

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 983 Village of Estero, Lee County
SPONSOR(S): Local Government Affairs Subcommittee and Rodrigues
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 0 N, As CS	Zaborske	Miller
2) Finance & Tax Committee	15 Y, 0 N	Wolfgang	Langston
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

HB 983 is a local bill amending the charter for the recently incorporated Village of Estero. The bill corrects some information inadvertently included or excluded in the charter. Specifically, the bill:

- Eliminates the requirement that the Village of Estero first adopt a local comprehensive land use plan before amending, superseding, enforcing, or repealing transitional land use development regulations;
- For the purposes of revenue sharing, waives certain requirements for conducting audits and financial reporting through the end of fiscal year 2016-2017;
- Expressly authorizes the Village of Estero to use the millage levied by the Estero Fire Rescue District for purposes of complying with the revenue sharing statutory requirements;
- Corrects the territorial boundaries of the Village of Estero by eliminating certain parcels located within the City of Bonita Springs;
- Eliminates from the land description for the village council districts those properties the bill also eliminated from the boundaries of the Village of Estero and corrects the corresponding acreage; and
- Adds a provision that waives a statutory requirement relating to development orders for developments of regional impact (DRI), providing that – instead of having to adopt a new development order incorporating all previous rights and obligations specified in the prior development order, as required by statute – all DRI development orders existing on the incorporation date will be deemed subject to the jurisdiction of the Village of Estero without the Village of Estero amending any order.

The Economic Impact Statement (EIS) for HB 983 projects no expenditures or loss in revenues associated with this bill. The EIS projects the Village of Estero will receive \$2,370,399 in state funds in fiscal year 2015 to 2016, and \$2,441,510 in fiscal year 2016 to 2017.

The act shall take effect upon becoming law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2014 the residential community of Estero, located in Lee County between the cities of Fort Myers to the north and Bonita Springs to the south, incorporated as the Village of Estero.¹ Following a referendum on November 4, 2014, approving the incorporation of the Village of Estero,² the Village officially was created on December 31, 2014.³ As required by law, the charter prescribes the form of government and clearly defines the responsibility for the legislative and executive functions.⁴ The charter for the Village of Estero also sets forth the municipality's boundaries, powers, and procedures for transitioning to a new municipality.⁵

Land Use Development Regulations

The charter provides that the Village of Estero will designate an agency or agencies to execute the planning functions and will adopt a comprehensive plan consistent with zoning and other land use control ordinances.⁶ The charter sets forth provisions providing that at the time of the passage of the referendum, unless specifically referenced in the charter, all applicable county ordinances in place will remain in place until and unless rescinded by the council for the Village of Estero.⁷ The charter also provides that until the Village of Estero adopts a comprehensive plan, the Lee County comprehensive plan as it exists on the day the Village of Estero commences corporate existence, will remain in effect as the Village's transitional comprehensive plan.⁸ Additionally, the charter provides that the Village of Estero will adopt ordinances providing for land use development regulations within the corporate limits and that until such time as ordinances are adopted, after the adoption of a local comprehensive land use plan the council may by ordinance amend, supersede, enforce, or repeal the transitional land use development regulations, or portions of the regulations.⁹

The charter does not address developments of regional impact located within the jurisdictional boundaries of and existing on the date of incorporation of the Village of Estero. A development of regional impact (DRI) is "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county."¹⁰ Current law requires a local government to issue a development order regarding a decision on a DRI application.¹¹ The development order constitutes a land development regulation applicable to the property.¹² When property in a DRI is annexed by another local jurisdiction, current law requires the annexing jurisdiction to adopt a new development order that incorporates all previous rights and obligations specified in the prior development order.¹³

The bill adds to the charter a provision addressing the requirement that the annexing jurisdiction adopt a new development order incorporating all previous rights and obligations specified in the prior

¹ Ch. 2014-249, Laws of Fla.

² Official General Ballot election results for Lee County, November 4, 2014, available at <http://www.leeelections.com/download/elhis14/141104/result2.html> (last visited 03/14/2015).

³ Ch. 2014-249, s. 1 at Charter s. 3(b), Laws of Fla.

⁴ S. 165.061(1)(e)a., F.S.

⁵ Ch. 2014-246, s. 1, Laws of Fla.

⁶ Ch. 2014-249, s. 1 at charter s. 6(3), Laws of Fla.

⁷ *Id.*

⁸ Ch. 2014-249, s. 1 at charter s. 12(6), Laws of Fla.

⁹ Ch. 2014-249, S. 1 at charter s. 12(7), Laws of Fla.

¹⁰ S. 380.06, F.S.

¹¹ S. 380.06(15), F.S.

¹² S. 380.06(15)(f), F.S.

¹³ S. 380.06(15)(h), F.S.

development order. Specifically, the new provision makes an exemption to that general law requirement by providing that for those DRIs located within the jurisdictional boundaries of the Village of Estero and existing on December 31, 2014, any existing DRI development orders existing on that date will be deemed subject to the jurisdiction of the Village of Estero without any need to amend the existing DRI development order. The bill also provides that the Village of Estero's jurisdiction over such existing DRI development orders will be subject to all rights, entitlements, covenants, and commitments adopted in the DRI development orders and zoning, including all rights and entitlements included in any local development order or plats adopted pursuant to the DRI development order and related zoning, adopted in conjunction with or pursuant to the DRI development order before December 31, 2014. The bill also provides that the Village of Estero must recognize the property owner's property rights and interests under such DRI development orders and other vested property rights as they existed on December 31, 2014.

Local Government Revenue Sharing Eligibility

In any fiscal year, a unit of local government may be eligible to participate in revenue sharing beyond the minimum entitlement amount.¹⁴ To be eligible, the local government unit must do all of the following:

- Report to the Department of Financial Services its finances for its most recently completed fiscal year.
- Make provisions for annual post-audits of its financial accounts.
- For newly incorporated municipalities, for the taxable values for the year of incorporation as certified by the property appraiser,
 - Levy ad valorem taxes, exclusive of taxes levied for debt service or other voter-authorized special millages, to produce revenue equivalent to a millage rate of 3 mills on the dollar based on the 1973 taxable values as certified by the property appraiser, or
 - In order to produce revenue equivalent to that which would otherwise be produced by such 3-mill ad valorem tax, to have received a certain remittance from the county, collected an occupational license tax or a utility tax, levied an ad valorem tax, or received revenue from any combination of these four sources.¹⁵
- Certify certain information relating to its law enforcement officers,¹⁶ firefighters,¹⁷ and dependent special districts.¹⁸
- Certify, annually and within 30 days of adopting an ordinance or resolution establishing a final property tax levy (or if none is levied, no later than November 1), to the Department of Revenue that the requirements of s. 200.065, F.S., were met.¹⁹

The charter provides that the Village of Estero may participate in all revenue sharing programs of the state. It also provides that the provisions of s. 218.23, F.S., are waived for the purpose of conducting audits and financial reporting through the end of fiscal year 2014-2015, and that for purposes of complying with s. 218.23, F.S., the millage levied by a special district may be used for an indefinite period of time.

The Department of Revenue analyzed the enrolled legislation pertaining to the incorporation of the Village of Estero and determined that if the referendum to establish the Village was approved in the November 2014 election, the Village of Estero would be eligible for revenue sharing from January through June 2015 based on its creation date, but would not be eligible for revenue sharing for fiscal

¹⁴ S. 218.23, F.S.

¹⁵ S. 218.23(1)(c), F.S.

¹⁶ S. 218.23(1)(d), F.S.

¹⁷ S. 218.23(1)(e), F.S.

¹⁸ S. 218.23(1)(f), F.S.

¹⁹ S. 218.23(1), F.S.

year 2015-2016 because it would not be able to meet the statutorily required reporting criteria for that period.²⁰

As part of the incorporation process, the Village of Estero conducted and submitted to the Legislature a Feasibility Study.²¹ According to the Study, the Village of Estero will satisfy the requirement that it pay a total local tax rate of 3 mills by adding the Village of Estero's tax rate of 0.8398 mills to the 2.18 mills for the Estero Fire Rescue District or the 3 mills for the San Carlos Fire Rescue District, making the total exceed 3 mills.²² The Estero Fire District is an independent special district created in 1976.²³ The San Carlos Fire Rescue District also is an independent special district created in 1976.²⁴

Village of Estero Corporate Boundaries & Village Council Boundaries

The Village of Estero charter sets forth boundaries for the newly incorporated area.²⁵ The boundaries set forth in the charter include portions contained within the corporate limits of the City of Bonita Springs which should not have been included in the corporate boundaries for the Village of Estero. Additionally, the charter provides for seven village council districts based on permanent population and sets forth the boundaries of each.²⁶ Those boundaries also inadvertently include portions contained within the corporate limits of the City of Bonita Springs.²⁷

Proposed Changes

The bill amends s. 12 of the charter for the Village of Estero as follows:

- In a provision relating to transitional land development regulations, rather than requiring the Village of Estero first adopt a local comprehensive land use plan before amending, superseding, enforcing, or repealing by ordinance the transitional land use development regulations, the bill gives the Village of Estero the authority to pass such ordinances without first adopting a local comprehensive land use plan.
- Because the Village of Estero did not become incorporated until December 31, 2014, to correct the provision relating to the Village's ability to participate in state revenue sharing, the bill waives the statutory requirements in s. 218.23, F.S., pertaining to conducting audits and financial reporting through the end of fiscal year 2016-2017, rather than through 2014 through 2015.
- Additionally, in order to avoid any confusion regarding whether ad valorem taxes levied by the Estero Fire Rescue District may be used in calculating millage to satisfy the requirement that the Village of Estero impose 3 mills of ad valorem tax or a 3 mill equivalent, the bill expressly provides that the millage levied by the Estero Fire Rescue District may be used.²⁸

The bill amends s. 3 of the charter for the Village of Estero to correct the territorial boundaries of the Village by eliminating certain parcels located within the City of Bonita Springs, including lots within the Pelican Landing development which also are located in the City of Bonita Springs. The bill incorporates these boundary changes into the bill's amendments to s. 9 of the charter by eliminating from the village council districts those properties that were removed from the boundaries of the Village of Estero, and reducing the corresponding total acreage of the Village from 4,128.3 acres to 4,080.3 acres.

²⁰ Department of Revenue 2014 Enrolled Bill Analysis for CS/CS/HB 1373, available at https://www.google.com/?gws_rd=ssl#q=Department+of+Revenue+2014+Enrolled+Bill+Analysis+for+CS%2FCS%2FHFB+1373 (last visited 03/14/2014).

²¹ Estero Incorporation Feasibility Study (August 26, 2013), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCEQFjAA&url=http%3A%2F%2Fww.lwvlee.org%2Ffiles%2FEstero%2Festero_feasibility_study_with_appendices.pdf&ei=C4EEVcTANoPCggTJ8IPgCA&uq=AFQjCNEM88tiZ9KOT8Qja9kd7fws0fjoyA&bvm=bv.88198703,d.eXY (last visited 03/14/2015).

²² *Id.* at p. 22.

²³ Ch. 2000-437, Laws of Fla.

²⁴ Ch. 2000-397, Laws of Fla. (the district's full name is the "San Carlos Park Fire Protection and Rescue Service District").

²⁵ Ch. 2014-249, S. 1 at charter s. 3, Laws of Fla.

²⁶ Ch. 2014-249, S. 1 at charter s. 9, Laws of Fla.

²⁷ *Id.*

²⁸ S. 218.23(1)(c), F.S.

B. SECTION DIRECTORY:

- Section 1: Amends s. 12 of the charter for the Village of Estero to no longer require the Village of Estero to first adopt a local comprehensive land use plan before amending, superseding, enforcing, or repealing transitional land use development regulations; to add a provision waiving the requirement in s. 380.06(15)(h), F.S., that an annexing jurisdiction adopt a new development order incorporating all previous rights and obligations specified in the prior development order; to waive the revenue sharing requirements in s. 218.23(1), F.S., pertaining to conducting audits and financial reporting through the end of fiscal year 2016-2017; and to allow the Village of Estero to use the millage levied by the Estero Fire Rescue District to comply with s. 218.23(1), F.S.
- Section 2: Amends s. 3 of the charter for the Village of Estero, correcting the territorial boundaries of the Village of Estero by eliminating certain parcels located within the City of Bonita Springs.
- Section 3: Amends s. 9 of the charter for the Village of Estero, eliminating from the village council districts those properties removed in s. 2 of HB 983 from the boundaries of the Village of Estero, and correcting the corresponding acreage.
- Section 4: The act shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 16, 2015

WHERE? The News-Press

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

The waiver of the revenue sharing provisions in s. 218.23, F.S., is an exception to general law.

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

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Local Government Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment adds a provision that waives a statutory requirement relating to development orders for developments of regional impact (DRI), providing that – instead of having to adopt a new development order incorporating all previous rights and obligations specified in the prior development order, as required by statute – all DRI development orders existing on the incorporation date will be deemed subject to the jurisdiction of the Village of Estero without the Village of Estero amending any order.

This analysis is drafted to the committee substitute as passed by the Local Government Affairs Subcommittee.