

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1435 Village of Estero, Lee County

SPONSOR(S): Rodrigues

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee		Miller	Miller
2) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

The Village of Estero was incorporated in 2014. The charter of the Village provides for amending the charter according to the Municipal Home Rules Powers Act, ch. 166, F.S., or as otherwise provided by general law. Charter amendments may be proposed by Village Council ordinance or petition of the qualified Village voters. The charter further provides that charter amendments are adopted if a majority of the registered voters of the Village vote in favor. The charter thus may be interpreted as consistent with s. 166.031, F.S., the exclusive method in general law to amend municipal charters.

HB 1435 amends the charter for the Village of Estero to require proposed amendments to the Village charter to be adopted by a vote of at least 60% of the electors voting in a referendum for that purpose.

The Economic Impact Statement for the bill projects no expenses or changes in revenues, characterizing this as a policy change without financial impact.

The bill provides the act is effective 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:

Present Situation

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

Village of Estero Charter Provisions for Amendment

The current charter provides the following methods to amend the charter:

- Pursuant to the Municipal Home Rules Powers Act.⁵ The operative section of the Act is s. 166.031, F.S.
- As otherwise may be provided by general law.
- By ordinance adopted by the Village council and submitted to the Village voters.
- By petition signed by 10% or 5,000, whichever is less, of the qualified electors in the Village registered to vote in the last regular Village election.⁶

The provisions for ordinance and petition are similar to the requirements in s. 166.031, F.S. Whether brought forward by ordinance or petition, the Village council is required to place a proposed amendment before the voters at the next Village election or a special election called for that purpose.⁷ The charter provides that a proposed amendment is adopted if approved by a majority of the registered voters of the Village⁸ and become effective either at the time provided in the amendment or, if no time is specified, 30 days after adoption by the voters.⁹

General Law for Municipal Charter Amendment

Regardless of any provisions in its charter, a municipality may amend its charter pursuant to s. 166.031, F.S.¹⁰ Under the statute, amendments to a municipal charter may be proposed by:

- The governing body of the municipality, by ordinance, or
- By petition signed by 10% of the registered electors as of the last preceding municipal general election.¹¹

Amendments so proposed must be placed by the governing body of the municipality as a referendum before the voters at the next general election held in the municipality or a special election called for the purpose voting on the proposed amendment.¹² The proposed amendment is adopted if approved by a

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 Section 165.061(1)(e)a., F.S.

⁵ Ch. 166, F.S.

⁶ Ch. 2014-249, s. 11(2)(a), Laws of Fla.

⁷ Ch. 2014-249, s. 11(2)(b), Laws of Fla.

⁸ Ch. 2014-249, s. 11(2)(c), Laws of Fla.

⁹ *Id.*

¹⁰ Section 166.031(3), F.S.

¹¹ Section 166.031(1), F.S. The statute also states these methods cannot be used to propose changes to that part of the charter describing the boundaries of the municipality.

¹² Section 166.031(3), F.S.

majority of the electors voting in a referendum on the proposal.¹³ This section is supplemental to, not exclusive of, the provisions of other law pertaining to amending municipal charters.¹⁴

The right of referendum has been called “the essence of reserved power,” those powers Floridians retained for themselves under the 1968 Constitution.¹⁵ The Florida Constitution requires all referenda to be held as provided in law.¹⁶ When the qualified electors of a municipality vote in a referendum on whether to amend the municipal charter, regardless of how the proposed change reached the ballot, they exercise this reserved power and “exercise greater control over the laws which directly affect them.”¹⁷

Section 166.031, F.S., preserves the integrity of the referendum and is interpreted as the exclusive means to amend municipal charters. In one case, voters petitioned the City of Orlando to amend the municipal charter. The proposed amendments included a provision that they could not be repealed except “by a referendum election of the registered voters of the City of Orlando.”¹⁸ The appellate court interpreted this as an attempt to preclude the governing body of the City from proposing charter amendments by ordinance and ruled such a charter provision would have no legal effect.¹⁹ A series of Attorney General opinions²⁰ concluded consistently that the statute is the exclusive method to amend municipal charters:

- “The provisions of s. 166.031, F.S., prevail over conflicting provisions contained in a municipal charter.”²¹
- “The amendment of a city’s charter is governed by s. 166.031, F.S., and no alternative method of charter amendment may be used.”²²
- “A municipal charter may not conflict with the provisions of section 166.031, Florida Statutes...”²³

Conflict between the Charter and Statute

Closely paralleling the statute, the Village charter requires a proposed charter amendment be approved by “a majority of the registered voters of the village.” Although s. 166.031, F.S., controls the manner of amending the charter, the present text could be construed simply to restate the statutory text in the charter. The terms of the statute preclude any other interpretation.²⁴

For example, the present text cannot be construed to require a proposed amendment pass by a vote total equal to a majority of *all* registered voters in the Village. As of February 2, 2015, the Village of Estero had a total of 29,682 registered voters.²⁵ If 50%, or 14,841, of the registered electors voted in a referendum on a proposed charter amendment, applying the requirements of the statute would require approval by a majority of at least 7,421. However, if the charter provision is interpreted as requiring a vote equaling at least a majority of *all* registered voters, or 14,842, then every referendum would always require a supermajority of the voters actually voting unless turnout is 100%. Because this requirement conflicts with the exclusive requirements of s. 166.031, F.S., such an interpretation could not stand.

¹³ Section 166.031(2), F.S.

¹⁴ Section 166.031(3), F.S.

¹⁵ *Florida Land Company v. City of Winter Springs*, 427 So. 2d 170, 172 (Fla. 1983).

¹⁶ Art. VI, s. 5(a), Fla. Const.

¹⁷ *Florida Land Company*, at 172.

¹⁸ *Gaines v. City of Orlando*, 450 So. 2d 1174, 1176-1177 (Fla. 5th DCA 1984).

¹⁹ *Gaines*, at 1179.

²⁰ While not legally binding, opinions of the Attorney General are entitled to great weight and should be regarded as highly persuasive. *State v. Family Bank of Hallandale*, 623 So. 2d 474, 478 (Fla. 1993); *Beverly v. Division of Beverage of the Department of Business Regulation*, 282 So. 2d 657, 660 (Fla. 1st DCA 1973).

²¹ AGO 1988-30.

²² AGO 1993-23.

²³ AGO 2002-79.

²⁴ *Gaines v. City of Orlando*, at 1179; AGO 2002-79; AGO 1993-23; AGO 1988-30.

²⁵ Lee County Elections Book Closing Party Summary by District for ESTERO-SANIBEL, at <http://www.leeelections.com/wp/elections/archive/elec150303/> (last accessed 1/26/2016).

Effect of Proposed Changes

The bill would amend the charter for the Village of Estero to require all amendments to that municipal charter must be adopted by a minimum 60% of those electors voting in a referendum on that issue. This would be an exception to the controlling general law requiring charter amendments to be adopted if approved by a simple majority of the electors voting in the referendum. Because the statute has been interpreted as the exclusive manner for amending municipal charters, the bill could result in litigation over proposed charter amendments.

B. SECTION DIRECTORY:

Section 1: Amends the municipal charter for the Village of Estero to require any future charter amendment be approved by at least 60% of the qualified electors voting in a referendum on that issue.

Section 2: Provides the act is effective upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 8, 2015

WHERE? Lee County, by 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, unless the charter amendment contained in the bill is construed as constraining the right of the Village voters to act through referendum in violation of article VI, s. 5(a), of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Requiring a 60% majority of those voting to approve changes to a municipal charter would be inconsistent with the requirements of the general law, s. 166.031, F.S. The bill does not expressly except the charter for the Village of Estero from the statute, creating a potential inconsistency that if litigated may result in the statute being applied in lieu of the charter terms. If the 60% vote requirement is also interpreted as an undue burden on the exercise of the voters' rights to act through referendum as reserved in the Constitution and judicially interpreted, the amendment in the bill could be ruled invalid as violating the Florida Constitution. As the present charter text could be construed to conform with the statute, amending the charter to require approval of charter amendments by a majority of those voting in a referendum would further align the charter with the current requirements of 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