

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

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|----------------------------|---|----------------------------------|----------|-----|
| BILL #: | CS/HB 395 | FINAL HOUSE FLOOR ACTION: | | |
| SUBJECT/SHORT TITLE | Martin County | 111 | Y's 1 | N's |
| SPONSOR(S): | Local, Federal & Veterans Affairs Subcommittee; Magar | GOVERNOR'S ACTION: | Approved | |
| COMPANION BILLS: | N/A | | | |

SUMMARY ANALYSIS

CS/HB 395 passed the House on March 5, 2018, and subsequently passed the Senate on March 8, 2018.

The bill creates a municipality in Martin County to be known as the Town of Hobe Sound (town). The bill contains the charter of the proposed town, including the following authority, powers, and duties:

- Corporate name, purpose of the charter, and creation and establishment of the Town of Hobe Sound;
- Powers of the town;
- A council-manager form of government;
- Town council, mayor, and vice mayor;
- Powers and duties, composition of the council, eligibility, terms, compensation, council meetings, vacancies, forfeitures, judge of qualifications, and investigations;
- Administration by town manager and provision for town attorney, departments, personnel, planning;
- Adoption and enforcement of ordinances and resolutions;
- Financial management, including budget administration and amendment, capital program, public records, annual audits, and shortfalls;
- Authority to raise revenue for municipal purposes, including imposing ad valorem taxes;
- Authority to incur debt, including a bridge loan for initial expenses of the new town;
- Nominations and qualifications of council members, nonpartisan elections, and five at large council seats;
- Powers of initiative and referendum, amendments to the charter and severability; and
- Transition provisions, including a referendum election, initial council election, eligibility for state-shared revenues, local revenue sources, local option gas tax revenues, contractual services and facilities (including existing solid waste contracts), and the continuation of existing county municipal services taxing service units.

The Economic Impact Statement (EIS) submitted for the town projects revenues of \$1,687,710 in FY 2019 and \$6,391,427 in FY 2020 (first full year of municipal government). The EIS projects expenditures of \$1,038,455 in FY 2019 and \$4,558,775 in FY 2020, representing the cost of municipal administration and bridge loan payments. The expenditure figure does not include payment from the proposed municipality to Martin County for services provided by interlocal agreement.

The bill was approved by the Governor on March 23, 2018, ch. 2018-166, L.O.F. Subsection (1) of section 11 and section 12 became effective March 23, 2018, and the remainder of the bill will become effective only upon approval by a majority vote of the proposed municipality's electors voting in a referendum conducted in accordance with subsection (1) of section 11.

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

STORAGE NAME: h0395z1.LFV

DATE: April 10, 2018

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Municipal Incorporation

Constitutional Provisions

The Florida Constitution states municipalities may be established or abolished and their charters amended pursuant to general or special law.¹ Municipalities are granted all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services. Additionally, municipalities are authorized to exercise any power for municipal purposes except when expressly prohibited by general or special law.² The power to tax is granted only by general law.³ The legislative body of a municipal government must be elected.⁴

Municipal Home Rule Powers Act

The Municipal Home Rule Powers Act structures the use of the constitutional powers authorized for municipalities.⁵ A special law forming a municipality or a municipal charter may not be amended without a referendum of the affected voters if the change impacts:⁶

- 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.

¹ Art. VIII, s. 2(a), Fla. Const. A municipality is a local government entity, located within a county that is created to perform additional functions and provide additional services for the particular benefit of the population within the municipality. The term “municipality” can be used interchangeably with the terms “city,” “town,” and “village.”

² Art. VIII, s. 2(b), Fla. Const.

³ Art. VII, s. 9(a), Fla. Const.

⁴ Art. VIII, s. 2(b), Fla. Const.

⁵ Chapter 166, F.S.

⁶ Section 166.021(4), F.S. The charter of a municipality may be amended by a referendum called pursuant to s. 166.031, F.S.

Formation of Municipalities Act

The Formation of Municipalities Act (Formation Act) governs the formation and dissolution of municipal governments.⁷ 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.⁸

Under the Formation Act, a municipal government may be established where no such government exists only if the Legislature adopts the municipal charter by special act after determining the appropriate standards have been met.⁹

Requirements for Municipal Incorporation

Standards for Incorporation

The area proposed for incorporation must meet the following conditions in order to be eligible for incorporation:¹⁰

- 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 75,000 or less, 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 or 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.¹¹

Special Act

With certain exceptions, the Legislature has chosen to create the charter for a new municipality only by special act.¹² Special acts for municipal incorporation are initiated as local bills. A local bill is legislation

⁷ Chapter 165, F.S.

⁸ Section 165.021, F.S.

⁹ Section 165.022, F.S. An exception to this principle is the home rule authority of Miami-Dade County, where the board of county commissioners has been granted the exclusive power to create municipalities within that county through the Florida Constitution. *See* s. 165.022, F.S., and Art. VIII, s. 6(e), Fla. Const. Adopted in 1957, the Miami-Dade County Home Rule Charter provides for the creation of new municipalities at Art. 6, s. 6.05.

¹⁰ Section 165.061(1), F.S.

¹¹ In accordance with Art. I, s. 10, Fla. Const.

relating to (or designed to operate only in) a specifically indicated part of the state or purporting to operate within a classified territory when such classification is not permissible or legal in a general bill.¹³ To incorporate a municipality, the special act must include a proposed municipal charter prescribing the form of government and clearly defining the legislative and executive functions of city government. The special act may not prohibit or limit tax levies otherwise authorized by law.¹⁴

Unless conditioned to become effective only upon approval by qualified electors, no special act may be passed without prior publication of intent to seek such enactment.¹⁵ The notice of intent to file must be published in the manner provided by general law.¹⁶ The Legislature has required special acts creating municipal incorporations to be subject to a referendum. A bill proposing creation of a municipality is reviewed based on the statutory standards for municipal incorporation.¹⁷

Feasibility Study

A feasibility study and a local bill proposing the municipal government charter must be submitted 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.¹⁸

In 1999, the Legislature adopted detailed requirements for the preparation of the required feasibility study for any area requesting incorporation.¹⁹ 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.

¹² Section 165.041(1)(a), F.S. Municipalities in Miami-Dade County are created only by the Miami-Dade County Commission. *See* art. VIII, s. 6(e), Fla. Const., incorporating art. VIII, s. 11, Fla. Const. (1885, as amended); s. 165.22, F.S. Conversion of certain independent special districts to a municipality is by petition and referendum of the district electors. *See* s. 165.0615, F.S.

¹³ *State ex rel. Landis v. Harris*, 163 So. 237, 240 (Fla.1934).

¹⁴ Section 165.061(1)(e)2., F.S.

¹⁵ Art. III, s. 10, Fla. Const.

¹⁶ Section 11.02, F.S., specifies the publication of notice must occur one time, at least 30 days prior to introduction of the local bill in the Legislature.

¹⁷ Section 165.061, F.S.

¹⁸ Section 165.041(1)(b), F.S. For any proposed incorporations to be considered during the 2018 Legislative Session, this deadline fell on September 4, 2017.

¹⁹ Section 165.041, F.S.

- 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, such information must also be submitted to the Legislature in the feasibility study.²⁰

The Proposed Town of Hobe Sound²¹

Hobe Sound is located in south Martin County, with a “front door [on]... the Gold Coast and... back door [on] ... the Treasure Coast.” The area is named after the Jobe tribe, who were encountered by a shipwrecked crew of merchants in 1696. The area was part of a Spanish land grant known as the Gomez grant, given to Don Eusebio Gomez in 1815 for services to the crown. Upon admission of Florida into the United States as a territory, the federal government challenged many land grants, including the Gomez grant, on the grounds that the transfers had occurred to dispossess the United States of her interest in the land. While Gomez’s claim to the land was ultimately affirmed by the United States Supreme Court,²² uncertainty prevented development and the property was sold for \$1 per acre.

All claims to the Gomez grant were released to the Indian River Pineapple and Coconut Growers Association in the 1880s. The area quickly became home to 50 individuals with pineapple plots. The Florida East Coast Railway was extended to Hobe Sound in 1894, leading a group of investors known as the Indian River Association to purchase the remaining tracts in the Gomez grant. The association constructed much of the early infrastructure in the region, including a bridge from Hobe Sound to Jupiter Island.

By the early 1920s, the area had become known as Olympia due to much of the land being purchased by the Olympia Improvement Corporation. The company partnered with movie studios in a plan to transform the area into a development known as Picture City. The studio was never constructed and the collapse of the land boom in the late 1920s, along with the 1928 Okeechobee hurricane and the Great Depression, ended the studio plans. A group of Jupiter Island residents formed the Hobe Sound Company and purchased the remaining lots in 1932.²³ By the late 1930s, Joseph V. Reed assumed control of the Hobe Sound Company. The Reed family controlled the company for the next 65 years.

²⁰ Section 165.041(1)(c), F.S. Municipal overlays are adopted pursuant to s. 163.3217, F.S.

²¹ See generally *History*, Hobe Sound Chamber of Commerce, available at <http://www.hobesound.org/history.html> (last accessed Jan. 18, 2018) and *Hobe Sound Incorporation Feasibility Study*, infra note 23.

²² *United States v. Gomez*, 33 U.S. 477 (1834).

²³ Tyler Treadway, *Picture City promised Hollywood glitz in 1920s in what is now Hobe Sound, Treasure Coast Palm*, Oct. 21, 2012, available at <http://archive.tcpalm.com/lifestyle/picture-city-promised-hollywood-glitz-in-1920s-in-what-is-now-hobe-sound-ep-381841066-342931592.html> (last accessed Jan. 18, 2018).

Feasibility of the Proposed Town of Hobe Sound

This section examines whether the proposed town meets the statutory criteria for the form and structure of municipal government and demonstrates sufficient fiscal integrity for self-governance.

The proponents of municipal incorporation submitted their feasibility study addressing each element required by statute in August 2017.²⁴ Upon review by staff, the study was found to contain certain deficiencies. Evaluations of the study were also requested from the Department of Revenue (DOR),²⁵ Department of Economic Opportunity (DEO),²⁶ and Office of Economic and Demographic Research (EDR).²⁷ These evaluations, along with a letter outlining concerns raised by the reviews, were sent to proponents on November 8, 2017. Correspondence from the proponents resolving these concerns was received on November 13, 2017.²⁸ The following compiles how each element was presented in the 2017 Study, the evaluations conducted by DOR, DEO, and EDR, and finally addressed by the proponents.

Meeting the Statutory Criteria for Municipal Incorporation

Section 165.041(1)(b)1., F.S. – Location and Boundaries

The location of territory subject to boundary change and a map of the area which identifies the proposed change.

The 2017 Study provides a full legal description of the area proposed for incorporation, together with a boundary map. A copy of the general boundary map is attached to this analysis as Appendix B.

DEO concluded the 2017 Study adequately addressed this requirement, EDR found no significant issue, and DOR had no comment.

Section 165.041(1)(b)2., F.S. – Major Reasons for Boundary Change

The major reasons for proposing the boundary change.

The 2017 Study states the area seeks greater control over the future of the community, to maintain its quality of life, and to receive a greater share of county tax dollars. DEO concluded the 2017 Study adequately addressed this requirement, EDR found the element appears to have been satisfied, and DOR had no comment.

Section 165.041(1)(b)3.a.-d., F.S. – Land Use, Zoning Designations

a. A list of the current land use designations applied to the subject area in the county comprehensive plan.

b. A list of the current county zoning designations applied to the subject area.

c. A general statement of present land use characteristics of the area.

d. A description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.

²⁴ BJM Consulting, Inc., *Hobe Sound Incorporation Feasibility Study*. (August 2017) (herein 2017 Study), on file with the Local, Federal & Veterans Affairs Subcommittee. *See also* ss. 165.041(1)(b) & 165.061(1), F.S.

²⁵ Dept. of Revenue, Proposed Incorporation – Town of Hobe Sound, Martin County (Nov. 6, 2017) (herein DOR 2017 Review), on file with the Local, Federal & Veterans Affairs Subcommittee.

²⁶ Dept. of Economic Opportunity, Review of Proposed Town of Hobe Sound Municipal Incorporation (Oct. 31, 2017) (herein DEO 2017 Review), on file with the Local, Federal & Veterans Affairs Subcommittee.

²⁷ Office of Economic and Demographic Research, Letter to Local and Federal Affairs Committee (Oct. 27, 2017) (herein EDR 2017 Review), on file with the Local, Federal & Veterans Affairs Subcommittee.

²⁸ BJM Consulting Inc., *Re: Hobe Sound Responses to the Department Staff Reviews* (Nov. 13, 2017) (herein November Letter), on file with the Local, Federal & Veterans Affairs Subcommittee.

The 2017 Study indicates the area has land designated as industrial, commercial, and residential. The Study also indicates that as of July 31, 2017, no new development is planned in the proposed area of incorporation.

DEO concluded that a general statement of present land use characteristics was adequately included, EDR stated that a discussion of the sufficiency of this information is outside of the agency's purview, and DOR had no comment.

Section 165.041(1)(b)4., F.S. – Public Entities Currently Within the Incorporation Area

A list of all public agencies, such as local governments, school districts, and special districts, whose current boundary falls within the boundary of the territory proposed for the change or reorganization.

The 2017 Study discusses county government entities, courts with jurisdiction over the area proposed for incorporation in Martin County, the Martin County School District, the Martin Soil and Water Conservation District, and the Martin Metropolitan Planning Organization. The study indicates no initial impact on these districts due to incorporation.

DEO and EDR found that the 2017 Study adequately addressed this requirement and DOR had no comment.

Section 165.041(1)(b)5., F.S. – Current Services and Costs

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.

The 2017 Study indicates that Martin County currently provides the maintenance of right-of-ways, parks, all development services, code enforcement, and other general governmental services to Hobe Sound. Water and sewer services are provided by the South Martin Regional Utility, transportation by the Martin County Metropolitan Planning Organization, fire protection by Martin County Fire Rescue Department through a municipal services taxing unit, law enforcement by the Martin County Sheriff's Department, and emergency medical services by Martin County Emergency Medical Services. Private sector companies provide power (FPL), phone (AT&T), and solid waste hauling and disposal (Waste Management).

The Study provides the following comparison of the estimated cost of government services currently provided by the county within the Town of Hobe Sound if area remains unincorporated versus services provided by the county directly and subject to interlocal agreements after incorporation:

| | Unincorporated Martin County | Town of Hobe Sound |
|--------------------------------------|-------------------------------------|---------------------------|
| County General Fund | \$3,327,482 | \$3,327,482 |
| Sheriff | \$2,712,500 | \$2,712,500 |
| Public Works | \$512,309 | \$512,309 |
| Street Lighting | \$65,310 | \$65,310 |
| Library and Cultural | \$37,363 | \$37,363 |
| | | |
| County MSTU/Town General Fund | \$2,916,245 | \$2,916,245 |
| Fire | \$2,272,806 | \$2,272,806 |
| Parks and Recreation | \$147,581 | \$147,581 |
| Stormwater | \$233,594 | \$233,594 |
| Roads | \$262,264 | \$262,264 |
| | | |
| Municipal Government | \$0 | \$1,426,890 |
| | | |
| Total Cost | \$6,243,727 | \$7,670,317 |

DEO and EDR concluded the 2017 Study adequately addressed this requirement and DOR had no comment.

Section 165.041(1)(b)6., F.S. – Proposed Services and Costs

A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such proposed services.

The following services are proposed to be provided within the proposed incorporation area (with estimated costs):

- General Government Administration - \$1,426,890
- Interlocal agreement with Martin County, to be based on services presently provided through the County Municipal Services Taxing Unit:
 - Fire: \$2,272,806
 - Parks and Recreation: \$147,581
 - Stormwater: \$233,594
 - Roads: \$262,264
- Public Safety - Martin County Sheriff's Office will continue to provide these services.

DEO and EDR concluded this requirement was adequately addressed, relying on an August 9, 2017, letter from the Martin County Administrator stating the county would continue to provide fire, stormwater, parks and recreation, and road maintenance services currently provided by a municipal services taxing unit (MSTU) if the Town of Hobe Sound levies the same millage rate for those services as the one levied by the county and remits the funds to the county.²⁹

The Martin County Administrator also stated the Martin County Sheriff's Office will continue to provide services in the incorporated area at present levels with no increase in costs or funding requirements

²⁹ Letter from Taryn G. Kryzda, County Administrator, Martin County to Eric Miller, Policy Chief, Local, Federal & Veterans Affairs Subcommittee (August 9, 2017). A copy of this letter is attached as Appendix C and is on file with the Local, Federal & Veterans Affairs Subcommittee.

beyond the ad valorem taxes already imposed by the County. EDR stated the Study does not explain how estimated costs associated with services provided by the county are determined, however, the Study appears to address this concern by stating the estimated costs are based on the current cost of providing the services and that the estimates were agreed to by the Martin County Administrator.

DOR had no comment.

Section 165.041(1)(b)7., F.S. – Names of 3 Persons Submitting the Proposal

The names and addresses of three officers or persons submitting the proposal.

The 2017 Study provides full information for the three officers or persons submitting the proposal.³⁰ DEO and EDR concluded the list in the Study appeared complete and adequately addressed this requirement, and DOR had no comment.

Section 165.041(1)(b)8.a. and 8.b., F.S. – Fiscal Capacity and Organizational Plan

Evidence of fiscal capacity and an organizational plan as it relates to the area seeking incorporation.

- a. 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.***
- b. A five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.***

The 2017 Study provides the following estimates of annual revenues projected to begin in Fiscal Year (FY) 2020:

- Ad Valorem Taxes (continuation of aggregate 3.1735 mills currently imposed by several county MSTUs within the area, which MSTUs are projected not to continue after incorporation) - \$2,916,245
- Franchise Fees - \$1,080,600
- Communication Services Tax - \$209,222
- State Shared Revenue - \$2,001,584
- Business Tax Receipts and Investment Income - \$50,000

Projections provided in the 2017 Study estimate revenues to exceed expenses each year for the first five years after incorporation, yielding cumulative reserves of \$3,283,201 after the town's first full fiscal year of operation and such reserves increasing by approximately \$2 million annually thereafter. The Study does not provide projections concerning building acquisition or construction. The November Letter from the proponents of incorporation stated the town intends to rent office space sufficient to conduct business and hold public meetings and that this cost is accounted for in the annual operating overhead portion of the budget.

EDR made the following comments regarding components of this requirement:

- EDR compared the Study's estimates of expected municipal revenues originating from the Local Government Half-Cent Sales Tax Program and Municipal Revenue Sharing Program to data provided by DOR and found the Study's state shared revenue projections to be reasonable.
- The Study did not appear to sufficiently explain the estimates used to project Communication Services Tax (CST) and franchise fee revenue. Based on FY 2017-18 data for Martin County, EDR projected CST and franchise fee revenue likely would be greater than the amount projected by the Study.

³⁰ Michael Ennis, Patrick J. Martin, and Alfred N. Miller.

- Local Business Tax and investment income projections lack an accompanying explanation of how the amounts were derived. In the November Letter, the proponents stated the values provided for these items are intended as very conservative placeholders.³¹
- Potential additional revenues were discussed, but not included, in the Study. Most notably are user fees and revenues associated with permits. Although the town apparently will contract with Martin County to continue providing services typically paid for by these fees, revenues derived from collecting additional discretionary permitting fees are not reflected in the five-year operational plan which reflects payments for other contracted services.
- The Study's population growth estimate of 2 percent appears to be too optimistic based on the 0.6 percent annual population growth of unincorporated Martin County for the five-year period between 2011 and 2016.
- The property tax base projected annual increase of 3 percent is unsubstantiated in the Study, however, compound annual growth rates (CAGR) for the area support the projection.³²
- EDR concluded that the Study's projected revenue growth of 3 percent annually was not substantiated and might be too optimistic. Local government revenues grew statewide at 2.3 percent between FY 2003-04 and 2014-15. EDR noted, however, that the increase can vary significantly between municipalities.
- Operating costs associated with the new local government are intended to be covered by the redirection of existing revenues and a bridge loan. The five-year operational plan identifies bridge loan proceeds of \$1,000,000 in FY 2019 and repayments in each of the subsequent five years. The Study contemplates the bridge loan can be secured at a 3 percent annual percentage rate.
- The Study provides a discussion of how estimated expenditures were calculated. EDR also notes the inclusion of a letter from the Martin County Administrator stating the county will continue providing services based on revenues to be incurred at the current MSTU millage rate.
- Projected growth of expenditures and revenues is estimated in the Study at 3 percent annually. The Study does not provide documentation or explanation to substantiate the estimate presented. A comparison to CAGR data for statewide municipal government revenues and expenditures between FY 2003-04 and 2013-14 suggests the Study's assumption is reasonable, but notes actual increase in expenditures and revenues vary significantly across municipalities. The November Letter states Hobe Sound's projected growth in expenditures and revenues reflect the experiences of other municipalities who contract for most services.

DOR analyzed the fiscal capacity of the proposed town. DOR noted potential conflicts between the initial dates of eligibility for state revenue sharing and other tax distributions and when DOR could actually transmit such funds to the proposed town.³³ DOR also provided a table of estimated revenue sharing distributions to which the town would be entitled upon meeting (or waiving) the requirements of s. 218.23, F.S., as well as the impact of these distributions on the revenues of Martin County and the City of Stuart and the towns of Jupiter Island, Ocean Breeze, and Sewall's Point.³⁴

Revenue Sharing

To be eligible for revenue sharing, a municipality not only must exist but must have elected and seated its legislative body.³⁵ As a unit of local government, the municipality also must comply with the

³¹ The Study states that investment income is derived from interest accrued from ad valorem tax proceeds between collection and time the monies are actually spent. The \$25,000 value for investment income projected by the Study suggests an annualized return of 0.86 percent for FY 2020, based on the Study's protected ad valorem tax collections.

³² EDR found the 2012-2016 CAGR for Martin County was 3.7 percent and stated the August 3, 2017 Florida Ad Valorem Estimating Conference projects CAGR of 5 percent between 2018 and 2023. EDR 2017 Study 6-7.

³³ DOR 2017 Review 2-4.

³⁴ A copy of the table is attached to this analysis as Appendix D. DOR 2017 Review 5.

³⁵ Section 218.21(3), F.S.

requirements of s. 218.23, F.S., including reporting its finances for its most recently completed fiscal year³⁶ and either levy ad valorem taxes of at least 3 mills or collect revenue from specified other sources equivalent to what would be raised by such an ad valorem assessment.³⁷

DOR noted the bill provides for the town to be eligible for revenue sharing beginning April 1, 2019, and waives the financial reporting and annual audit requirements of s. 218.23(1), F.S., through September 30, 2020. The bill also allows ad valorem taxation levied by special districts to be used toward the 3 mill requirement for an indefinite period of time.

Half-Cent Sales Tax

A newly-incorporated municipality not only must meet the statutory requirements for revenue sharing to participate in the local government half-cent sales tax distribution, but also all applicable criteria for incorporation under s. 165.061, F.S.³⁸

Gas Tax Revenues

A newly-created municipality entitled to receive distributions under ch. 218, parts II (Revenue Sharing) and VI (Half-Cent Sales Tax), F.S., is entitled to receive distributions of certain gas taxes if levied by the county.³⁹ These distributions cannot begin until the new municipality's first full fiscal year.⁴⁰

Martin County imposes local option gas taxes⁴¹ in which the town would be entitled to share. The 2017 Study states revenue from gas taxes is not estimated because the intent of the town would be for Martin County to retain all such funds and continue to perform all road maintenance and repair. The bill indicates revenues will be distributed in accordance with general law or an interlocal agreement with the county. DOR notes that statute requires the interlocal agreement to be executed prior to June 1 and a certified copy to be provided by July 1, to become effective at the beginning of the next local fiscal year, which would be October 1.

Local Communications Services Tax

Counties and municipalities may, by ordinance, levy a tax on communication services,⁴² which applies to taxable services after January 1 of a given year.⁴³ A municipality adopting, repealing, or changing such tax must notify DOR by September 1 preceding the January 1 in which the change would go into effect.⁴⁴ Assuming that the town elects its governing body, holds its first town council meeting, adopts a local communications services tax rate, updates DOR's address database, and notifies DOR of its own municipal rate by September 1, 2019, the earliest the town's local communications services tax could be imposed would be January 1, 2020. The bill proposes continuing the local communications services tax rate imposed by Martin County through December 31, 2019.

³⁶ Section 218.23(1)(a), F.S. This report is submitted to the Dept. of Financial Services. S. 218.32, F.S.

³⁷ Section 218.23(1)(c), F.S.

³⁸ Section 218.63(1), F.S.

³⁹ Section 336.025(4)(b), F.S.

⁴⁰ *Id.*

⁴¹ Martin County Code of Ordinances, Ch. 71, Art. 5. *available at* https://www.municode.com/library/fl/martin_county/codes/code_of_ordinances?nodeId=COOR_CH71FITA_ART5LOOPGATA (accessed Jan. 18, 2018).

⁴² Section 202.19(1), F.S. "Communication services" are defined by s. 202.11(1), F.S., with a number of exclusions such as one for internet access, electronic mail, or similar online computer services.

⁴³ Section 202.21, F.S.

⁴⁴ *Id.*

Section 165.041(1)(b)9, F.S. – Data and Analysis Showing Incorporation is Necessary and Feasible
Data and analysis to support the conclusions that incorporation is necessary and financially feasible, including population projections and population density calculations, and an explanation concerning methodologies used for such analysis.

The 2017 Study bases the analysis and evidence of financial feasibility on the redirection of existing revenues derived from assessments levied by the county for fire/rescue, parks and recreation, stormwater, and roads. The Study indicates that law enforcement services will continue to be provided by the county. The costs estimated by the Study are based on the current costs incurred by the county for providing the service, which will be transferred from the town to the county subject to an interlocal agreement.

The Study provides for a millage rate of 3.1735 yielding a projected total town budget for FY 2020 (the first full year of operation) of \$6,205,346. For comparison, the following are the millage rates and general fund expenditures (for FY 2016-2017) for similarly-sized municipalities:

| | Stuart | Tavares | Callaway | Auburndale |
|--------------|---------------|----------------|-----------------|-------------------|
| Millage Rate | 4.5520 | 6.6166 | 2.2500 | 4.2657 |
| Expenditures | \$38,064,581 | \$33,759,438 | \$13,919,872 | \$34,164,677 |

DEO stated the projected 2 percent annual increase in population and the 3 percent annual increase in expenses and revenues were reasonable based on staff findings.

EDR assumes that the Study reflects the views of incorporation proponents residing within the Hobe Sound community and the community's conclusion that incorporation is needed and necessary. However, EDR expressed that it is not clear if proponents have adequately answered questions concerning financial feasibility.

DOR had no comment.

Section 165.041(1)(b)10. – Evaluation of Alternatives to Incorporation
Evaluation of the alternatives available to the area to address its policy concerns.

The 2017 Study does not identify the evaluation of alternatives to incorporation but rather indicates that Hobe Sound is over 100 years old and has a unique culture, centered on a downtown area consisting of small shops and offices. The Study also asserts that incorporation would increase the ability of the local population to determine levels of services for municipality functions such as law enforcement and fire protection.

DEO found the 2017 Study does not include a formal evaluation of the alternatives to municipal incorporation and therefore does not meet this requirement. EDR noted that the 2017 Study does not include a formal discussion of possible alternatives to incorporation but did address alternatives to address specific policy concerns. EDR stated the validity of alternatives was a determination subject to the opinion of the reader. DOR took no position.

Section 165.041(1)(b)11., F.S. – Evidence the Proposed Municipality Meets the Requirements for Incorporation under s. 165.061(1), F.S.
Section 165.061(1)(a), F.S. – Compact, Contiguous, Amenable to Municipal Gov't.
New municipality is compact and contiguous and amenable to separate municipal government.

The 2017 Study includes a map identifying the area proposed for incorporation as contiguous and compact, with no outlying enclaves. DEO and EDR concurred that the area proposed for incorporation met this requirement. DOR took no position.

Section 165.061(1)(b), F.S. – Minimum Population

New municipality has a total population, as determined in the latest official state census, special census, or estimate of population, in the area proposed to be incorporated of at least 1,500 persons in counties with a population of 75,000 or less, and of at least 5,000 population in counties with a population of more than 75,000.

The 2017 Study identifies a population of 15,670 for the proposed area for municipal incorporation. As of the 2010 U.S. Census, Martin County had a population of 146,318.

DEO and EDR concur that the proposed town meets this requirement. DOR had no comment.

Section 165.061(1)(c), F.S. – Minimum Population Density

New municipality has an average population density of at least 1.5 persons per acre or has extraordinary conditions requiring the establishment of a municipal corporation with less existing density.

Barring extraordinary circumstances, a proposed municipality must have an average population density of 1.5 persons/acre. The 2017 Study indicates a population of 15,670 for the proposed municipality, which spans 6061.46 acres. This would result in a population density of 2.59 persons per acre. The most recent population data able to be verified (11,521, from the 2010 U.S. Census) shows a population density of 1.9 persons per acre.

DEO and EDR concur that the 2017 Study adequately addressed this requirement. DOR had no comment.

Section 165.061(1)(d), F.S. – Minimum Distance from Existing Municipalities

New municipality has a minimum distance of any part of the area proposed for incorporation from the boundaries of an existing municipality within the county of at least two miles or has an extraordinary natural boundary which requires separate municipal government.

The 2017 Study indicates that the area is within two miles of Jupiter Island, but that the two areas are separated by the Intracoastal Waterway.

DEO indicated that the nearest municipality other than Jupiter Island is the City of Stuart, located 5.3 miles away, and concurred that the proposed area meets this requirement. EDR indicates this requirement has been met if the Intracoastal Waterway satisfies the statutory criteria of “an extraordinary natural boundary which requires separate municipal government.” DOR had no comment.

Section 165.061(1)(e)1. & (e)2. – Proposed Municipal Charter

- 1. Proposed charter prescribes the form of government and clearly defines the responsibility for legislative and executive functions.***
- 2. Proposed charter does NOT prohibit the legislative body of the municipality from exercising its powers to levy any tax authorized by the Constitution or general law.***

The 2017 Study includes the proposed charter, which is set out in the bill. Neither the 2017 Study nor the bill prohibits the town council from levying any authorized tax. The proposed charter established by the bill complies with this requirement.

DEO concluded the proposed charter both prescribed the form of government and did not prohibit the town council from exercising its power to levy any tax authorized by the Florida Constitution or general law. EDR deferred to DEO and DOR; DOR took no position.

Section 165.061(1)(f), F.S. – Solid Waste Contracts

Per s. 10, Art. I, Fla. Const., plan honors existing solid-waste contracts in the affected geographic area subject to incorporation. (May provide for existing contracts for solid-waste-collection services to be honored only for five years or the remainder of the contract term, whichever is less, and may require that a copy of the pertinent portion of the contract or other written evidence of the duration of the contract, excluding any automatic renewals or evergreen provisions, be provided to the municipality within a reasonable time after a written request to do so.)

The 2017 Study indicates that the proposed town will continue to honor and rely upon the Martin County's present contract for solid-waste services and the bill takes no action to impair such contracts. EDR and DEO concluded that the 2017 Study adequately addresses this requirement, and DOR had no comment.

Section 165.041(1)(c), F.S. – Information on County Municipal Overlay

Incorporates information on county's municipal overlay adopted per s. 163.3217, F.S.

Martin County does not have a municipal overlay for the Hobe Sound area.

Ability of Proposed Municipality to Meet Annual Financial Reporting Requirements

As a local government entity, the town will be required to file with the Department of Financial Services a copy of its annual financial report for the previous fiscal year.⁴⁵ If the town's total revenues, or total expenditures and expenses, exceed \$250,000, the town must have an annual financial audit by an independent certified public accountant.⁴⁶

Effect of the Bill

The bill creates the Town of Hobe Sound in a previously unincorporated area of Martin County, Florida, and provides a charter structuring the town government, providing powers and authority, and providing for a transition to the fully-functioning town government.

The charter provides for a council-manager form of government, with five town council members serving four-year terms, elected in non-partisan elections. After each election the council selects two of the members to serve two-year terms as mayor and vice-mayor, respectively. Council members are elected in five districts. The charter specifies the initial boundaries for each district and provides for the boundaries to be readjusted following the decennial census.

The council is the sole judge of the qualifications of the members, including forfeiture of office. Procedures are provided for determining and filling vacancies on the council. Council members are entitled to reimbursement as provided in general law for travel and per diem expenses. No compensation is established initially but the council is authorized to provide for compensation of its members; however, no such compensation may take effect until after the expiration of the terms of members elected at the next regular election.

The council will employ a town manager (or a management firm to fulfill the duties of a town manager), who serves as the chief administrative officer of the town at the pleasure of the council. The town manager acts under the supervision of the council. The administrative section of the charter also provides for the office and duties of the town attorney, authorizes expenditures of town funds only on due appropriation, and authorizes the council to create or terminate boards and agencies.

⁴⁵ Section 218.32(1)(a), F.S.

⁴⁶ Section 218.39(1), F.S.

The legislative power of the town is vested in the council. The town council is to conduct regular public meetings on due notice. Special meetings may be conducted on the call of the mayor or a majority of council members. The council exercises this authority through the adoption of ordinances and resolutions.

The charter provides for a fiscal year of October 1 – September 30. Under the town budget process, a minimum of two public hearings on the budget must be held before the council may adopt it. The town is authorized to issue bonds and revenue bonds and is required to perform an annual independent audit of all financial accounts.

The charter provides for a referendum to create the town to be held on August 28, 2018. If approved, the town is created and incorporated effective December 31, 2018. The charter provides for the first regular election of council members to take place no later than March 12, 2019, and 10 weeks prior to the general election on each even-numbered year thereafter.⁴⁷ The three council members elected from districts 1, 3, and 5 will serve four-year terms ending in August 2022. The two remaining council members (elected from districts 2 and 4) will serve two-year terms ending in August 2020. Beginning with the election of council members in 2020, town council members will be elected to full four-year terms.

The bill provides the following waivers of general law necessary to complete the incorporation and for the operation of this town:

- Waives the requirements of s. 218.23(1), F.S., relating to ad valorem taxation, allowing millage levied by special districts to satisfy the three-mill requirement for an indefinite period of time. The funds levied and collected by the special districts are not turned over to the proposed town.
- Waives the requirements of s. 218.23(1), F.S., for the purpose of auditing and financial reporting through the end of the town FY 2019-2020.

The bill will result in new distributions of the communications services tax, revenue sharing, local option gas tax, and half-cent sales tax funds to the new town, reducing certain amounts currently distributed to Martin County and the cities of Jupiter Island, Ocean Breeze, Sewall's Point, and Stuart. The Florida Constitution authorizes municipalities to levy ad valorem taxes up to 10 mills. The Florida Constitution and general law will control the town's ability to levy ad valorem taxes. The town plans to impose ad valorem taxes consistent with the current rates levied by Martin County via an MSTU to fund certain operations. The 2017 Study foresees the continuation of services via interlocal agreements with the county to result in the redirection of existing revenues rather than the need to impose additional tax revenues to support the financial viability of the proposed town.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁴⁷ This provision conforms the date of future elections for the town council to the date for regularly scheduled primary elections. *See* s. 100.061, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

According to the 2017 Study and Economic Impact Statement (EIS), the bill will result in new distributions of communications services tax, revenue sharing, and half-cent sales tax funds to the new municipality, reducing certain revenues currently distributed to Martin County and the existing municipalities. The EIS projects the new municipality will receive \$998,698 in state shared revenues in fiscal year 2018-2019.

2. Expenditures:

The EIS projects the new municipality would incur \$1,038,445 in administrative expenses in fiscal year 2018-2019.

C. ECONOMIC IMPACT STATEMENT FILED? Yes No

D. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

WHERE?

E. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? August 28, 2018

**APPENDIX A
MATERIALS RECEIVED**

| Document | Date | Author |
|--|-------------|--|
| Town of Hobe Sound Incorporation Feasibility Study | 8/17/2017 | Joseph Mazurkiewicz, Jr. BJM Consulting, Inc. |
| Economic Impact Statement | 10/12/2017 | Joseph Mazurkiewicz, Jr. BJM Consulting, Inc. |
| Response to Request for Evaluation of Town of Hobe Sound Incorporation Feasibility Study | 10/27/2017 | Office of Economic and Demographic Research |
| Review of Proposed Town of Hobe Sound Municipal Incorporation | 10/31/2017 | Department of Economic Opportunity |
| Memorandum: Proposed Incorporation – Town of Hobe Sound, Martin County | 11/6/2017 | Department of Revenue |
| Re: HB 395 – Municipal Incorporation of Town of Hobe Sound | 11/8/2017 | Local, Federal and Veterans Affairs Subcommittee |
| Re: Hobe Sound Responses to the Department Staff Reviews | 11/13/2017 | Joseph Mazurkiewicz, Jr. BJM Consulting, Inc. |

APPENDIX B
MAP OF PROPOSED AREA OF INCORPORATION

LETTER FROM MARTIN COUNTY ADMINSTRATOR



MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS

2401 S.E. MONTEREY ROAD • STUART, FL 34988

Telephone: 772-288-5939
Fax: 772-288-5432
Email: tkryzda@martin.fl.us

August 9, 2017

DOUG SMITH
Commissioner, District 1

ED FELDING
Commissioner, District 2

HAROLD E. JENKINS II
Commissioner, District 3

SARAH HEARD
Commissioner, District 4

EDWARD V. CIAMPI
Commissioner, District 5

TARYN KRYZDA, CPM
County Administrator

SARAH W. WOODS
County Attorney

Eric H. Miller
Local, Federal & Veterans Affairs Subcommittee
209 House Office Building
402 S. Monroe Street
Tallahassee, FL 32399-1300

Dear Mr. Miller:

As the County Administrator (Administrator) for Martin County (County) and Chief Financial Officer, I have been asked to provide you with an explanation of our taxing structure. Martin County is unique in that we provide municipal services to eighty-seven percent (87%) of the unincorporated area in the County. The services provided are: Road Maintenance, Stormwater Maintenance, Park Maintenance and Fire Rescue. All residents within the unincorporated area pay for the aforementioned services through a Municipal Services Taxing Unit (MSTU). An MSTU is established for each one separately and each MSTU is a separate Taxing Authority and leverage a separate millage rate accordingly.

If an area was to incorporate within the County, the County has agreed to continue providing all services to that incorporated area, as long as the incorporated area is willing to levy the appropriate MSTU millage rate, and remit those monies to the County. This would be accomplished through an Interlocal Agreement between the two governing bodies. Another major concern has been funding for the Sheriff, and impacts to a newly incorporated area. The Sheriff is funded by the County through a county-wide millage rate which is assessed to all residents, whether in an incorporated or unincorporated area. Therefore, the Sheriff would continue to provide services to the incorporated area as he had prior to the incorporation.

Prior studies have been done on the validity of incorporation with the financial feasibility calculations based upon Per-Capita. This is problematic as the County would not have the ability to collect from the residents on a per-capita basis, and therefore feel that using a straight millage rate based upon the taxable value, since that would be the basis for the Interlocal Agreement, provides transparency to those impacted residents. Therefore, my recommendation would be to allow the Feasibility Study to be done based upon taxable values and our MSTU millage rates, rather than per-capita.

Should you require any additional information, please do not hesitate to contact me.

Sincerely,

Handwritten signature of Taryn G. Kryzda in blue ink.

Taryn G. Kryzda
Martin County Board of County Commissioners
County Administrator

TELEPHONE
772-288-5400

WEB ADDRESS
<http://www.martin.fl.us>

