

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2626

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee and Senator Saunders

SUBJECT: Lee County

DATE: April 5, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill authorizes a referendum for the creation of the City of Bonita Springs and provides for its charter.

This bill creates an new special act.

II. Present Situation:

Chapter 165, Florida Statutes

Florida law governing the formation and dissolution of municipal governments is found in chapter 165, F.S., the "Formation of Municipalities Act." The stated purpose of the "Formation of Municipalities Act" is to provide standards, direction, and procedures for the incorporation of municipalities, and to achieve the following goals:

- Orderly patterns of growth and land use;
- Adequate public services;
- Financial integrity in government;
- Equity in fiscal capacity; and
- Fair cost distribution for municipal services.

Under Florida law, there is only one way to establish a city government where no such government existed before: the Legislature must pass a special act enacting the city's charter. 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, and cannot prohibit tax levies authorized by law.

The 1996 Legislature revised s. 165.041, F.S., to require completion of a feasibility study for any area requesting incorporation. The purpose of the study is to enable the Legislature to determine

whether or not the area: 1) meets the statutory requirements for incorporation, and 2) is financially feasible. Specifically, the study must include:

- Data and analysis to support the conclusions that incorporation is necessary and financially feasible.
- Population projections and population density calculations and an explanation concerning methodologies used for such analysis.
- Evaluation of the alternatives available to the area to address its policy concerns.
- Evidence that the proposed municipality meets the standards for incorporation of s. 165.061, F.S. These standards are:
 - The area to be incorporated must be compact and contiguous and amenable to separate municipal government.
 - The area must have a total population of at least 1,500 persons in counties with a population of less than 50,000, as determined in the latest official state census, special census, or estimate of population in the area proposed to be incorporated, and of at least 5,000 population in counties with a population of more than 50,000.
 - The area must have an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.
 - The area must have 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 2 miles or have an extraordinary natural boundary which requires separate municipal government.

Recent Municipal Incorporations

From 1972 to the present, at least 14 municipalities were either created by special act (Lake Mary, Sanibel, Destin, Jacob City, Midway, DeBary, Ft. Myers Beach, Deltona, Wellington, Weston, Islamorada, Marco Island, and Suntree) or recreated by special act after previous incorporation under authority of general law in effect prior to 1974 (Seminole). The cities of Key Biscayne, Aventura and Pinecrest were created under the charter provisions of Dade County's Charter. The following table indicates recent municipal incorporations by year, city, county, enabling law, and any other applicable chapter of the Laws of Florida:

Recent Municipal Incorporations

Date	City	County	Authority
1970	SEMINOLE	Pinellas	general law
1972	SEMINOLE	Pinellas	ch. 72-693
1973	LAKE MARY	Seminole	ch. 73-522
1974	SANIBEL	Lee	ch. 74-606
1983	JACOB CITY	Jackson	ch. 83-434
			ch. 84-456
1984	DESTIN	Okaloosa	ch. 84-422
			ch. 85-471
1986	MIDWAY	Gadsden	ch. 86-471
1991	KEY BISCAWAYNE	Dade	Dade Charter
1993	DEBARY	Volusia	ch. 93-351
			ch. 93-363
1995	AVENTURA	Dade	Dade Charter
1995	PINECREST	Dade	Dade Charter
1995	FT. MYERS BCH.	Lee	ch. 95-494
1995	DELTONA	Volusia	ch. 95-498
1995	WELLINGTON	Palm Beach	ch. 95-496
1996	WESTON	Broward	ch. 96-472
1997	ISLAMORADA	Monroe	ch. 97-348
1997	MARCO ISLAND	Collier	ch. 97-367
1997	SUNTREE	Brevard	ch. 97-352

Recently Failed Incorporations

Over the years, a number of incorporation attempts have failed. Since 1980, some Floridians have rejected municipal government by voting down the incorporation efforts of:

- Deltona (1987 & 1990)
- Fort Myers Beach (1982 & 1986)
- A City in the Halifax area of Volusia County (1985)
- The City of Marco Island (1980/1982/1986/1990/1993)
- The City of Spring Hill (1986)
- The City of Port LaBelle (1994)
- The City of Destiny (1995)
- The City of Ponte Vedra (1998)

Municipal Dissolutions

During the last decade or so, several cities have been dissolved:

- Bayview in Bay County by chapter 77-501, L.O.F.;
- Munson Island in Monroe County by chapter 81-438, L.O.F.;
- Painters Hill in Flagler County by chapter 81-453, L.O.F.;
- Hacienda Village in Broward County by chapter 84-420, L.O.F.; and
- Pennsuco in Dade County under authority of the Dade County Charter.

State Shared Revenues

Section 218.23, F.S., specifies the eligibility criteria for participation in the municipal revenue program. Many of these criteria require certification of financial information which newly incorporated cities would not have. In addition, cities are required to levy taxes which result in a specified level of revenue.

Local Option Gas Taxes

Pursuant to s. 336.025(1)(a), F.S., counties may levy a tax of 1 to 6 cents on every net gallon of motor and diesel fuel sold in a county. Tax proceeds may be used to fund “transportation expenditures,” as defined in s. 336.025(7), F.S. Tax proceeds are shared with municipalities within the county by interlocal agreement or by the distribution formula set forth in statute. One component in the statutory formula includes the transportation expenditures of the municipality for the preceding 5 fiscal years, as a proportion of the total expenditures for the county and all municipalities within the county.

Proposed City of Bonita Springs

Bonita Springs is located in southeast Florida between Fort Myers and Naples, and stretches from the Gulf of Mexico to the eastern border of Lee County. It is a large geographical area (33+ square miles), with the developed community existing between ecologically sensitive land to the East, and the Gulf to the West. The estimated resident population is approximately 23,000 and during the tourist season the population reaches approximately 43,000. The economic development structure is comprised of primarily agriculture, construction and tourism industries.

The incorporation effort has been spearheaded by the Bonita Springs Incorporation Committee. This organization is a grass-roots community group which has held numerous public workshops to inform the public of the pros and cons of incorporation.

III. Effect of Proposed Changes:

- Section 1: Creates the name and purpose of the city charter..
- Section 2: Provides legislative intent.
- Section 3: Provides for the creation of the City of Bonita Springs in Lee County and that the city is a council-manager form of government.
- Section 4: Provides for a preamble.

- Section 5: Provides for the purpose clause of the charter.
- Section 6: Provides Boundaries.
- Section 7: Provides for a period of 5 years, from the date the city is created, no area currently within the Estero Fire and Rescue District may be annexed into the corporate limits of Bonita Springs.
- Section 8: Provides for the form of government.
- Section 9: Provides for the powers of the city.
- Section 10: Provides for liberal construction of municipal powers.
- Section 11: Provides the city may consummate intergovernmental relations.
- Section 12: Provides for the powers vested in the city council.
- Section 13: Provides for the composition of the city council, eligibility, terms and term limits.
- Section 14: Provides for nonpartisan elections.
- Section 15: Provides for referendum and campaign spending limits.
- Section 16: Provides for the adoption of election procedures.
- Section 17: Provides for multiple candidates.
- Section 18: Provides for a Mayor.
- Section 19: Provides for compensation and expenses of the mayor and the city council.
- Section 20: Provides for prohibitions.
- Section 21: Provides for vacancies, forfeitures of office; filling vacancies.
- Section 22: Provides that the council is the judge of the election and qualifications of its members.
- Section 23: Provides for investigations.
- Section 24: Provides for Council meetings.
- Section 25: Provides for rules and a journal.
- Section 26: Provides for voting by the city council.
- Section 27: Provides for actions requiring an ordinance.
- Section 28: Provides for ordinances and resolutions.
- Section 29: Provides for ordinances in general.
- Section 30: Provides for emergency ordinances.
- Section 31: Provides for codes of technical regulations.
- Section 32: Provides for authentication and recording; codification; and printing.
- Section 33: Provides for appointment; qualifications; compensation; of the city manager.
- Section 34: Provides for removal of the city manager.
- Section 35: Provides for the designation of an acting city manager.
- Section 36: Provides for the powers and duties of the city manager.
- Section 37: Provides for the city clerk/treasurer.
- Section 38: Provides general provisions.
- Section 39: Provides for personnel.
- Section 40: Provides for planning functions.
- Section 41: Provides for the city attorney.
- Section 42: Provides for the fiscal year.
- Section 43: Provides for the submission of budget and budget message.
- Section 44: Provides for city council action on the budget.
- Section 45: Provides for appropriations; revenue; surety bond ordinances.
- Section 46: Provides for budget amendments
- Section 47: Provides for lapse of appropriations.

- Section 48: Provides for administration of the budget.
- Section 49: Provides a prohibition against overspending.
- Section 50: Provides for a capital program.
- Section 51: Provides for city council action on the capital program.
- Section 52: Provides for public records.
- Section 53: Provides for council district boundaries.
- Section 54: Provides for initiative and referendum.
- Section 55: Provides for recall of elected officials.
- Section 56: Provides for a code of ethics.
- Section 57: Provides for amendments to the city charter.
- Section 58: Provides for elections.
- Section 59: Provides for adoption of amendments to the charter.
- Section 60: Provides for a referendum.
- Section 61: Provides for the initial election of the council.
- Section 62: Provides for officers and employees.
- Section 63: Provides for departments, offices, and agencies.
- Section 64: Provides for pending matters.
- Section 65: Provides for compliance with state and county laws.
- Section 66: Provides for severability of any section of the charter.
- Section 67: Provides that the city may levy taxes.
- Section 68: Provides early assumption of duties by the city council.
- Section 69: Provides for first year expenses.
- Section 70: Provides for transitional ordinances and resolutions.
- Section 71: Provides for a transitional comprehensive plans.
- Section 72: Provides for transitional land development regulations.
- Section 73: Provides for a waiver from statutory requirements relating to receiving state-shared revenues. Specifically, s. 218.23(1), F.S., is waived “for the purpose of eligibility to receive revenue-sharing funds from the date of incorporation through the state fiscal year 2001-2002.” This allows the city to receive state-shared revenues from the date of incorporation rather than upon satisfaction of the criteria set in statute.
- Section 74: Provides that the city is entitled to receive local option gas tax revenue beginning October 1, 2000, in accordance with an interlocal agreement or pursuant to s. 336.025(4)(b)1., F.S.
- Section 75: Provides for contractual services and facilities.
- Section 76: Provides for the elimination of transition elements from the charter.
- Section 77: Provides for special districts.

Section 2 provides for severability for any section of the charter.

Section 3 provides that this act will take effect upon approval by a majority vote of qualified electors residing within the proposed corporate limits of the proposed City of Bonita Springs in an election to be held November 2, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Subject to referendum, the bill grants the newly incorporated City of Bonita Springs the authority to levy any and all taxes provided for in general law and the State of Florida Constitution for municipalities.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Subject to referendum, the bill creates a new municipality which will have all the rights and responsibilities granted to municipalities in chapter 125, F.S., and in the Florida Constitution.

According to the Department of Revenue, there is a projected loss of revenue to Lee County of \$1,541,015 annually. The other cities in Lee County will also experience a combined loss of \$419,404 in annual revenue because of the redistribution of state revenue sharing funds.

VI. Technical Deficiencies:

The Department of Revenue, the Legislative Committee on Intergovernmental Relations and the Office of Economic and Demographic Research have identified flaws in the feasibility study and have made corresponding suggestions for amendments to the charter. Most of these suggestions were incorporated into this Committee Substitute of the bill.

VII. Related Issues:

Notice of the local bill was published January 29, 1999 in the Fort Myers News Press. Referendum is required for November 2, 1999. The Local Bill Certification and Economic Impact Statement have been file and are attached.

The House Committee on Community Affairs coordinates a review of the feasibility study required by section 165.041, F.S., and the proposed charter with various other legislative committees and appropriate state agencies (The Department of Revenue, The Legislative Committee on Intergovernmental Relations (LCIR) and the Office of Economic and Demographic Research).

The reviews of the feasibility study and charter similarly conclude that the community of Bonita Springs does not meet some of the statutory requirements for becoming a municipality. The area is compact and contiguous and meets the minimum population requirement of 5,000 persons. However it does not meet the minimum density requirement of 1.5 persons per acre, nor does the area meet the minimum 2 mile limit within the proximity of an existing municipality. Any unmet standards are automatically waived by virtue of the approval of this special act by the Legislature.

Furthermore, LCIR staff notes that while the available tax base of the community suggests that the proposed City of Bonita Springs is financially feasible, the expectations for expenditures by the proposed city appears to be somewhat underestimated. In a review of 12 other municipalities of a similar size, 9 of the 12 had expenditures higher than those projected by Bonita Springs.

VIII. Amendments:

None.