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: SB 2734

SPONSOR: Senator Jones

SUBJECT: Monroe County

DATE: April 19, 2000 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable
2.			RC	
3.				
4.				
5.				

I. Summary:

This bill authorizes a referendum for the creation of a municipality named the Village of Paradise Islands. This bill also provides for its charter.

This bill creates a new section of Florida Law.

II. Present Situation:

Florida Constitution
Section 2, Art. VIII, of the State Constitution provides that municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, the Constitution requires that provision be made for the protection of its creditors.

Municipalities are constitutionally granted all governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services. Municipalities may exercise any power for municipal purposes except as otherwise provided by law. The only specific constitutional requirement concerning municipal government is that its legislative body must be elected.

Chapter 165, F.S.
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 act is to provide standards, direction, and procedures for the incorporation, merger and dissolution 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.

Requirements for Municipal Incorporation
Under chapter 165, F.S., there is only one way to establish a city government where no such government existed before: the Legislature must pass a special act creating the city's charter.

For incorporation purposes, the special act must include a proposed municipal charter that prescribes the form of government and clearly defines the legislative and executive functions of city government. It cannot prohibit tax levies authorized by law.

Special acts must meet requirements of Section 10, Art. III, of the State Constitution, which requires that notice of an intent to file a special act be either published in a local newspaper or conditioned to become effective only on approval by area electors. If notice by publication is the preferred method, s. 11.02, F.S., specifies that the publication of notice occur one time, at least 30 days prior to bill introduction.

The 1999 Legislature revised s. 165.041, F.S., by adding new, more detailed requirements for the preparation of the required 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:

- The general location of territory subject to boundary change and a map of the area which 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 boundary falls within the boundary of the territory proposed for the change or reorganization.
- Evidence, through signed petitions, letters or some other method, that a minimum of 25 percent of the landowners or residents consent or otherwise support the proposed change or reorganization.
- A list of current service providers and estimate of the cost of services.
- A list of proposed service providers and estimate of the cost of the 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 5-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, budgets.

- 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, contiguous, and amenable to separate municipal government.
    - The area proposed to be incorporated must have a total population, as determined in the latest official state census, special census, or estimate of population, of at least 1,500 persons in counties with a population of less than 75,000, and of at least 5,000 population in counties with a population of more than 75,000.
    - 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.
    - Any part of the area proposed for incorporation must have a minimum distance of at least 2 miles from the boundaries of an existing municipality within the county. Alternately, an extraordinary natural boundary that requires separate municipal government must be present.

A municipal charter should contain matters which are of such importance that they should not be subject to change by simple ordinance. For example, chapter 166, F.S., requires that each municipality provide procedures for filling a vacancy in an elected office caused by death, resignation, or removal from office. While this requirement may be satisfied through the passage of an ordinance, the issue is fundamental enough to the governance of a municipality to be included in its charter.

The National Municipal League has recommended that a charter include an article on each of the following topics:

- Powers of the City;
- City Council;
- Chief Administrative Officers (City Manager and Attorney);
- Administrative Departments;
- Financial Procedures;
- Planning;
- Nominations and Elections;
- Initiative and Referendums;
- General Provisions; and
- Transitional Provisions

Formation Activity in Florida

From 1972 to the present, 15 municipalities were created by special act (Bonita Springs, DeBary, Deltona, Destin, Ft. Myers Beach, Islamorada, Jacob City, Lake Mary, Marathon, Marco Island,

Midway, Palm Coast, Sanibel, Wellington, Weston). During this time, one was recreated by special act after previous incorporation under authority of general law in effect prior to 1974 (Seminole). The cities of Key Biscayne, Pinecrest, Aventura, and Sunny Isles Beach were created under the charter provisions of Dade County's 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.

Infrastructure Surtax Revenues
Section 212.055(2), F.S., authorizes counties to impose the Local Government Infrastructure Surtax (tax) on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, and admissions. The sales amount is not subject to the tax if the property or service is delivered within a county that does not impose a surtax. In addition, the tax is not subject to any sales amount above $5,000 on any item of tangible personal property and on long distance telephone service. This $5,000 cap does not apply to the sale of any other service. The Department of Revenue (DOR) is responsible to administer, collect, and enforce all sales taxes. Collections received by the department are returned monthly to the county imposing the tax. These taxes are in addition to the state and local sales taxes imposed on transient rentals.

Section 212.055(2)(c), F.S., provides that the tax proceeds be distributed to the county and the municipalities within the county in which the tax was collected either by interlocal agreement or according to the formula provided in s. 218.62, F.S.

The Proposed Village of Paradise Islands
The Proposed Village of Paradise Islands, with an estimated population of 5,073 in 1999, consists of not only one key in Monroe County, but rather is comprised of many. Some of these keys include: Little Duck Key, Missouri Key, Ohio Key, Bahia Honda Key, West Summerland Key/Spanish Harbor Key, Big Pine Key, No Name Key, and the New Found Harbor chain of Islands. This village would extend from MM40 (Seven Mile Bridge) to MM29.5. Although this area has some of the finest diving and fishing boats, this area does not have a lot of tourist accommodations. In addition, two of the islands, Big Pine Key and No Name Key, do serve an important role as they are two of the few remaining protected havens for the Florida Key Deer. These two islands support more than two-thirds (approximately 600) of the remaining deer population. No Name Key, the northern undeveloped parts of Big Pine Key, and other smaller islands, are part of the National Key Deer Refuge, which was established in 1957.

Section 380.0552, F.S., designates the Florida Keys as an area of state critical concern. The legislative intent of the "Florida Keys Area Protection Act" is:

- To establish a land use management system that protects the natural environment of the Florida Keys;
- To establish a land use management system that conserves and promotes the community character of the Florida Keys;
- To establish a land use management system that promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services;
- To provide for affordable housing in close proximity to places of employment in the Florida Keys;
- To establish a land use management system that promotes and supports a diverse and sound economic base;
- To protect the constitutional rights of property owners to own, use, and dispose of their real property; and
- To promote coordination and efficiency among governmental agencies with permitting jurisdiction over land use activities in the Florida Keys.

The Department of Community Affairs closely regulates all planning activities that occur in the Florida Keys. In addition, due to the designation, the Village would have to adopt a comprehensive plan in the type and manner set out in Chapter 163, Part II, F.S., Rule 9J-5, F.A.C., and the requirements of Chapter 380.05, F.S., within 3 years after the date of incorporation. The Department of Community Affairs also has executed an interagency agreement to develop a Habitat Conservation Plan (HCP) for Big Pine Key.

The Citizens Committee for The Village of Paradise Islands is a grass-roots community group which have spearheaded the effort for incorporation. According to this group, the primary reason for incorporation is due to dissatisfaction with Monroe County. The feasibility study lists the following reasons:

- Lack of responsiveness of the elected County Commissioners to local issues;
- Poorly delivered services by Monroe County;
- Inadequate recreational land and programs provided by Monroe County;
- Poor maintenance of secondary roads by Monroe County;
- Lack of control over destiny of the community; and
- Delayed responsiveness by Monroe County to natural disasters.

III. Effect of Proposed Changes:

This bill authorizes a referendum for the creation of a municipality named the Village of Paradise Islands. This bill also provides for its charter.

Section 1 provides legislative findings and intent.

Section 2 provides for the creation of the Village of Paradise Islands in Monroe County. The Village will have a mayor-council-manager form of government.

Section 3 provides a short title of the act, and creates the Village charter.

Section 1 of the charter provides for the Village powers. This section also states that the "quality of rights under the laws of the Village of Paradise Islands shall not be denied or abridged because of sex, sexual orientation, age, disability, race, creed, color, or national origin."

Section 2 of the charter provides for the Village boundaries.

Section 3 of the charter provides for a five member Village council, with one member serving as mayor, who is elected at large. All members are elected for two year terms. The Village is to have a mayor-council-manager form of government. The Village is to hold regular semi-monthly meetings, and all minutes, ordinances, and resolutions adopted by the council must be maintained as a public record. All ordinances must be codified. Village property may not be sold without a referendum.

Section 4 of the charter provides for the adoption of a budget.

Section 5 of the charter designates the Village manager and Village attorney as charter officers appointed by the council and serving at its pleasure. This section also establishes qualifications for, the duties and powers of, and the restrictions imposed on charter officers.

Section 6 of the charter provides qualifications for electors, provides for nonpartisan elections, an election schedule, the recall of Village council members, elector initiatives, referendums, and procedures for elector initiatives and referendums.

Section 7 of the charter provides referendum language and provides for a transition schedule should the voters approve the referendum.

Section 8 of the charter provides for Village revenues. First, this section waives statutory requirements (s. 218.23(1), F.S.) to allow the Village to receive state-shared revenues on December 1, 2000. The charter waives the statutory requirements (s. 336.025, F.S.) to receive gas tax revenues, to allow the city to receive such revenues beginning April 1, 2001. The city's distribution is to be in accordance with an interlocal agreement or pursuant to s. 336.025(4)(b)1., F.S. Finally, the charter provides that the Village is entitled to receive infrastructure surtax revenues beginning on January 1, 2001. The city's distribution is to be in accordance with an interlocal agreement or pursuant to s. 218.62, F.S.

Section 9 of the charter provides for charter amendments, standards of conduct and ethical standards.

Section 4 provides severability clause.

Section 5 provides for an effective date, subject to referendum approval, by a majority vote of voters residing in this area.

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 approval, the bill grants the newly incorporated Village of Paradise Islands 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:

Subject to referendum approval, businesses and individuals will be subject to ordinances adopted by the new municipality.

C. Government Sector Impact:

Subject to referendum approval, the bill creates a new municipality which will have all the rights and responsibilities granted to municipalities in chapter 166, F.S., and in the Florida Constitution.

According to the Department of Revenue, there is a projected loss of revenue to Monroe County of $486,051 annually. The other cities in Monroe County will also experience a combined loss of $146,184 in annual revenue because of the redistribution of state revenue-sharing funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The community of Paradise Islands does not meet one of the statutory requirements for becoming a municipality. The area is compact and contiguous, meets the minimum population requirement

of 5,000 persons, and the minimum 2-mile limit within the proximity of an existing municipality (Note: The proposed Village of the Lower Keys is adjacent to the proposed Village of Paradise Islands). However, the area does not meet the minimum density requirement of 1.5 persons per acre as it appears that the population density is .62 persons per acre. One of the reasons for the low population density may be attributed to the fact that a portion of land is owned either by the Federal or State government (for example the Florida Key Deer Refugee). Additionally, there is a current building moratorium. This unmet standard is automatically waived by virtue of the approval of this special act by the Legislature.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.