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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-339, Laws of Florida

HOUSE OF REPRESENTATIVES

**LOCAL GOVERNMENT & VETERANS AFFAIRS
FINAL ANALYSIS- LOCAL LEGISLATION**

BILL #: HB 527
RELATING TO: City of Palm Coast
SPONSOR(S): Representative(s) Wiles and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 8 NAYS 0
- (2) RULES, ETHICS & ELECTIONS YEAS 13 NAYS 0
- (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 12 NAYS 0
- (4)
- (5)

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I. SUMMARY:

This bill corrects the boundary of the City of Palm Coast (City) to include the whole of 26 parcels that were only partially included in the original boundary. This boundary revision does not affect the ad valorem taxes of existing City citizens. Additionally, the bill changes the date of the City primary; and provides that any candidate in a City primary who receives a majority vote shall be deemed elected to office without the necessity of a general City election.

The bill also amends provisions that allow for City Council redistricting. By deletion of a reference to population as the basis for redistricting, the bill, as filed, raised a constitutional concern. The amendment adopted on January 24, 2002 resolves the issue. See V. Amendments or Committee Substitute Changes.

This bill has no impact on state revenues. According to the Economic Impact Statement, the bill is directed at improving the function of a municipal government and has no true economic impact, but will reduce governmental costs at the municipal level.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

The Charter of the City, as created by ch. 99-448, Laws of Florida, contained errors in its metes and bounds description of the City boundary. Twenty-six parcels were each only partially incorporated into the City boundary. Additionally, since its incorporation, the City population has grown in such a way as to result in a population imbalance among the City Council districts.

C. EFFECT OF PROPOSED CHANGES:

This bill amends the City boundary description to correct errors. This bill corrects an error with the original City boundary that included only a portion of 26 specific parcels of land. The boundary correction in this bill incorporates the whole of each of those 26 parcels into the City boundary without affecting ad valorem taxes of existing City citizens.

The bill amends the City Charter changing the date of the City primary elections and provides that any candidate in a City primary who receives a majority vote shall be deemed elected to office without the necessity of a general City election.

This bill amends the City Charter to provide different provisions for the revision of City Council district boundaries. The bill as filed deleted the reference to population as the basis for redistricting, thus raising constitutional concerns (See IV. A. Constitutional Issues). However, the bill as amended resolved those concerns.

In a telephone conversation, the City Attorney, for the City of Palm Coast, represented that the City has undergone growth since its incorporation of such a rate as to result in a population imbalance among the City Council districts. The City desires to receive the authority to redistrict on a more frequent basis than every ten years as currently provided in s. 9(2), ch. 99-448, Laws of Florida.

The bill deletes outdated provisions relevant at the time of, and immediately following, incorporation.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends ss. 8(4) and (6), ch. 99-448, Laws of Florida, the City's Charter, to provide that:

Section 8(4) - the primary City election (required when there are more than two candidates) will be held on the first Tuesday after the second (instead of the first) Monday in September; and

Section 8(6) - a clarification of language to the effect that if a primary is held and any candidate receives a majority vote, then that candidate shall be deemed elected to office without the necessity of additional election at the regular City election.

Section 2. Amends ss. 9(1) and (2), ch. 99-448, Laws of Florida, to change the corporate boundaries.

Section 9(1) changes the corporate boundary of the City.

Section 9(2) deletes a requirement that City Council district boundaries be revised "every 10 years based upon population figures following the release of census tract data;" and makes technical changes to reflect the change in section numbering and language accomplished by s. 4 of the bill. Section 9(2), as amended, provides that City Council district boundaries will be revised in accordance with s. 10(4) of the Charter (further described below).

Section 3. Deletes s. 10, ch. 99-448, Laws of Florida, regarding dissolution of the Palm Coast Area Municipal Service District (Service District). Former s. 10 provided that the Service District was authorized to continue to provide services through December 31, 1999, and that thereafter, upon passage of a referendum, the Service District would be considered dissolved. The question on that referendum, held September 21, 1999, was approved, and the Service District was thus considered dissolved.

Section 4. Renumbers s. 11, ch. 99-448, Laws of Florida, as s. 10 of the City's Charter, and amends the new ss. 10(4)(a) and (c), as follows:

Section 10(4)(a) – Changes the timing and manner in which the City Council district boundaries are adjusted. The adjustment of City Council district boundaries may be accomplished when the City Council determines, based upon each decennial census, that redistricting would be appropriate to ensure compliance with the requirements of ss. 9(2) and 10(4)(c) of the Charter, or until a districting commission is appointed. All Council district boundaries shall be based upon population data derived from the most recent decennial census.

Section 10(4)(c), as amended, provides that a report of the appointed City Council districting commission will be filed within 120 days after appointment or such earlier time as prescribed by the council.

Section 5. Renumbers s. 12, ch. 99-448, Laws of Florida, as s. 11.

Section 6. Renumbers and amends s. 13, ch. 99-448, Laws of Florida, as s. 12. The amendment deletes ss. 13(1), (3), (4), (5), (8) and (9), which sections have become outdated; and renumbers the remaining sections.

Section 7. Deletes s. 14, ch. 99-448, Laws of Florida.

Section 8. Provides an effective date.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN?

October 12, 2001

WHERE?

The News-Journal, Daytona Beach, Volusia County, Florida

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

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bill, as introduced, may raise a Fourteenth Amendment, Equal Protection Clause, issue by removing a reference, in s. 9(2), ch. 99-448, Laws of Florida, to population as the criteria for redistricting. The U. S. Supreme Court has long held a standard of "one man, one vote" in relation to elections. *Reynolds v. Sims*, 377 U.S. 533 (1964). In *Avery v. Midland County, Texas*, 390 U.S. 474, 478, the U.S. Supreme Court made clear that this standard applies equally to "local as well as state elections." The Florida Supreme Court in *Sebesta v. Miklas*, 272 So.2d 141, 145-146, (Fla. 1972), repeated this principle. The Court, in *Sebesta*, stated, "when the State delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance, or local charter, it must ensure that those qualified to vote have the right to an equally effective voice in the election process. "Divergence from a strict population standard may be permitted as an exception to the strict population standard. "But neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation." *Sebesta*, at 146. This issue was resolved by amendment adopted on January 24, 2002, by the Committee on Local Government & Veterans Affairs.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

According to a January 2002 letter from the City Attorney for the City of Palm Coast, the boundary revision that brings the whole of 26 parcels that were by error only partially included in the City boundary, does not affect the ad valorem tax obligation of existing City citizens. As related to private properties, the City Attorney indicated that the boundary revision comports to the legal descriptions already in use by the County Property Appraiser. Therefore, there will be no additional ad valorem tax burdens to existing City citizens.

A policy adopted by the Florida House of Representatives requires certification from the local legislative delegation that the purposes of the bill cannot be accomplished at the local level. This bill contained the requisite certification, but the City Charter provided for local amendment of the Charter without an act of the Legislature. The Charter authorizes amendment consistent with the provisions of ch. 166, F.S. Chapter 166, F.S., provides that a municipal charter may be amended by ordinance or by petition signed by ten percent of the registered voters of the City followed by referendum.

House Rule 5.6(a) provides that "if a committee or council determines that the substance of a local bill may be enacted into law by ordinance of a local governing body, the committee shall not report the bill to the Clerk. However, if a local governing body would be required to call a referendum to enact the substance of a local bill into law, the committee or council may report the local bill." The purposes of this bill could be accomplished locally by the charter amendment authority of the City Charter and ch. 166, F.S. without an act of the Legislature. However, the City Charter and ch 166, F.S., authorize charter amendment by ordinance or by petition signed by ten percent of the registered voters of the City followed by referendum. Therefore, the Committee was authorized to report this local bill.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Local Government & Veterans Affairs adopted one amendment at its meeting on January 24, 2002. The amendment continues population as the basis for redistricting that appears to comply with the Fourteenth Amendment, Equal Protection Clause, U.S. Constitution.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Andrew S. Grayson, Esquire

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON RULES, ETHICS & ELECTIONS:

Prepared by:

Staff Director:

Emmett Mitchell, IV

Richard Hixson

AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Staff Director:

Andrew S. Grayson, Esquire

Don Rubottom

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Andrew S. Grayson, Esquire

Joan Highsmith-Smith