

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 165, Florida Statutes

Chapter 165, F.S., provides statutory standards for forming Florida municipalities. The provisions of this act are the exclusive procedures pursuant to general law for creating or dissolving municipalities in this state, except in those counties operating under a home rule charter which provides for an exclusive method as specifically authorized by s. 6(e), Art. VIII of the State Constitution.¹

Section 6(e) of Art. VIII of the State Constitution

Section 6(e) of Art. VIII of the State Constitution provides that ss. 9, 10, 11 and 24 of Art. VIII of the Constitution of 1885, as amended, remain in full force and effect as to each county affected, until a county expressly adopts a charter or home rule plan pursuant to that article. Sections 9, 10, 11 and 24 refer to Duval, Monroe, Dade and Hillsborough counties, respectively. Within these provisions, only Section 11 authorizes Dade County to adopt a home rule charter which provides a method for establishing new municipal corporations.²

Miami-Dade County

Adopted in 1957, the Miami-Dade Home Rule Charter provides for the creation of new municipalities at section 5.05. This charter contemplates "pre-agreed conditions" between the County and a prospective municipality:

The Board of County Commissioners and only the Board may authorize the creation of new municipalities in the unincorporated areas of the county after hearing the recommendations of the Planning Advisory Board, after a public hearing, and after an affirmative vote of a majority of the electors voting and residing within the proposed boundaries. The Board of County Commissioners shall appoint a charter commission, consisting of five electors residing within the proposed boundaries, who shall propose a charter to be submitted to the electors in the manner provided in Section 5.03. The new municipality shall have all the powers and rights granted to or not withheld from municipalities by this Charter and the Constitution and general laws of the State of Florida. Notwithstanding any provision of this Charter to the contrary, with regard to any municipality created after September 1, 2000, the pre-agreed conditions between the County and the prospective municipality which are included in the

¹ Section 165.022, F.S., which reads as: Preemption; effect on special laws.--It is the purpose of this act to provide viable and usable general law standards and procedures for forming and dissolving municipalities in lieu of any procedure or standards now provided by general or special law. The provisions of this act shall be the exclusive procedure pursuant to general law for forming or dissolving municipalities in this state, except in those counties operating under a home rule charter which provides for an exclusive method as specifically authorized by s. 6(e), Art. VIII of the State Constitution. Any provisions of a general or special law existing on July 1, 1974, in conflict with the provisions of this act shall not be effective to the extent of such conflict.

² See s. 11 (e) of Art. VIII of the Constitution of 1885, as amended, as referenced in Section 6(e) of Art. VIII.

municipal charter can only be changed if approved by an affirmative vote of two-thirds (2/3) of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors.

The incorporation process in the Miami-Dade Code of Ordinances, which was passed by a county-wide vote, is as follows:

Petition for Incorporation

To request incorporation, an individual or group files a petition with the Clerk of the Board of County Commissioners. The petition must include the following regarding the proposed incorporation:

- a. general description and map of area boundaries;
- b. statement of the reason for seeking incorporation;
- c. the consent of ten (10) percent of the electors in the area proposed for incorporation; and
- d. any resolutions of support for incorporation by the closest existing municipality.

A report is then prepared by the director of the Office of Management & Budget to the Boundaries Commission and the Planning Advisory Board. A hearing is then scheduled and advertised to be held in the area proposed for incorporation. Following this, the petition and recommendations of the Planning Advisory Board, the Boundaries Commission, and the County Manager are forwarded by the County Manager to the Clerk of the Board of County Commissioners.

Upon receipt, the Clerk sets the matter for a public hearing in front of the County Commission and makes public notice of such hearing, which must take place either between March 1 and March 31, or between September 1 and September 30. The Board must consider whether the proposed boundaries are both cohesive and inclusive and must find that the area should:

- a. not divide a U.S. Census Designated Place, to the extent feasible;
- b. include adjacent areas of ethnic minority and lower income residents in which a majority of those residents have so petitioned;
- c. have contiguity and not create any unincorporated enclave area(s);
- d. have natural or built barriers as boundaries, to the extent feasible; and
- e. include a mixture of residential and non-residential uses.

The Board must consider a number of other factors including:

- a. the impact of the proposal on the revenue base of the unincorporated area and the ability of the County to provide services to the adjacent areas;
- b. the financial impacts of the proposed incorporation on the remaining unincorporated areas of Miami-Dade County. Specifically in order to insure fiscal equity the per capita taxable property value of the area proposed for incorporation should fall between \$20,000.00 and \$48,000.00 in order to assure that fiscal viability is maintained in both the potential new municipality and the remaining unincorporated area.

At the conclusion of the hearing, the Board may:

- a. call for an election of the electors on the incorporation petition as presented;
- b. call for an election on the petition as modified with respect to boundaries or other aspects;
- c. deny the petition; or
- d. defer the petition for further consideration.³

³ See Article II Incorporation Procedure, Sec. 20-20, 20-21, 21-21.1, 20-22, and 20-23 of the Miami-Dade Code of Ordinance.

Mitigation

If the petition for incorporation is approved, an agreement is concluded between the County and the area proposed for incorporation. Part of that agreement may include a mitigation payment. If the proposed boundaries will cause a loss of revenue because the County believes the boundaries include a larger proportion of higher income areas than lower income areas, it will require the agreement to include a mitigation payment to be paid yearly in perpetuity to offset the estimated revenue loss to the Unincorporated Municipal Service Area (UMSA) budget of the County. If the County believes the area proposed for incorporation is revenue neutral, then no mitigation payment is charged.

Similar legislation, HB 939, was filed in the 2006 Legislative Session but was withdrawn from consideration for negotiations to take place among the parties. Research was conducted and numerous public meetings were held to discuss the issue. The issue remains unresolved.

Effect of Proposed Changes

HB 7167 creates an unnumbered section of general law which provides that any new municipality created after the effective date of the bill, or any municipality formed since January 1, 2000, may not pay any kind of charge, assessment, tax, fee, or other consideration, which would include a mitigation payment, for such formation. As a general law that applies statewide, it would prevent Miami-Dade County from charging any kind of mitigation payment or fee to any new municipality, and would prevent any current mitigation payments from any municipality formed since January 1, 2000.

C. SECTION DIRECTORY:

Section 1: Provides that any municipality formed since January 1, 2000, or any municipality formed on or after the effective date of the bill may not pay any charge, assessment, tax, fee, or other consideration for allowing citizens of an area to incorporate and govern themselves.

Section 2: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The Legislature may enact general acts applying to Miami-Dade County and one or more other counties, or to cities within and without Miami-Dade County. The Legislature does not have power to enact a local bill that relates only to Miami-Dade County. The proposed legislation appears to have statewide application.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the bill's provisions would apply to the creation of a municipality under ch. 165, F.S., hence the "[n]otwithstanding section 165.022, Florida Statutes" language, a municipality created under ch. 165, F.S., is formed through the local bill process. By its nature, a local bill may include exemptions from general law. Therefore, should the bill pass into law, a future local bill creating a new municipality could exempt itself from the provisions of this general law and potentially include a mitigation payment.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.