Finance & Tax Committee

Tuesday, April 11, 2006
9:30 AM – 12:00 PM
404 HOB

MEETING PACKET

Allan G. Bense
Speaker

Fred Brummer
Chair

The Florida House of Representatives

Fiscal Council

Finance & Tax Committee

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AGENDA

April 11, 2006
9:30 AM – 12:00 PM
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I. Chairman's Remarks

II. **HJR 39 CS** – Limitations on Assessments of Real Property-**Farkas**

III. **HB 951 CS** – Palm Beach County - **Vana**

IV. **HB 993 CS** – City of Southport, Bay County- **Coley**

V. **HB 1079 CS** – Exemption from the Tax on Sales, Use & Other Transactions – **Altman**

VI. **HB 1143 CS** – Economic Development Incentives - **McInvale**

VII. **HB 1199 CS** – Statewide Cable Television Franchises - **Traviesa**

VIII. **HB 1375 CS** – Manatee County - **Reagan**

IX. **HB 1399 CS**– North Naples Fire Control and Rescue District – **Davis, M.**

222 Capitol Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 488-1601 Fax:

X. **HB 1445 CS** – West Villages Improvement District, Sarasota County - **Reagan**

XI. **HB 7099 CS** – Land Trust - **Judiciary Committee**

XII. **HB 7233 CS** – Review Under the Open Government Sunset Review Act regarding the Communications Services Tax Simplification Law – **Government Operations Committee**

XIII. **HB 7237** – Public Service Commission – **Utilities & Telecommunications Committee**

XIV. Adjourn

CS/HJR 39

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 39 CS Limitations on Assessments of Residential and Commercial Property
SPONSOR(S): Farkas
TIED BILLS: **IDEN./SIM. BILLS:** SJR 22

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee	8 Y, 1 N, w/CS	Hogge	Hogge
2) Local Government Council	6 Y, 2 N	DiVagno	Hamby
3) Finance & Tax Committee		Monroe	Diez-Arguelles
4) Justice Council			
5)			

SUMMARY ANALYSIS

This joint resolution proposes to amend Article VII, section 4 of the State Constitution. The amendment would allow the Legislature to authorize counties, by general law, to provide by ordinance for the extension of the Save Our Homes assessment limitation to all real property. That is, the annual assessed value of real property could not be increased over the prior year's assessment by more than 3 percent or the percentage change in the U. S. Consumer Price Index, whichever is less. The limitation would not apply to agricultural land, land producing high water recharge for Florida's aquifers, land used exclusively for non commercial recreational purposes and historic property assessed on the basis of character or use. This authority would not extend to determinations of the value of real property taxed for school purposes

This bill has a negative indeterminate impact to local revenues since the number of counties which would choose to implement it cannot be determined. If all counties fully implemented this bill and millage rates remained the same, the fifth year impact would be approximately a negative $6.3 billion dollars in local revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill implicates the following House Principle:

Ensure lower taxes— If authorized by the legislature, implemented by counties, and if market values continue to outpace the proposed assessment cap, the extension of the "Save Our Homes" limitation from homestead[1] to most real property, would reduce the growth in total assessed property values. As a result, the amount of ad valorem property taxes billed to property owners will be reduced, unless a county, municipality, or other local taxing authority adopted a corresponding increase in the millage rate to offset the likely reductions in the growth in total assessed values.

B. EFFECT OF PROPOSED CHANGES:

Background

Ad valorem property taxes are the single largest source of tax revenues for general purpose local governments in Florida. In FY 2002-03, the last year for which fiscal information is available, property taxes accounted for 31 percent of county governmental revenue ($6.3 billion), and almost 20 percent of municipal government revenue ($2.4 billion). Ad valorem property tax revenues also are the primary local revenue source for school districts. For that same fiscal year, school districts levied $8.4 billion in property taxes.

Ad valorem property tax revenues result from multiplying the millage rate adopted by counties, municipalities, and school boards by the taxable value of property within that jurisdiction. Each entity may levy up to 10 mills and, in most cases, the real property must be assessed at just value.[2] Article VII, s. 6 of the State Constitution authorizes a $25,000 ad valorem property tax exemption for homestead property.

In 1992, Florida voters approved the so-called "Save Our Homes" amendment to the State Constitution. This amendment limits the annual growth in the assessed value of homestead property to 3 percent over the prior year's assessment or the percentage change in the U. S. Consumer Price Index, whichever is less. It does not limit assessment increases for other types of property such as non-homestead residential, commercial, or industrial property. This has produced valuation differentials for tax purposes among properties having similar market values. The "Save Our Homes" exception is one of several exceptions to the just value requirement found in Article VII, s. 4 of the State Constitution.[3]

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[1] That is, real property owned by a taxpayer and used as the owner's permanent residence or the permanent residence of another who is legally or naturally dependent upon the owner.

[2] "Just value" is the estimated market value of the property. "Assessed value" is generally synonymous with "just value" unless a constitutional exception such as Save Our Homes applies to reduce the value of the property. "Taxable value" is the assessed value minus any applicable exemptions such as the $25,000 homestead exemption.

[3] These include exceptions for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Tangible personal property that is held as inventory may also be assessed at a specified percentage of its value or totally exempted. Additionally, counties and cities may be authorized to assess historical property based solely on the basis of its character or use, without regard to just value. The Legislature also has provided for differential treatment of specific property, to include pollution control devices and building renovations for the physically handicapped.

Largely due to the recent surge in housing values[4] and lack of corresponding millage rate reductions by local officials to offset double-digit increases in taxable values, ad valorem property tax revenues have increased substantially in recent years: 9.2 percent in 2002, 11.5 percent in 2003, and 10.4 percent in 2004.[5] These annual property tax increases are twice as high as the 5 percent average increase experienced between 1991 and 2000, but comparable to the 12.5 percent average annual increase from 1981 to 1990.[6] Despite the growth in total taxable values, the statewide average actual millage rates have remained relatively unchanged, although on a generally downward trend.[7] However, the differential between the actual millage rate and the so-called "rolled back rate" (i.e., the millage rate necessary to generate the same amount of revenue as the prior year excluding new construction and boundary changes) is substantially more pronounced since 2000, then it was from 1990 to 1999.

The taxable value of all real property has increased 53 percent over the past four years.

The amount of value removed from the tax rolls from the "Save Our Homes" provision is growing at a much faster rate than the amount of value removed by the homestead exemption. For example, in 2006, the amount of value excluded from the tax rolls as a result of the Save Our Homes provision was $344.2 billion (or $174.9 billion more than the previous year), compared to $108.9 billion (or $4.5 billion more than the previous year) removed as a result of the homestead exemption.

Proposed Change

This joint resolution proposes to amend Article VII, section 4 of the State Constitution. The amendment would allow the Legislature to authorize counties, by general law, to provide by ordinance for the extension of the Save Our Homes assessment limitation to all real property. That is, the annual assessed value of real property included within this joint resolution could not be increased over the prior year's assessment by more than 3 percent or the percentage change in the U. S. Consumer Price Index, whichever is less. The limitation would not apply to agricultural land, land producing high water recharge for Florida's aquifers, land used exclusively for non commercial recreational purposes and historic property assessed on the basis of character or use. This authority would not extend to determinations of the value of real property taxed for school purposes

C. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

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[4] The boom in housing values does not translate into an identical increase in "just values" or "assessed values" since not all property is taxed at "just value." "Just values" have experienced double-digit increases since 2001: 10.6% in 2001; 11.3% in 2002; 12.4% in 2003; and 14.0% in 2004. For the period 1990-2000, the largest increase was 8.3%, with two years, 1992 and 1993, experiencing an increase of only 2.0%. Although not as large, the growth in "taxable values" resulted in a similar experience.

[5] "Taxes Levied and Millage Rates 1974-2004," from 2006 Property Tax Roll Estimates prepared by the Department of Revenue. The amount of ad valorem property tax levied for 2005 is not yet available, but the value of property subject to tax increased by approximately 20%.

[6] Id.

[7] Actual average millage rates for all jurisdictions for 2004—20.18; for 2003—20.60; for 2002—20.57. Excluding public school levies for 2004—11.96; for 2003—12.06; for 2002—11.93.

Art. XI, s. 5, of the Florida Constitution, requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. The Division of Elections within the Department of State estimates that the cost of compliance for a proposal with a ballot summary of 75 words or less would be approximately $50,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

If authorized by the Legislature, counties adopting the assessment limitation as provided in this joint resolution, as well as municipalities and other local taxing authorities, would be expected to experience a significant adverse fiscal impact, assuming no offsetting change in millage rates. This bill has a negative indeterminate impact to local revenues since the number of counties which would choose to implement it cannot be determined. If all counties fully implemented this bill and millage rates remained the same, the fifth year impact would be approximately a negative $6.3 billion dollars in local revenues.

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:

The mandates provision does not apply to House Joint Resolutions.

2. Other:

Article XI, Section 1 of the State Constitution provides the Legislature with the authority to propose amendments to the State Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006 the House Judiciary committee adopted an amendment that effectively converts the original bill as filed into one requiring the Legislature to authorize, and county discretion to implement

the assessment limitation. The Legislature would be authorized to permit counties to extend the Save Our Homes homestead property assessment limitation to certain other real property. Additionally, this authority would not extend to determinations of value of homestead property for school purposes. This analysis reflects the changes made by the amendment.

CHAMBER ACTION

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1 The Judiciary Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 House Joint Resolution
6 A joint resolution proposing an amendment to Section 4 of
7 Article VII of the State Constitution, relating to
8 limitations on assessments of property, to authorize the
9 Legislature to authorize counties to provide by ordinance
10 for applying to all real property, with specified
11 exceptions, the limitations on assessments applicable only
12 to homestead property, and to declare nonapplicability to
13 determinations of the value of real property taxed for
14 school purposes.
15
16 Be It Resolved by the Legislature of the State of Florida:
17
18 That the following amendment to Section 4 of Article VII of
19 the State Constitution is agreed to and shall be submitted to
20 the electors of this state for approval or rejection at the next
21 general election or at an earlier special election specifically
22 authorized by law for that purpose:
23 ARTICLE VII

24 FINANCE AND TAXATION
25 SECTION 4. Taxation; assessments.--By general law
26 regulations shall be prescribed which shall secure a just
27 valuation of all property for ad valorem taxation, provided:
28 (a) Agricultural land, land producing high water recharge
29 to Florida's aquifers, or land used exclusively for
30 noncommercial recreational purposes may be classified by general
31 law and assessed solely on the basis of character or use.
32 (b) Pursuant to general law tangible personal property
33 held for sale as stock in trade and livestock may be valued for
34 taxation at a specified percentage of its value, may be
35 classified for tax purposes, or may be exempted from taxation.
36 (c) All persons entitled to a homestead exemption under
37 Section 6 of this Article shall have their homestead assessed at
38 just value as of January 1 of the year following the effective
39 date of this amendment. This assessment shall change only as
40 provided herein.
41 (1) Assessments subject to this provision shall be changed
42 annually on January 1st of each year; but those changes in
43 assessments shall not exceed the lower of the following:
44 a. Three percent (3%) of the assessment for the prior
45 year.
46 b. The percent change in the Consumer Price Index for all
47 urban consumers, U.S. City Average, all items 1967=100, or
48 successor reports for the preceding calendar year as initially
49 reported by the United States Department of Labor, Bureau of
50 Labor Statistics.
51 (2) No assessment shall exceed just value.

52 (3) After any change of ownership, as provided by general
53 law, homestead property shall be assessed at just value as of
54 January 1 of the following year. Thereafter, the homestead shall
55 be assessed as provided herein.
56 (4) New homestead property shall be assessed at just value
57 as of January 1st of the year following the establishment of the
58 homestead. That assessment shall only change as provided herein.
59 (5) Changes, additions, reductions, or improvements to
60 homestead property shall be assessed as provided for by general
61 law; provided, however, after the adjustment for any change,
62 addition, reduction, or improvement, the property shall be
63 assessed as provided herein.
64 (6) In the event of a termination of homestead status, the
65 property shall be assessed as provided by general law.
66 (7) The provisions of this amendment are severable. If any
67 of the provisions of this amendment shall be held
68 unconstitutional by any court of competent jurisdiction, the
69 decision of such court shall not affect or impair any remaining
70 provisions of this amendment.
71 (d) The legislature may, by general law, for assessment
72 purposes and subject to the provisions of this subsection, allow
73 counties and municipalities to authorize by ordinance that
74 historic property may be assessed solely on the basis of
75 character or use. Such character or use assessment shall apply
76 only to the jurisdiction adopting the ordinance. The
77 requirements for eligible properties must be specified by
78 general law.

79 (e) A county may, in the manner prescribed by general law,
80 provide for a reduction in the assessed value of homestead
81 property to the extent of any increase in the assessed value of
82 that property which results from the construction or
83 reconstruction of the property for the purpose of providing
84 living quarters for one or more natural or adoptive grandparents
85 or parents of the owner of the property or of the owner's spouse
86 if at least one of the grandparents or parents for whom the
87 living quarters are provided is 62 years of age or older. Such a
88 reduction may not exceed the lesser of the following:
89 (1) The increase in assessed value resulting from
90 construction or reconstruction of the property.
91 (2) Twenty percent of the total assessed value of the
92 property as improved.
93 (f) By general law, the legislature may authorize
94 counties, subject to the conditions specified therein, to
95 provide by ordinance for the application of the provisions of
96 subsection (c) to all real property, other than property
97 assessed under subsection (a) or subsection (d). This subsection
98 shall not apply to determinations of the value of real property
99 taxed for school purposes.
100 BE IT FURTHER RESOLVED that the following statement be
101 placed on the ballot:
102 CONSTITUTIONAL AMENDMENT
103 ARTICLE VII, SECTION 4
104 LIMITATIONS ON ASSESSMENTS OF REAL PROPERTY.--Proposing an
105 amendment to the State Constitution to authorize the
106 Legislature, by general law, to authorize counties to provide by

107 ordinance for applying to all real property, other than
108 agricultural land, land producing high water recharge to
109 Florida's aquifers, land used exclusively for noncommercial
110 recreational purposes, and historic property assessed on the
111 basis of character or use, the limitations on assessments of
112 property at just value currently applicable only to homestead
113 property and specify that the amendment does not apply to
114 determinations of the value of real property taxed for school
115 purposes.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 0039C5

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	✓	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) ~~Farkas~~ Brummer offered the following:
3
4 **Amendment (with ballot statement and title amendments)**
5 Remove lines 93-99 and insert:
6 (f) Except for property assessed under subsection (a) or
7 subsection (d), by general law and subject to conditions
8 specified therein, the legislature may authorize counties, to
9 provide by ordinance for the application of the provisions of
10 subsection (c) to real property other than homestead property,
11 except the percentage limitation under subparagraph (c)1.a. for
12 such property shall be six percent (6%). The county governing
13 body may provide in the ordinance by a supermajority vote for a
14 different percentage limitation under subparagraph (c)1.a for
15 such property. This subsection shall not apply to determinations
16 of the value of real property taxed for school purposes.
17
18 ======= B A L L O T S T A T E M E N T A M E N D M E N T ======
19 Remove lines 107-115 and insert:
20 ordinance for applying to real property other than homestead
21 property, but not agricultural land, land producing high water

22 recharge to Florida's aquifers, land used exclusively for
23 noncommercial recreational purposes, and historic property
24 assessed on the basis of character or use, the limitations on
25 assessments of property at just value currently applicable only
26 to homestead property but limiting changes in annual assessments
27 to the lower of 6 percent of the prior year's assessment or the
28 Consumer Price Index, provide for supermajority county governing
29 body vote to specify a different percentage in the limitation,
30 and specify that the amendment does not apply to determinations
31 of the value of real property taxed for school purposes.
32
33 ========== T I T L E A M E N D M E N T ==========
34 Remove lines 10-12 and insert:
35 for applying to real property other than homestead property,
36 preserving specified exceptions, the limitations on assessments
37 applicable only to homestead property with a revised annual
38 assessment change percentage limitation, authorize a county
39 governing body to specify a different percentage limitation by
40 supermajority vote, and declare nonapplicability to

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0039**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Farkas offered the following:
3
4 **Amendment (with ballot statement and title amendments)**
5 Remove lines 93-99 and insert:
6 (f) Except for property assessed under subsection (a) or
7 subsection (d), by general law and subject to conditions
8 specified therein, the legislature may authorize counties, to
9 provide by ordinance for the application of the provisions of
10 subsection (c) to real property other than homestead property,
11 except the percentage limitation under subparagraph (c)1.a. for
12 such property shall be five percent (5%). This subsection shall
13 not apply to determinations of the value of real property taxed
14 for school purposes.
15
16 ======= B A L L O T S T A T E M E N T A M E N D M E N T ======
17 Remove lines 107-115 and insert:
18 ordinance for applying to real property other than homestead
19 property, but not agricultural land, land producing high water
20 recharge to Florida's aquifers, land used exclusively for
21 noncommercial recreational purposes, and historic property

22 assessed on the basis of character or use, the limitations on
23 assessments of property at just value currently applicable only
24 to homestead property but limiting changes in annual assessments
25 to the lower of 5 percent of the prior year's assessment or the
26 Consumer Price Index, and specify that the amendment does not
27 apply to determinations of the value of real property taxed for
28 school purposes.
29
30 ========== T I T L E A M E N D M E N T ==========
31 Remove lines 10-12 and insert:
32 for applying to real property other than homestead property,
33 preserving specified exceptions, the limitations on assessments
34 applicable only to homestead property with a revised annual
35 assessment change percentage limitation, and declare
36 nonapplicability to

CS/HB 951

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 951 CS Palm Beach County
SPONSOR(S): Vana
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N, w/CS	Nelson	Hamby
2) Finance & Tax Committee		Monroe KDSM	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 951 provides for the creation and establishment of the Town of Loxahatchee Groves in Palm Beach County. The bill provides a charter for the municipality which describes:

- the town boundaries;
- a council-manager form of government; municipal powers; the duties of the mayor and vice mayor;
- vacancies in office; grounds for forfeiture, suspension and removal; filling of vacancies;
- compensation and expenses; standards of conduct in office;
- appointment of charter officers, including a town manager and attorney;
- meetings; the fiscal year; annual budget and appropriations, and financial audits;
- adoption, distribution and recording of technical codes;
- nonpartisan elections;
- future charter amendments;
- a transitional schedule and procedures for the first election; first-year expenses; adoption of transitional ordinances, resolutions, comprehensive plan and local development regulations; sharing of communications services taxes; an accelerated entitlement to state-shared revenues; gas tax revenues;
- continuation of the Palm Beach County Fire Rescue Municipal Service Taxing Unit;
- continuation of the Palm Beach County Library District;
- dissolution of the Palm Beach County Municipal Service Taxing Unit B;
- dissolution of the Palm Beach County Municipal Service Taxing Unit F;
- continuation of the Loxahatchee Groves Water Control District and Loxahatchee Groves Park;
- the repeal of a restriction on annexation within the Loxahatchee Groves Water Control District;
- waivers from certain statutory requirements; and
- that the act takes effect only upon a referendum.

According to the Economic Impact Statement, the estimated cost of administration, implementation and enforcement for this bill is $1,085,673 in FY 07-08, and $1,171,369 in FY 08-09. There will be an increase in property taxes of 1.5 mils for the incorporated area.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

If incorporation of the proposed municipality is approved, it will create an additional local government entity.

Ensure Lower Taxes

According to the Economic Impact Statement, there will be an increase in property taxes of 1.5 mils for the incorporated area.

B. EFFECT OF PROPOSED CHANGES:

Background/Municipal Incorporation

Constitutional Provisions

Section 2, Art. VII of the State Constitution provides that municipalities[1] may be established or abolished and their charters amended pursuant to general or special law. Municipalities are constitutionally granted all governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and 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 be elected.

Statutory Provisions

Florida law governing the formation and dissolution of municipal governments is found in ch. 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 so as to:

- allow orderly patterns of urban growth and land use;
- assure adequate quality and quantity of local public services;
- ensure financial integrity of municipalities;
- eliminate or reduce avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions; and
- promote equity in the financing of municipal services.

Under ch.165, F.S., there is only one way to establish a city government where no such government exists: the Legislature must pass a special act creating the city's charter, upon determination that the standards provided in that chapter have been met. [2]

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[1] 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] An exception to this rule exists in Miami-Dade County where the county has been granted the exclusive power to create cities through the State Constitution and its home rule powers. See, s. 165.022, F.S., and s. 6(e), Art. VIII of the State Constitution. Adopted in 1957, the Miami-Dade Home Rule Charter provides for the creation of new municipalities at section 5.05.

Requirements and Standards for Municipal Incorporation

Submittal of a feasibility study and a local bill that proposes the local government charter is required for consideration of incorporation. In addition, the new municipality must meet the following conditions in the area proposed for incorporation pursuant to s. 165.061(1), F.S.:

1. It must be compact, contiguous and amenable to separate municipal government.
2. It 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 persons in counties with a population of more than 75,000.
3. It 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.
4. It must be 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 government.
5. It must have a proposed municipal charter that clearly prescribes and defines the form of government and its functions and does not prohibit or restrict the levy of authorized tax.
6. In accordance with s. 10, Art. I of the State Constitution, the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation.

Feasibility Study

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 or not the area: 1) meets the statutory requirements for incorporation, and 2) is financially feasible. The feasibility study must be completed and submitted to the Legislature at least 90[3] days prior to the first day of the regular legislative session during which the municipal charter would be enacted.

In 1999, the Legislature revised s.165.041, F.S., by adding new, detailed requirements for the preparation of the required feasibility study for any area requesting incorporation. Specifically, the study must include:

1. The general location of territory subject to a boundary change and a map of the area that identifies the proposed change.
2. The major reasons for proposing the boundary change.
3. 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.
4. 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.
5. 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 service.

[3] Section 165.041(1)(b), F.S.

6. A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such services.
7. The names and addresses of three officers or persons submitting the proposal.
8. 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; and
   - a five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance and budgets.
9. 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.
10. Evaluation of the alternatives available to the area to address its policy concerns.
11. Evidence that the proposed municipality meets the standards for incorporation of s.165.061, F.S.

Section 165,081, F.S., provides that any special law enacted pursuant to ch. 165, F.S., is reviewable by certiori if the appeal is brought before the effective date of the incorporation.

Formation Activity In Florida

Municipal Incorporations and Mergers

From 1972 to the present, 25 municipalities have been incorporated, with 17 municipalities created by special act (Bonita Springs, DeBary, Deltona, Destin, Ft. Myers Beach, Islamorada, Jacob City, Lake Mary, Marathon, Marco Island, Midway, Palm Coast, Sanibel, Southwest Ranches, Wellington, West Park and Weston). During this time, one municipality 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, Sunny Isles Beach, Miami Lakes, Palmetto Bay, Doral and Cutler Bay were created under the charter provisions of Miami-Dade County's Charter. The following table indicates recent municipal incorporations by year, county and enabling law.

YEAR	MUNICIPALITY	COUNTY	ENABLING LAW
1973	LAKE MARY	Seminole County	ch. 73-522, L.0.F.
1974	SANIBEL	Lee County	ch. 74-606, L.O.F.
1983	JACOB CITY	Jackson County	ch. 83-434, L.O.F. ch. 84-456, L.O.F.
1984	DESTIN	Okaloosa County	ch. 84-422, L.O.F. ch. 85-471, L.O.F.
1986	MIDWAY	Gadsden County	ch. 86-471, L.O.F.
1991	KEY BISCAYNE	Miami-Dade County	by authority of the Miami-Dade County Charter
1993	DEBARY	Volusia County	ch. 93-351, L.O.F. ch. 93-363, L.O.F.
1995	AVENTURA	Miami-Dade County	by authority of the Miami-Dade County Charter

1995	PINECREST	Miami-Dade County	by authority of the Miami-Dade County Charter
1995	FT. MYERS BEACH	Lee County	ch. 95-494, L.O.F.
1995	DELTONA	Volusia County	ch. 95-498, L.O.F.
1995	WELLINGTON	Palm Beach County	ch. 95-496, L.O.F.
1996	WESTON	Broward County	ch. 96-472, L.O.F.
1997	ISLAMORADA	Monroe County	ch. 97-348, L.O.F.
1997	MARCO ISLAND	Collier County	ch. 97-367, L.O.F.
1997	SUNNY ISLES BEACH	Miami-Dade County	by authority of the Miami-Dade County Charter
1999	BONITA SPRINGS	Lee County	ch. 99-428, L.O.F.
1999	MARATHON	Monroe County	ch. 99-427, L.O.F.
1999	PALM COAST	Flagler County	ch. 99-448, L.O.F.
2000	SOUTHWEST RANCHES	Broward County	ch. 2000-475, L.O.F.
2000	MIAMI LAKES	Miami-Dade County	by authority of the Miami-Dade County Charter
2002	PALMETTO BAY	Miami-Dade County	by authority of the Miami-Dade County Charter
2003	DORAL	Miami-Dade County	by authority of the Miami-Dade County Charter
2003	MIAMI GARDENS	Miami-Dade County	by authority of the Miami-Dade County Charter
2004	WEST PARK	Broward	ch. 2004-454, L.O.F.
2005	CUTLER BAY	Miami-Dade County	by authority of the Miami-Dade County Charter

Failed Attempts at Municipal Incorporation

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

- A city in the Halifax area of Volusia County (1985) (ch. 85-504, L.O.F.)

- The City of Fort Myers Beach (1982/1986)
  (chs. 82-295 and 86-413, L.O.F.)

- The City of Spring Hill (1986)
  (ch. 86-463, L.O.F.)

- The City of Deltona Lakes (1987)
  (ch. 87-449, L.O.F.)

- The City of Deltona (1990)
  (ch. 90-410, L.O.F.)

- The City of Marco Island (1980/1982/1986/1990/1993)
  (chs. 80-541, 82-330, 86-434, 90-457 and 93-384, L.0.F.)

- The City of Port LaBelle (1994)
  (ch. 94-480, L.O.F.)

- The City of Destin (1995)
  (by authority of the Miami-Dade County Charter)

- The City of Ponte Vedra (1998)
  (ch. 98-534, L.O.F.)

- The Village of Key Largo (1999)
  (ch. 99-430, L.O.F.)

- The City of Southport (1999)
  (ch. 99-444, L.O.F.)

- The Village of the Lower Keys (2000)
  (ch. 2000-383, L.O.F.)

- The Village of Paradise Islands (2000)
  (ch. 2000-382, L.O.F.)

Municipal Mergers

A few previously existing cities have been incorporated through mergers with other cities. Examples include:

- In Brevard County, the merger of Eau Gallie with Melbourne (chs. 67-1156, 69-879 and 70-807, L.O.F.) and the merger of the Town of Whispering Hills Golf Estates with the City of Titusville (chs. 59-1991 and 63-2001, L.O.F.).
- In Pinellas County, the merger of Pass-A-Grille Beach with the City of St. Petersburg Beach (ch. 57-1814, L.O.F.).
- In Bay County, the merger of Longbeach Resort and Edgewater Gulf Beach with the City of Panama City Beach (chs.67-2174 and 70-874, L.O.F.).

Municipal Dissolutions

During the last several decades, numerous cities have been dissolved:

- Bithlo in Orange County by authority of the Secretary of State in January 1977;

- Bayview in Bay County by ch. 77-501, L.O.F.;
- Munson Island in Monroe County by ch. 81-438, L.O.F.;
- Painters Hill in Flagler County by ch. 81-453, L.O.F.;
- Hacienda Village in Broward County by ch. 84-420, L.O.F.;
- Pennsuco in Miami-Dade County under authority of the Miami-Dade County Charter;
- Golfview in Palm Beach County by ch. 97-329, L.O.F.; and
- North Key Largo by ch. 2003-318, L.O.F.

Effect of Proposed Changes

HB 951 provides for the creation and establishment of the Town of Loxahatchee Groves, contingent upon approval by a majority vote of qualified electors residing within the corporate limits of the proposed city. Loxahatchee Groves is a rural community in Palm Beach County. Its boundaries are established by the Loxahatchee Groves Water Control District, and total 8,148 acres. There are approximately 3,122 residents of the area.

The bill provides that these residents are experiencing certain impacts, such as the destruction of rural habitats and threats to their equestrian, farming and nursery businesses, resulting from urbanization in the surrounding areas. Subsequently, through the incorporation of the town, the residents seek to control the effects of those impacts and to preserve the character of the area.

This proposed incorporation was the subject of HB 1339 in the 2005 Legislative Session. The bill favorably passed the Local Government Council as a Committee Substitute, which died in the Committee on Finance & Tax.

Proposed Charter

The proposed charter for the Town of Loxahatchee Groves is included in the bill, and provides as follows:

Section 1: Charter; creation; form of government; boundary and powers.

(1) Charter; creation:
   a. Provides that the act, together with future amendments, is the charter for the Town of Loxahatchee Groves, and creates the municipality.
   b. States that the area includes a compact and contiguous rural community of approximately 3,120 persons.
   c. Provides that it is in the best interests of the public health, safety and welfare of the residents of the area to form a separate municipality.
   d. Provides that it is intended that the charter and incorporation will serve to preserve and protect the distinctive rural characteristics of the community.
   e. Provides that it is the intent of the charter and incorporation to secure the benefits of self-determination, and affirm the values of representative democracy, citizen participation, strong community leadership, professional management and regional cooperation.

(2) Form of government: Provides that the town will have a "council-manager" form of government.

(3) Corporate boundaries: Provides a legal description of the town's boundaries. Provides that the town will not annex the area known as "Callery-Judge Groves."

(4) Municipal powers: Provides that the town will be a body corporate and politic and will have all governmental, corporate and proprietary powers of a municipality under the State Constitution and laws of the state; provides that the charter and powers of the town will be construed liberally in favor of the town; provides a statement of recognition that certain services within the proposed municipal boundaries are provided by independent special districts and by Palm Beach County.

Section 2: Council; mayor and vice mayor.

(1) Town council: Provides for a five-member town council elected at large who are vested with all legislative and charter powers of the town, unless otherwise provided by the charter.

(2) The mayor; powers and duties: Provides for the election of a mayor by the council at its first regular meeting after the fourth Tuesday of each March who will serve a one-year term; provides that the mayor will preside at council meetings and be recognized as the head of town government for service of process, ceremonial matters and the signature or execution of ordinances, contracts, deeds, bonds and other instruments, and for purposes of military law; provides that the mayor also will serve as the ceremonial head of the town and the town official designated to represent the town.

(3) The vice mayor: Provides for the election of a vice mayor by the council at its first regular meeting after the fourth Tuesday of each March who will serve a one-year term; provides that the vice mayor serve as acting mayor during the absence or disability of the mayor; provides that in the absence of the mayor and the vice mayor, the remaining council members will select an acting mayor.

Section 3: Election and terms of office.

(1) Term of office: Provides that each council member will serve three-year terms; provides that council members will be sworn into office at the first regularly scheduled meeting following their election; provides that each council member will remain in office until his or her successor is elected and assumes the position.

(2) Seats: Provides that the town council will be divided into five separate council seats, with each qualified elector entitled to vote for one candidate for each seat.

(3) Qualification: Provides that candidates for council seats must qualify for election in accordance with applicable general law; provides that to qualify for office, each candidate must:

- file a written notice of candidacy with the town clerk and submit payment of any fees required by general law;
- be a registered elector in the state;
- have maintained domicile within the boundaries of the town for a period of one year prior to qualifying for election and, if elected, maintain such residency throughout the term of office; and
- qualify with the town clerk no sooner than noon on the last Tuesday in January nor later than noon on the first Tuesday in February in the year of the election.

(4) Vacancies in office; forfeiture; suspension; filling of vacancies: Provides that vacancies in office will occur upon the death of an incumbent, removal from office as authorized by law, resignation, appointment to other public office which creates dual office holding, a judicial determination of incompetence or forfeiture of office; provides that any council member will forfeit his or her office upon determination by the council at a public meeting that the member: lacks any qualification for office, has been convicted of a felony or entered a plea of guilty or nolo contendere, is found to have violated the Code of Ethics for Public Officers and Employees and has been suspended from office by the Governor, or has been absent from three consecutive regular council meetings without good cause; provides that the council will be the sole judge of the qualifications of its members, and that a member whose qualifications are in question will be entitled to a public hearing; provides that any council member will be suspended from office upon return of an indictment or issuance of any information charging the council member with a felony or any crime arising out of his or her official duties which is a misdemeanor; provides that during suspension, a council member may not perform any official acts or receive any payment; provides that if the suspension is lifted the council member is entitled to full back pay; provides that if any vacancy occurs and the remainder of the member's unexpired term is less than one year and 81 days, the council members will appoint a person by majority vote to fill the term within 30 days; provides that if a vacancy occurs and the remainder of the unexpired term is equal to or exceeds one year and 81 days, the remaining members will

appoint a person to fill the vacancy by majority vote until the next regularly scheduled town election; provides that if a vacancy occurs in the office of the mayor and less than 120 days remain in the term of the member that the vice mayor will serve as mayor until a new mayor is elected; provides that if a vacancy occurs in the office of mayor and 120 days or more remain in the term that the vice mayor will serve as mayor until a new council member is elected, and the council elects a new mayor and vice mayor; provides that persons appointed to fill vacant seats meet the required qualifications of that seat; provides that if at any time the full membership of the council is reduced to less than a quorum, the remaining members may appoint additional members by majority vote; provides that in the event that all council members are removed, the Governor shall appoint interim council members who will call a special election not less than 30 days or more than 60 days after such appointment; provides that if there are fewer than six months remaining in the unexpired terms, the interim appointed council will serve out the unexpired terms; provides that council members are entitled to receive reimbursement in accordance with general law for authorized travel and per diem expenses incurred in the performance of their official duties; provides that the council may elect for compensation and an increase in compensation by ordinance, but that any such ordinance will not take effect until the commencement of the terms of council members elected at the next regular election.

Section 4: Administrative.

(1) Designation of charter officers: Provides that the town manager and attorney are designated as charter officers, and that the office of town attorney may be contracted to an attorney or law firm.

(2) Appointment; removal; compensation; filling of vacancies: Provides that charter officers are appointed by a majority vote of the full council and serve at their pleasure; provides that charter officers can be removed from office only by a super majority vote of the full council; provides that the compensation of charter officers shall be fixed by the town council by contract; provides that the town council begin the process to fill a vacancy in a charter office within 90 days after such vacancy; provides for the appointment of an acting town manager or attorney during a vacancy; provides that a charter officer may not be a member of or candidate for the town council.

(3) Town manager: Provides that the town manager will be the chief administrative officer of the town under the direction of the town council, and that he or she be appointed by a resolution approving an employment contract; provides for minimum qualifications for the town manager; provides for the designation of an "acting town manager" to execute the functions of the town manager in his or her absence; provides for the powers and duties of the town manager.

(4) Town attorney: Provides for a town attorney to be employed under the terms and conditions deemed advisable by the council; provides for the qualifications for the town attorney; provides that the town attorney may appoint assistant town attorneys; provides for functions to be performed by the town attorney.

(5) Town clerk: Provides for the appointment of a town clerk by the town manager, and provides for his or her duties.

(6) Expenditure of town funds: Provides that no funds of the town be expended except pursuant to duly approved appropriations, or for the payment of debts authorized by the council and from authorized funds.

(7) Town boards and agencies: Provides that the council may establish or abolish any boards and agencies as it deems advisable, and appoint members by resolution.

Section 5: Legislative.

(1) Regular meetings: Provides that the council conduct regular, public meetings at such times and places as it prescribes by resolution.

(2) Special meetings: Provides that special meetings may be held at the call of the mayor or the request of a majority of council members; provides for at least 72 hours notice of the meeting, unless an emergency exists.

(3) Commencement: Provides that meetings are to start no earlier than 7 a.m. or later than 10 p.m.

(4) Rules; order of business: Provides that the council determine its own rules and order of business.

(5) Quorum: Provides that a majority of the full council constitutes a quorum.

(6) Validity of action: Provides that actions of the council be adopted by a majority of the full council to be valid.

(7) Legislative powers: Provides that the legislative powers of the town be vested in the council.

(8) Departments: Provides that the council may establish departments, offices or agencies by ordinance.

(9) Code: Provides that the council may adopt any standard code of technical regulations by reference in an ordinance.

(10) Emergency ordinances: Provides that the council may adopt one or more emergency ordinances in the manner provided by general law to meet a public emergency affecting life, health, property or the public peace; provides that an emergency ordinance may be adopted by the affirmative vote of four council members; provides that emergency ordinances become effective upon adoption; provides that every emergency ordinance is automatically repealed 61 days following its effective date.

(11) Emergency appropriations: Provides that the council may make emergency appropriations by resolution to meet a public emergency affecting life, health, property or the public peace.

(12) Recordkeeping: Provides that the council provide for the recording of all minutes or meetings and all ordinances and resolutions adopted by the council.

(13) Dual office holding: Provides that no elected town official hold any compensated appointive office or employment of the town while in office; provides that former council members may not be employed by the town until a year after leaving office.

(14) Noninterference by town council: Provides that council members are prohibited from interfering with the performance of the duties of any town employee who is under the supervision of the town manger or attorney, and that such action constitutes malfeasance within the meaning of s. 112.51, F.S.

Section 6: Budget and appropriations.

(1) Fiscal year: Provides that the town's fiscal year is from October 1-September 30 unless otherwise defined by general law.

(2) Budget adoption: Provides that the council adopt a budget in accordance with general law, following a minimum of two public hearings; provides that a resolution adopting the budget constitute appropriation of the amounts specified therein as expenditures from the indicated funds.

(3) Expenditures: Provides that the budget shall not provide for expenditures in an amount greater than the budgeted revenues.

(4) Appropriations: Provides that if excess revenues become available the council may make supplemental appropriations; provides for remedial action, if revenues appear to be insufficient; provides that no appropriation for debt service may be reduced or transferred.

(5) Bonds; indebtedness: Provides that the town may borrow money and issue bonds; provides that bonds may be issued pursuant to resolutions adopted by a majority of the council; provides that the town may assume all outstanding indebtedness relating to facilities it acquires from other units of local government.

(6) Revenue bonds; lease-purchase contracts: Provides that the council shall not authorize the issuance of revenue bonds or enter into lease-purchase contracts or any other unfunded multiyear contracts for the purchase of real property or a capital improvement which would take in excess of 36 months to repay, unless authorized by the electors, or mandated by state or federal governing agencies.

(7) Annual audit: Requires that the council provide for an independent annual financial audit of all town accounts.

Section 7: Elections.

(1) Electors: Provides that a town elector is a resident who has qualified as an elector of the state, and registers.

(2) Nonpartisan elections: Provides that town council member elections be nonpartisan.

(3) Election dates: Provides that a special election will be held on the second Tuesday in March 2007, and regular elections will be held on the second Tuesday in March of each election year; provides for staggered offices based on the number of votes a member receives when first elected; provides that such town elections are general town elections.

(4) Runoff Elections: Provides that if no candidate receives a majority of votes, the person receiving the largest number of votes cast will be elected; provides that if two candidates receive an equal number of votes, a runoff election is held on the fourth Tuesday in March.

(5) Town canvassing board: Provides for a town canvassing board composed of those members of the town council who are not candidates for reelection, and the town clerk.

(6) Special elections: Provides for special municipal elections to be held in the same manner as regular elections.

(7) General elections: Provides that the ballot for general elections will contain the names of all qualified candidates for each seat, and that the candidate for each seat receiving the most votes will be elected; provides that no election will be required if there is only one qualified candidate for a seat; provides that if more than one candidate receives an equal and highest number of votes, there will be a runoff election; provides that the candidate receiving the highest number of votes in the runoff election will be elected to the seat; provides that if the runoff election results in a tie, the outcome will be determined by lot; provides that terms of office commence immediately after the election; provides for an oath to be taken by all elected officers; provides that the election laws of the state will apply to all elections; provides that any member of the town council may be removed from office by the town electors following the procedures for recall established by general law.

Section 8: Initiative and referendum.

(1) Power to initiate and reconsider ordinances: Provides that the electors of the town have the power to propose ordinances to the town council, and to adopt such an ordinance at a town election if the council fails to adopt the ordinance, as long as the ordinance does not apply to the budget, capital program, the levy of taxes or the setting of salaries; provides that the council has the power to call for a referendum by resolution at any time provided that the purpose of the referendum is presented to the town at a public hearing at least 60 days prior to the adoption of the resolution; provides that the electors of the town have the power to require the town council to reconsider any adopted ordinance as long as the ordinance does not apply to the budget, capital program, the levy of taxes or the setting of salaries.

(2) Commencement of proceedings: Provides that any 10 electors may commence initiative or referendum proceedings by filing an affidavit with the town clerk, who will issue appropriate petition blanks.

(3) Petitions: Provides that initiative and referendum petitions must be signed by at least 10 percent of the total number of electors registered to vote in the last regular town election; provides that each signature on a petition be in ink and followed by the printed name and address of the person signing; provides that the circulator of petitions certify the authenticity of signatures; provides that initiative and referendum petitions be filed within 60 days of the date on which proceedings with respect to such initiative or referendum are commenced, and that the submission of signatures be completed no later than 90 days following the date of filing such petition.

(4) Procedure for filing: Provides that within 20 days after a petition is filed that the town clerk complete a certificate as to its sufficiency or insufficiency; provides that a petition certified insufficient for lack of the required number of valid signatures may be amended once if certain conditions are met; provides that the town council will review insufficient petitions if certain conditions are met.

(5) Action on petitions: Provides that when a petition is sufficient, the town council will consider the ordinance at issue; provides for the submission of the ordinance to the electors of the town if the council fails to act in a specified number of days; provides for the submission of the ordinance to the electors; provides for the withdrawal of petitions any time prior to the 15th day preceding the day the election is scheduled.

(6) Results of elections: Provides that, if a majority of the electors vote in favor of an ordinance, it will be considered adopted upon certification of election results; provides that if a majority of the electors vote against an ordinance that it will be considered repealed upon certification of election results.

Section 9: General provisions.

(1) Severability: Provides for severability of provisions.

(2) Town personnel system: Provides that all new employments, appointments and promotions of town officers and employees be made pursuant to personnel procedures to be established by the town manager.

(3) Charitable contributions: Prohibits the town from making any charitable contributions unless authorized by the council.

(4) Variation of pronouns: Provides for the use of pronouns within the charter.

(5) Calendar day: Provides that for purposes of the charter, the term "day" means a calendar day.

(6) Charter review committee: Provides that the town council appoint a charter review committee (consisting of 15 individuals who are not members of the town council) to serve in an advisory capacity to the town council at its first regular meeting in March 2012 and every 10th year thereafter.

(7) Charter amendments: Provides that the charter may be amended in accordance with general law.

(8) Initiation by petition: Provides that the electors of the town may propose amendments to the charter by petition.

(9) Standards of conduct: Provides that all elected officials and employees of the town are subject to the Code of Ethics for Public Officers and Employees; provides that the council will establish its own code of ethics by ordinance no later than six months from the effective date of the corporation; provides that the intent of the subsection is to require more stringent standards than those provided under general law.

(10) Land use, rezoning: Provides that changes to the town's future land use map or any change to the zoning designation for any parcel within the town shall require the affirmative vote of no less than four members of the town council.

Section 10: Transition schedule.

(1) Referendum: Provides that the Palm Beach County Commission will hold the referendum election for considering the incorporation of the Town of Loxahatchee Groves on October 10, 2006.

(2) Initial election of council members; dates: Provides that following the adoption of the charter, the Palm Beach County Commission will call a special election for the election of the town council members to be held on March 13, 2007; provides for, if necessary, a runoff election to be held on March 27, 2007; provides that any individual who wants to run for the council must qualify as a candidate with the Palm Beach County Supervisor of Elections; provides for the Palm Beach County Commission to appoint a canvassing board to certify the results of the election; provides that those individuals who are elected will take office at the initial town meeting to be held at 7 p.m. on March 29, 2007.

(3) Creation and establishment of the town: Provides that for the purpose of compliance with s. 200.066, F.S., relating to assessment and collection of ad valorem taxes, the town is created effective November 1, 2006, although it will not be operational until March 30, 2007.

(4) First year expenses: Provides that the town council will have the power to borrow the money necessary for the operation of the town until a budget is adopted and revenues are raised.

(5) Transitional ordinances and resolutions: Provides that all applicable county ordinances currently in place at the time of passage of the referendum, unless specifically referenced herein, will remain in place until and unless rescinded by action of the town council, except that a county ordinance, rule or regulation which is in conflict with an ordinance, rule or regulation of the town shall not be effective to the extent of such conflict (except as otherwise provided by the Palm Beach County Charter); provides that any existing county ordinances, rules and regulations as of October 12, 2006, shall not be altered, changed, rescinded or added to, nor shall any variance be granted insofar as such action would affect the town without the approval of the town council.

(6) Temporary emergency ordinances: Requires the town council to adopt transitional ordinances and resolutions; provides that ordinances adopted within 60 days after the first council meeting may be passed as emergency ordinances; provides that these ordinances shall be effective for no longer than 90 days after adoption and thereafter may be readopted, renewed or otherwise continued only in the manner normally prescribed for ordinances.

(7) Transitional comprehensive plan and land development regulations: Provides that until the town adopts a comprehensive plan, all applicable provisions of the Comprehensive Plan and Land Development Regulations of the county will remain in effect; provides that all planning functions, duties and authority will rest in the town council; provides that the council will be deemed the local planning agency until it establishes a separate local planning agency; provides that after the passage of the act, no amendment of the comprehensive plan or land development regulations enacted by the Palm Beach County Commission will take effect within the town's corporate limits; provides that the owner or assigns of the 97+/- acre property located at the northwest corner of B-Road and Southern Boulevard, commonly known as the "Simon property," have applied for a land use change through the Palm Beach County comprehensive plan amendment process (LGA 2004-00037), and that this parcel and it owners and assigns will remain subject to the county comprehensive plan and approval process until such time as the town adopts its own comprehensive plan; provides that in the event that the town initiates a review and approval process in a timeframe that is faster than presently expected, the owner or assigns of the Simon property may elect to go through the town's zoning approval process.

(8) Communications Services Tax: Provides that the communications services tax imposed by Palm Beach County will continue within the town boundaries during the period commencing with the date of the incorporation through December 31, 2007; provides that revenues from the tax will be shared by Palm Beach County with the town.

(9) State shared revenues: Provides that the town will be entitled to participate in all shared revenue programs of the state available to municipalities effective April 1, 2007. provides that the provisions of s. 218.23(1), F.S, will be waived for the purpose of eligibility to receive revenue sharing funds from the date of the incorporation through the state fiscal year 2009-2010; provides that initial population estimates for calculating eligibility for shared revenue be determined by the University of Florida Bureau of Economic and Business Research; provides for the Palm Beach County Planning Division estimate to be used if the bureau is unable to provide an appropriate population estimate; provides that for the purposes of qualifying for revenue sharing, the following revenue sources be considered: municipal service taxing units, fire municipal service taxing units, water control district revenues, occupational license taxes, ad valorem taxes, public utility service taxes, communication services tax and franchise fees.

(10) Gas tax revenues: Provides that the town will be entitled to receive local gas tax revenues beginning October 1, 2007.

(11) Waiver: Provides that the provisions of s. 218.23(1), F.S., be waived for the purpose of conducting audits and financial reporting through fiscal year 2007-2008

Section 11: Continuation, merger, and dissolution of existing districts and service providers.

(1) Palm Beach County Fire Rescue Municipal Service Taxing Unit; continuation: Provides that the Palm Beach County Fire Rescue Municipal Service Taxing Unit, a special taxing district, is authorized to continue in existence within the boundaries of the town until the town adopts an ordinance to the contrary; provides that the town will not establish a fire department without a referendum.

(2) Law Enforcement: Provides that law enforcement services will be provided by contract with the Palm Beach County Sheriff's Office, or contracted with other law enforcement agencies, until the town adopts an ordinance to the contrary; provides that the town will not establish a police department without a referendum.

(3) Palm Beach County Library District: Provides that that portion of the Palm Beach County Library District, a dependent district of Palm Beach County that lies within the town, is authorized but not required to continue in existence; provides that, in order to be excluded from the library district, the town must establish a municipal tax-funded library.

(4) Palm Beach County Municipal Service Taxing Unit B: Provides that the portion of the Palm Beach County Municipal Service Taxing Unit B, a dependent district of Palm Beach County that lies within the boundaries of the town, will cease to exist within the municipal boundaries of the town on October 10, 2006.

(5) Palm Beach County Municipal Service Taxing Unit F: Provides that the portion of the Palm Beach County Municipal Service Taxing Unit F, a dependent district of Palm Beach County that lies within the boundaries of the town, will cease to exist within the municipal boundaries of the town on October 10, 2006.

(6) Loxahatchee Groves Water Control District; continuation: Provides that the Loxahatchee Groves Water Control District is authorized to continue in existence.

(7) Loxahatchee Groves Park: Provides that the Loxahatchee Groves Park will continue to be operated by the Palm Beach County Department of Parks and Recreation; provides that all planned improvements to the park be subject to the approval to the town, but remain the responsibility of Palm Beach County.

Section 12: Repeal.

Provides that section 6 of s. 2 of ch. 99-425, L.O.F., is repealed. Chapter 99-425, L.O.F., is the codification of the Loxahatchee Groves Water Control District, and the section that the incorporators seek to repeal provides that no land within the boundaries of the district, except for certain property which is legally described, may be annexed by any municipality unless the municipality agrees to annex all of the real property composing the district.

Section 13: Waivers.

Provides that waivers to the following thresholds for municipal incorporation established by s. 165.061, F.S., are granted:

(1) A minimum population of 5,000 as required by s.165.061(1)(b), F.S.;

(2) A minimum density of 1.5 persons per acre as required by s.165.061(1)(c), F.S.; and

(3) A minimum distance of two miles from an existing municipality as required by s.165.061(1)(d), F.S.

Section 14: Effective date.

Provides that the act take effect upon approval of a majority of qualified electors residing within the proposed corporate limits of the proposed town voting in a referendum to be called by the Board of County Commissioners of Palm Beach County to be held on October 10, 2006, except that s. 10(1) and this section will take effect upon the act becoming law.

Feasibility Study

A feasibility study on the creation of the Town of Loxahatchee Groves was submitted to the Florida House of Representatives on October 19, 2005. The Local Government Council requested a review of this study from the:

- Legislative Committee on Intergovernmental Relations;
- Office of Economic & Demographic Research;
- Department of Revenue; and
- Department of Community Affairs.

The responses of these reviewers are noted in "Comments" in Section III C. of this analysis.

D. SECTION DIRECTORY:

Section 1: Provides for corporate existence; form of government; boundary and powers.

Section 2: Provides for town; mayor and vice mayor.

Section 3: Provides for council members, elections and terms of office.

Section 4: Provides for town manager and attorney; appointment; removal; compensation; filling of vacancies; expenditure of town funds; town boards and agencies.

Section 5: Provides for town council meetings and powers.

Section 6: Provides for town budget and appropriations.

Section 7: Provides for town elections.

Section 8: Provides for initiative petitions and referendum.

Section 9: Provides general provisions.

Section 10: Provides a transition schedule.

Section 11: Provides for continuation, merger and dissolution of existing districts and service providers.

Section 12: Provides for repeal of section 6 of s. 2 of ch. 99-425, L.O.F.

Section 13: Provides for waivers from s. 165.061, F.S.

Section 14: Provides for effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN?

WHERE?

Note: Section 10 of Art. III, of the State Constitution provides: No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. **Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.**

B. REFERENDUM(S) REQUIRED? Yes [x] No []

IF YES, WHEN? October 10, 2006.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

According to the Economic Impact Statement, the estimated cost of administration, implementation and enforcement for this bill is $1,085,673 in FY 07-08, and $1,171,369 in FY 07-09. The anticipated sources of funding are as follows:

		FY 07-08	FY 08-09
State:	Revenue Sharing	$71,915	$79,106
	Half Cent Sales Tax	$238,350	$250,268
Local:	Ad Valorem Taxes	$505,749	$558,853

The EIS also states that the incorporation will have little impact on Palm Beach County because current county services will be kept at the same level of service and the area at issue accounts for less than .2 percent of the population of the county. There will be an increase in property taxes of 1.5 mils for the incorporated area.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

See, C. DRAFTING ISSUES OR OTHER COMMENTS, on the following page.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Exemptions to General Law

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill may create exemptions to the following general laws:

1) Section 171.0413, F.S., which provides for annexation of contiguous, compact unincorporated territory by municipalities subject to specified procedures, in that s. 1(3)(b) of the bill prohibits the town from annexing the area known as Callery-Judge Groves.
2) Section 165.061(1)(b), F.S., which requires that a proposed municipality have a minimum population of 5,000 in counties with a population of more than 75,000;
3) Section 165.061(1)(c), F.S., which requires that a proposed municipality have a minimum density of 1.5 persons per acre, or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density;
4) Section 165.01(1)(d), F.S., which requires that the boundaries of a proposed municipality be a minimum distance of two miles from an existing municipality, or have an extraordinary natural boundary which requires separate municipal government.
5) Section 125.01, F.S., which gives counties the authority to prepare and enforce comprehensive plans, and establish and enforce zoning ordinances, in that s. 10 (7)(b) of the act prohibits changes in the land use map or zoning districts within the boundaries of the town once the act becomes law.
6) Part II of ch. 163, F.S., which contains the "Local Government Comprehensive Planning and Land Development Regulation Act," in that s.10 (7)(d) of the bill provides that after the passage of the act, no amendment of the comprehensive plan or land development regulations enacted by the Palm Beach County Commission will take effect within the town's corporate limits.
7) Section 218.23(1), F.S., which provides eligibility requirements for revenue sharing, that s. 10 (8) of the bill seeks to waive through FY 2009-2010, and s. 10(10) of the bill seeks to waive for the purpose of conducting audits and financial reporting through FY 2007-2008.
8) Section 200.066, F.S., which provides that ad valorem taxes of newly created municipalities be initially imposed no earlier than the January 1 subsequent to the creation of the municipality.

Feasibility Study Reviews

The Legislative Committee on Intergovernmental Relations (LCIR)

The following includes selected comments from the Legislative Committee on Intergovernmental Relations regarding the proposed incorporation of the Town of Loxahatchee Groves.

The LCIR indicated that its review determined that the proposed incorporation met state standards for municipal incorporations specified in s. 165.061, F.S., (see, "Requirements and Standards for Municipal Incorporation" on page 3 of this analysis) with the following exceptions:

Based on the 2003 estimated population of 3,122 provided in the *Study* (page 1), the area proposed for incorporation does not meet the population requirements found in s. 165.061(1)(b), F.S. The *Study* (pages 2 and 7) report the number of acres proposed for incorporation at 8,148 acres and the estimated population at 3,122. Based on these data, the density of the area proposed for incorporation is 0.38 persons per acre, rather than the .65 persons per acre reported (page 7). The density of Loxahatchee Groves is approximately one-quarter of the required minimum under s. 165.061(1)(c), F.S., of 1.5 persons per acre. **Alternatively, the statutes provide that the area have extraordinary conditions requiring the establishment of a municipal incorporation with less existing density.**

The *Study* (pages 1 and 7) suggest that the unique rural character of Loxahatchee Groves and its standing as a readily identified community meet this statutory condition. As such, it cannot be ascertained whether the unique characteristics of Loxahatchee Groves serve as extraordinary conditions as required by law. However, Palm Beach County government staff report that the county created ordinances for the Loxahatchee Groves community which recognize its unique and historic nature.

Information in the *Study* acknowledges that the area to be incorporated does not maintain a distance of at least two miles from a boundary of two existing municipalities, Royal Palm Beach and Wellington, nor does it suggest the presence of any extraordinary natural boundary that requires separate municipal government as required by s. 165.061(1)(d), F.S. The area proposed for incorporation does not meet the minimum two-mile limit requirement. **The *Study* suggests that the aggressive annexation policies of its Royal Palm Beach and Wellington have brought them within the two-mile limit of Loxahatchee Groves and have contributed to its wish to incorporate as a means to protect the community from further expansion by these neighboring municipalities.**

The LCIR indicated that its review determined that the proposed incorporation met state standards for a municipal incorporation feasibility study pursuant to s. 165.041(1)(b), F.S., (see, "Feasibility Study" on pages 3 and 4 of this analysis) with the following exceptions:

The *Study* does not appear to propose any development for the area, rather it supports maintaining current characteristics and opposing higher density developments. As such, it cannot be ascertained whether the *Study* meets the requirement to describe proposed development. The *Study* (page 9) does provide for the formation of a citizen's commission to develop a comprehensive plan that would address this issue.

The *Study* appears to meet the requirement that it identify proposed services (pages 11-13). Based on information contained in the *Study*, and the Study Addendum we cannot ascertain whether it meets the requirement to identify estimated costs for the proposed services. **Supplemental information provided by the Committee to Incorporate Loxahatchee Groves, Inc., Palm Beach County Department of Planning, Zoning, and Building, and the Solid Waste Authority of Palm Beach County indicate some agreement that the county will continue to provide certain services to the residents upon incorporation such as solid waste and recycling, fire and rescue, law enforcement, maintenance of certain roadways, and maintenance of parks and recreation, and continuation of library services. However, it remains unclear how other services including future water utilities, and planning, zoning, permitting, and inspections will be provided.** It is assumed that such services would develop through interlocal agreements with the Palm Beach County government.

The *Study* appears to meet some but not all elements of the requirement that it provide evidence of the fiscal capacity for the area proposed for incorporation with the following caveats:

> The *Study* addresses the majority of tax bases and revenue sources available to a municipality, but provides revenue estimates for only a few of them: ad valorem property tax, Municipal Revenue Sharing Program, the Local Government Half-Cent Sales Tax (pages 12 and 22), and a non-ad valorem assessment to fund the water control district (page 11). The Study Addendum provides revenue estimates for franchise fees and the Communications Service Tax. These and other revenue sources included in the study require some clarification:
>
> - The *Study* notes that Palm Beach County will continue to provide a range of services to the community with revenues from existing taxes. It is somewhat unclear which services are to be provided by Palm Beach County government through existing county millage, under contract, or through interlocal agreement and which services would be provided by Loxahatchee Groves. **As noted above, the supplemental letters provided by The Committee to Incorporate Loxahatchee Groves, Inc., and the Palm Beach County Department of**

Planning, Zoning, and Building, indicate a willingness for the County to continue providing some services: law enforcement, library, parks and recreation (with certain stipulations), but it is unclear whether it would provide all of the identified services for the amount specified in the *Study* (pages 10-13, Appendices A and D, and the Study Addendum).

- State shared revenues (SSR) are identified as revenue sources for Loxahatchee Groves. In order to be eligible to participate in these programs, a municipality is required to meet certain criteria. These requirements include, among others, certain financial and audit reports and a minimum local taxing effort equal to the amount that would be generated by three mils of ad valorem property taxes. The Study Addendum projects the 2006 taxable value of property within the Loxahatchee Groves at $305,127,735. Based on this projected taxable value, the three-mil equivalency for Loxahatchee Groves is equal to approximately $915,383,205. Current budget projections include an ad valorem tax rate of 1.5 mils. **The requirements regarding financial reports have been temporarily waived in the past until such reports are available. However, the Legislature, in most instances, has required that a proposed incorporation show a minimum local taxing effort in order to qualify for SSR programs. It may be appropriate to credit non-ad valorem assessments from the Loxahatchee Water Control District and/or millage levied by Palm Beach County for other municipal type services toward this three-mil requirement.**

- The *Study* does not identify local option fuel taxes as a revenue source or provide revenue estimates, although the Charter includes a provision that entitles Loxahatchee Groves to receive local option gas tax revenues beginning October 1, 2007. It is unknown whether the county and Loxahatchee Groves have an interlocal agreement proposal for distribution of the fuel tax revenues. Florida Statutes provide a default formula for distribution of fuel tax revenue for newly incorporated municipalities in the absence of such an interlocal agreement.

Consequently, we cannot ascertain whether the *Study* and Study Addendum adequately address these tax bases. However, it appears that revenues for Loxahatchee Groves would exceed those projected in the *Study* and Study Addendum.

The *Study* does include a five-year operational plan and budget (pages 12-15, Appendix A, and Study Addendum). **The revenue totals include funds projected from sources for which the proposed municipality may not be eligible to receive and, as noted above, include provisions for other entities to continue providing services or provide under contract or through interlocal agreement without providing evidence that these entities are willing to provide all such services for the amount identified in the budget. In addition, the five-year operational plan in the Study Addendum allocates less than $52,000 during this five-year period for the development of a comprehensive plan and contract planning services with the county government.**

Also, although the *Charter* includes numerous provisions for council member elections, referenda, and initiatives, neither the *Charter* nor the five-year plan specify how such elections will be administered or funded. The Palm Beach County Supervisor of Elections Office has a standard interlocal agreement or fee schedule for conducting municipal elections which would cost approximately $4,500 - $6,000 per election for a municipality the size of Loxahatchee Groves. Given this list of concerns, we cannot ascertain whether the requirement for the five-year operational plan and budget is adequately addressed.

As noted above, the *Study* does not provide evidence that the proposed municipality meets the requirements for incorporation pursuant to s. 165.061, F.S. It does acknowledge, however, that certain criteria will need to be waived.

The LCIR also evaluated whether the proposed revenues and expenditures contained in the Study are consistent with revenues and expenditures of municipalities of similar size.

This section of the analysis compared the revenue and expenditure estimates for the proposed municipality of Loxahatchee Groves with "similarly sized" municipalities in Florida. As presented in the following table, all comparison municipalities reported FY 2002-03 total expenditures greater than those projected for Loxahatchee Groves. The estimated expenditures projected for Loxahatchee Groves ($1,085,673) are approximately one-third of the "average" reported expenditures for the 10 comparison municipalities ($3,601,695). Two additional issues should be noted in this comparison. First, the projected expenditures for Loxahatchee Groves do not include expenditures associated with the Loxahatchee Groves Water Control District or costs for services that Palm Beach County may continue to provide to the residents of Loxahatchee Groves under the current county tax structure. If included, such costs would increase the proposed expenditures and reduce the expenditure differential between Loxahatchee Groves and the comparison municipalities. Such a budget is presented in the Study Addendum.

The second issue regarding the proposed expenditures is that the fiscal data for the10 comparison municipalities reflect total reported revenues and expenditures for FY 2002-03,while the fiscal estimates for Loxahatchee Groves are those projected for FY 2006-07. It can be assumed that total expenditures and revenues for these 10 municipalities will have increased during this time period, and as a result, the gap has increased between their "average" reported expenditures and those projected for Loxahatchee Groves. However, the ad valorem tax base for Loxahatchee Groves appears sufficient to fund municipal services at the amount equal to the "average" expenditures by the comparison municipalities should it prove necessary to do so.

Comparison of Total Revenues and Expenditures for 10 Municipalities with Populations Similar to the Population Estimate for the Proposed Municipality of Loxahatchee Groves[4]

Municipality	2003 Pop. Est.[5]	Revenues	Expenditures
Loxahatchee Groves	3,122	$1,085,673	$1,085,673
Hilliard	2,748	$2,470,932	$2,500,234
Lake Helen	2,823	$1,823,727	$1,772,235
Ponce Inlet	2,917	$6,309,110	$6,807,364
Dundee	2,952	$2,890,820	$2,746,312
Frostproof	2,982	$3,436,992	$3,459,038
Bowling Green	3,012	$1,940,566	$1,766,766
Indialantic	3,030	$2,871,773	$2,981,874
Madison	3,079	$5,238,747	$4,565,907

[4] FY 2002-2003 reported revenues and expenditures by the 10 comparison municipalities and projected 2006 revenue and expenditure estimate for Loxahatchee Groves contained within the Loxahatchee Groves Incorporation Feasibility Study.

Port Richey	3,139	$5,984,664	$4,790,922
Fruitland Park	3,265	$3,049,623	$4,092,063
AVERAGE	**2,995**	**$3,601,695**	**$3,548,272**

The LCIR also evaluated the distribution of State Shared Revenues (SSR) and impact the incorporation would have on existing local governments.

While the statutory requirements for a feasibility study do not include identifying fiscal impacts to neighboring units of local government, such information is useful for these local governments as they begin to plan for their next budget cycle.

A newly created municipality will impact the amount of funds that existing municipalities receive in the two major SSR programs: Local Government Half-Cent Sales Tax and the Municipal Revenue Sharing (MRS). The county government within which the new municipality is formed will realize fiscal impacts in two SSR programs: Local Government Half-Cent Sales Tax and County Revenue Sharing.

The Office of Tax Research, Florida Department of Revenue, prepared SSR estimates for the proposed Town of Loxahatchee Groves and estimates on the impact from such incorporation to SSR distribution to other units of local government within Palm Beach County. If Loxahatchee had incorporated in 2005, Palm Beach County government would realize a reduction in 2005-06 SSR distributions totaling an estimated $205,039. The extent to which revenue reductions are offset by reductions in services is not known. Municipalities within the County would realize estimated SSR reductions ranging from a low of $20 (Cloud Lake) to a high of $10,451 (West Palm Beach).

Lastly, the LCIR provided the following comments with regard to the proposed charter.

Section 1(3): Subsection (b) prohibits Loxahatchee Groves from annexing certain adjacent property. Including such a provision in a municipal charter is unusual. If there is a need to reassure certain local stakeholders that Loxahatchee Groves will not attempt to annex this adjacent property, such a commitment might better be accomplished in an ordinance or by resolution of the city council.

Section 2(1) and Section 3(1) and (2): These subsections call for a five-member council to be elected at-large and represent the municipality at-large. Such an election scheme may be vulnerable to legal challenge under the 1965 U.S. Voting Rights Act, depending upon the area's demographics.

Section 2(3): Subsection (a) invests the vice-mayor with the same legislative powers and duties as any other council member. It may be appropriate to clarify that the vice-mayor would have the powers and duties of the mayor only when serving as the mayor. Subsection (b) provides that the vice-mayor shall serve as acting mayor during the absence or disability of the mayor. It may be appropriate to define "disability" or remove it.

Section 3(4): Subsection (a) provides for filling of vacancies of council officers and members and reasons why vacancies would occur. It may be appropriate to include disability as a reason.

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[5] 2003 population counts for comparison municipalities reported by the Bureau of Economic and Business Research, University of Florida. Population estimates for Loxahatchee Groves for calendar year 2003 contained within the Loxahatchee Groves Incorporation Feasibility Study, Appendix A.

Sources: Florida LCIR using fiscal data submitted by municipalities to the Department of Banking and Finance; Florida Estimates of Population 2003, Bureau of Economic and Business Research, University of Florida, 2004; information contained within the Loxahatchee Groves Incorporation Feasibility Study and Study Addendum.

Section 4(3): Subsection (d) authorizes the council to designate a temporary town manager during the absence or disability of the existing town manager. It would be appropriate to define "disability" in the charter and eliminate possible future confusion on the meaning of the term. Subsection (e) provides the powers and duties of the town manager which include signing of contracts. Such responsibility is also assigned to the mayor in Article 2(2)(b). It may be appropriate to clarify the assignment of responsibilities between the mayor and manager.

Section 5(10): Subsection (b) authorizes the adoption of an emergency ordinance upon the affirmative vote of four council members. Subsection 5(5) defines a quorum as a majority (3) of the full council. This creates a situation where the council may hold an emergency meeting, but not adopt any emergency ordinance. It may be appropriate to lower the threshold for the adoption of an emergency ordinance where only a quorum of council members is present.

Sections 7, 8, and 10: Sections 7 and 8 address council elections and referendum and initiative elections, respectively. It is unclear whether Loxahatchee Groves or the Palm Beach Supervisor of Elections Office is responsible for elections administrations. Section 10 directs Palm Beach County to hold the incorporation referendum. It may be appropriate for Sections 7 and 8 to clarify how elections will be administered and funded.

Section 10 Subsection (5) nullifies the effect of Palm Beach County ordinances and related actions enacted after passed of the referendum that are in conflict with those of Loxahatchee Groves. Subsection (7)(d) would similarly limit the comprehensive planning authority of Palm Beach County. Palm Beach County is a charter county and, as such, has authority over certain issues within the county, as well as how county government will relate to political subdivisions within the county. As such, it may be appropriate to revisit these provisions.

Section 10(8): This subsection authorizes Loxahatchee Groves to participate in all state shared revenue programs and waives the eligibility requirements in s. 218.23(1), F.S., through FY 2009-10. The requested waiver should be limited to the requirements regarding financial reports and audits which the Legislature has temporarily waived in the past until such reports are available. Also, given that it can take up to three years for the required financial reports and audits to become available, it may be appropriate to grant the waiver only through FY 2008-09.

Section 11(4) and (5): These subsections terminate the portions of the Palm Beach County Municipal Service Taxing Units (MSTUs) B and F, respectively, which lie within the boundaries of Loxahatchee Groves, upon incorporation. The purposes served and functions afforded by these MSTUs are not identified. While it may be appropriate to terminate these MSTUs, impacts, if any, from doing so are unknown.

Section 11(7): This subsection directs Palm Beach County to maintain responsibility for the Loxahatchee Groves Park and requires any proposed improvements to the park to be approved by the "Town of Loxahatchee Groves." It is unknown whether Palm Beach County government has prior policies relevant to the planning, development, and financing responsibilities for county parks or other county facilities. Any such policy may supersede, and/or be in conflict with this provision.

Office of Economic and Demographic Research (EDR)

The Office of Economic and Demographic Research submitted the following:

- The latest official population estimate for Palm Beach County placed its population at 1,265,900 (official 4/1/2005 estimate from Bureau of Economic and Business Research, University of Florida) so a new municipality would be required to have a minimum population of 5,000. The feasibility study indicates that the 2000 population of the area proposed for the Town of Loxahatchee Groves was 3,021 and EDR's analysis of census data for the blocks contained within the proposed boundaries of Loxahatchee Groves corroborated this figure. The feasibility

study assumed that the area's 2004 population was 3,122 and notes that it does not meet the minimum population requirement of 5,000 persons. The study further states that even with a five percent growth rate, the community is unlikely to grow to 5,000 persons during the next decade without compromising its rural identity.

- According to the feasibility study, the area being proposed for incorporation has population density of .65 persons per acre (assuming 8,148 acres). EDR's analysis of Census map data suggests that the area contains approximately 9,103 acres. Using this acreage would indicate that the density in 2000 was more in the range of .37 persons per acre.

- According to the maps provided in the feasibility study, the areas proposed for the Town of Loxahatchee Groves are contiguous and compact.

- The proposed municipality is bordered by two other incorporated places, Wellington to the south and Royal Palm Beach to the east. No extraordinary natural boundary exists which would require separate municipal government.

Department of Revenue

The Department of Revenue provided the following comments:

Revenue Sharing

- Article 10, Section (8) of the draft charter provides that Loxahatchee Groves be entitled to participate in all state shared revenue on the first day of the month occurring after the first meeting of the council, i.e., 4/1/07.

- Article 10, Section (8) of the draft charter also provides that the provisions of s. 218.23(1), F.S., are to be waived from the date of incorporation, 11/1/06, through the state fiscal year 2009-2010. **Loxahatchee Groves will have completed its first full local fiscal year on 9/31/08 and could potentially satisfy the revenue sharing reporting criteria contained in s. 218.23(1), F.S., by 6/30/09, as early as the end of the 2008-2009 state fiscal year.**

- Section 218.23(1)(c), F.S., requires as a condition of revenue sharing eligibility, that a local government impose three mills of ad valorem tax or a three-mill equivalent. The feasibility study on page 12 states that the anticipated millage for Loxahatchee Groves after incorporation is 1.5 mills for the fiscal years 2005-2010. Neither the draft charter nor the feasibility study specifically mention the three-mil requirement. However Article 10, Section (8) of the draft charter lists the following revenue sources to be considered for the purposes of qualifying for revenue sharing: municipal service taxing units, fire municipal service taxing units, water control district revenues, occupational license taxes, ad valorem taxes, public utility service taxes, communication services tax and franchise fees. **This should probably be clarified to state that for the purposes of meeting the provisions of s. 218.23(1), F.S., relating to ad valorem taxation, the millage levied by MSTU's and special districts levied throughout the proposed corporate limits of the city may be used.**

Gas Tax Revenues

- Article 10, Section (9) of the proposed charter states that Loxahatchee Groves shall be entitled to receive local option gas tax revenues beginning 10/1/07. This date complies with s. 336.025(4)(b), F.S., which provides that newly incorporated municipalities will not receive fuel tax distributions until the beginning of the first full local fiscal year following incorporation, which in the instance of Loxahatchee Groves is 10/1/07.

- Section 336.025(4)(b), F.S., requires that gas tax distributions to newly incorporated municipalities are to be in accord with the lane-mile formula unless provided otherwise by the special act providing for the incorporation. Since Section (9) of the draft charter is silent regarding any distribution pursuant to an interlocal agreement with Palm Beach County, then gas tax distributions to Loxahatchee Groves will be in accord with the lane-mile formula. Lane-mile data will have to be provided to the Department for use in calculating distributions to Loxahatchee Groves.

Local Communications Services Tax

- A communications services tax is currently imposed by Palm Beach County within the unincorporated area of Palm Beach County, including the area within the proposed Town of Loxahatchee Groves. The addendum to the feasibility study indicates Local Communications Services Tax revenues, i.e., $126,000 for FY 07/08, $132,300 for FY 08/09, etc. The charter language provides for a sharing of the CST imposed by Palm Beach County within the boundaries of Loxahatchee, beginning with the date of incorporation, 11/1/06 through December 31, 2007. If the incorporators intend to levy a communications services tax, it would be necessary for the new city to adopt an ordinance for this tax prior to 9/1/07 to be effective 1/1/08.

Discretionary Sales Surtax

- Currently, Palm Beach County imposes a five percent School Capital Outlay Surtax, effective 1/1/05, with a specified expiration date of 12/30/10. Proceeds of this tax are distributed entirely to the Palm Beach County School Board and will not be available to Loxahatchee Groves.

The Department also prepared revenue sharing estimates for the 2005-2006 state fiscal year which are on file with the Local Government Council.

Department of Community Affairs

The Department of Community Affairs provided the following comments:

Pursuant to ch. 163.3167(4), F.S., a new comprehensive plan must be adopted within three years of incorporation. Approximate cost of a new comprehensive plan for a City of this size is $100,000. Pursuant to ch. 163.3202(1), F.S. within one year of an adopted comprehensive plan, a new municipality must adopt land development regulations. Approximate cost of new land development regulations for a City of this size is $200,000. In addition, new cities typically become responsible for providing and maintaining certain types of infrastructure and services.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Local Government Counsel adopted a strike-all amendment at its March 22, 2006, meeting which makes technical changes to the bill, corrects the initial date for revenue sharing participation, and allows the town to proportionately share in the communications services tax with Palm Beach County during its first year of incorporation.

CHAMBER ACTION

1 The Local Government Council recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to Palm Beach County; creating the Town of
7 Loxahatchee Groves; providing a charter; providing
8 legislative intent; providing a council-manager form of
9 government; providing boundaries; providing municipal
10 powers; providing for a town council; providing for
11 membership, qualifications, terms, powers, and duties of
12 its members, including the mayor; providing for a vice
13 mayor; providing general powers and duties; providing
14 circumstances resulting in vacancy in office; providing
15 grounds for forfeiture and suspension; providing for
16 filling of vacancies; providing for compensation and
17 expenses; providing for appointment of charter officers,
18 including a town manager and town attorney; providing for
19 removal, compensation, and filling of vacancies; providing
20 qualifications, powers, and duties; providing for
21 meetings; providing for adoption, distribution, and
22 recording of technical codes; providing for recordkeeping;
23 providing a limitation upon employment of council members;

24 prohibiting certain interference with town employees;
25 establishing the fiscal year; providing for adoption of
26 annual budget and appropriations; providing for
27 supplemental, reduction, and transfer of appropriations;
28 providing for limitations; providing for referendum
29 requirements for revenue bonds and other multiyear
30 contracts; providing for financial audit; providing for
31 nonpartisan elections and matters relative thereto;
32 providing for recall; providing for initiative and
33 referenda; providing for future amendments of the charter;
34 providing for standards of conduct in office; providing
35 for severability; providing for a personnel system;
36 providing for charitable contributions; providing for land
37 use changes; providing the town a transitional schedule
38 and procedures for first election; providing for first-
39 year expenses; providing for adoption of transitional
40 ordinances, resolutions, comprehensive plan, and local
41 development regulations; providing for sharing of
42 communications services tax; providing for accelerated
43 entitlement to state-shared revenues; providing for gas
44 tax revenue; providing for continuation of the Palm Beach
45 County Fire Rescue Municipal Service Taxing Unit;
46 providing for law enforcement; providing for continuation
47 of the Palm Beach County Library District; providing for
48 dissolution of the Palm Beach County Municipal Service
49 Taxing Unit B and dissolution of the Palm Beach County
50 Municipal Service Taxing Unit F; providing for
51 continuation of the Loxahatchee Groves Water Control

52 District; providing for continuation of Loxahatchee Groves
53 Park; repealing s. 6 of s. 2 of chapter 99-425, Laws of
54 Florida, relating to a restriction on annexation of the
55 Loxahatchee Groves Water Control District; providing for
56 waivers; requiring a referendum; providing effective
57 dates.
58
59 Be It Enacted by the Legislature of the State of Florida:
60
61 Section 1. Charter; creation; form of government;
62 boundaries and powers.--
63 (1) CHARTER; CREATION.--
64 (a) This act, together with any future amendments thereto,
65 may be known as the "Charter of the Town of Loxahatchee Groves"
66 (the "charter"), and the Town of Loxahatchee Groves (the "town")
67 is hereby created.
68 (b) The Loxahatchee Groves area in Palm Beach County
69 includes a compact and contiguous rural community of
70 approximately 3,120 persons who are experiencing certain
71 impacts, such as the destruction of rural habitats and the
72 threat to equestrian, farming, and nursery businesses, resulting
73 from urbanization in the surrounding areas. The residents within
74 the town would like to control the effects of those impacts
75 through the incorporation of the town and its continued
76 existence as a historic, rural community with the benefits of
77 self-determination.
78 (c) It is in the best interests of the public health,
79 safety, and welfare of the residents of the Loxahatchee Groves

80 area to form a separate municipality for the Loxahatchee Groves
81 area with all the powers and authority necessary to provide
82 adequate and efficient municipal services to its residents.
83 (d) It is intended that this charter and the incorporation
84 of the Loxahatchee Groves area will serve to preserve and
85 protect the distinctive rural characteristics of the community,
86 such as low density, minimal lot coverage, substantial open
87 spaces, agricultural and nursery interests, and rural habitats,
88 and to acknowledge its close ties to the agriculture and
89 equestrian industries within the boundaries of the town.
90 (e) It is the intent of this charter and the incorporation
91 of the town to secure the benefits of self-determination and
92 affirm the values of representative democracy, citizen
93 participation, strong community leadership, professional
94 management, and regional cooperation.
95 (2) FORM OF GOVERNMENT.--The town shall have a council-
96 manager form of government.
97 (3)(a) CORPORATE BOUNDARIES.--The corporate boundaries of
98 the Town of Loxahatchee Groves shall be as described as follows:
99
100 That portion of Loxahatchee Sub-Drainage District,
101 Township 43 South, Range 41 East and Range 40 East,
102 Palm Beach County, Florida, being more particularly
103 described as follows:
104 Beginning at the Northwest corner of Section Eighteen
105 (18) in Township Forty-three (43) South, Range Forty-
106 one (41) East, Palm Beach County, Florida, and run
107 thence along the North line of Section Eighteen (18)

108 and Seventeen (17) of said Township to the Northeast
109 corner of Section Seventeen (17) in said Township and
110 Range; thence run South along the Eastern boundary of
111 Section Seventeen (17) to the Southeast corner of said
112 Section;
113 Thence run East along the Northern boundary of Section
114 Twenty-one (21) and of Section Twenty-two (22) to the
115 Northeast corner of the Northwest quarter of the said
116 Section Twenty-two (22); Thence run South along the
117 East line of the Northwest quarter of said Section
118 Twenty-two (22) to the Southeast corner of said
119 Northwest quarter of said Section; Thence run West
120 along the South line of the Southeast quarter of
121 Northwest quarter of said Section Twenty-two (22) to
122 the Southwest corner of said Southeast quarter of
123 Northwest quarter of said Section; Thence run South
124 along the East line of the West half of the Southwest
125 quarter of Section Twenty-two (22) and of the West
126 half of West half of Section Twenty-seven (27) and of
127 the West half of West half of Section Thirty-four (34)
128 to the North Right of Way line of State Road 80, in
129 Section Thirty-four (34); Thence West along the
130 Northern edge of the North Right of Way line of State
131 Road 80, across the West half of West half of Section
132 Thirty-four (34) and across Section Thirty-three (33),
133 Thirty-two (32), and Thirty-one (31) in said Township
134 to the point where the range line dividing ranges

135 Forty (40) and Forty-one (41) East intersects said
136 North Right of Way line of State Road 80;
137 Thence North along the West line of Sections Thirty-
138 one (31), Thirty (30), Nineteen (19) and Eighteen (18)
139 to the Point of Beginning, embracing approximately Six
140 Thousand Nine Hundred Thirty five and 56/100
141 (6,935.56) acres.
142 Said lands lying within the above described boundary
143 lines are described more particularly as follow, to
144 wit:
145 All of Section Seventeen (17), Eighteen (18), Nineteen
146 (19), Twenty (20), and Twenty-one (21) and the
147 Northwest quarter and West half of Southwest quarter
148 of Section Twenty-two (22); and West half of West half
149 of Section Twenty-seven (27); and all Section Twenty-
150 eight (28), Twenty-nine (29) and Thirty (30) and all
151 of Section Thirty-one (31) North of North Right of Way
152 line of State Road 80; and all of Section Thirty-three
153 (32) North of North Right of Way line of State Road
154 80; and all of Section Thirty-three (33) North of
155 North Right of Way line of State Road 80; and all of
156 the West half of West half of Section Thirty-four (34)
157 North of North Right of Way line of State Road 80; all
158 in Township Forty-three (43) South Range Forty-one
159 (41) East, all of said lands being situate in Palm
160 Beach County, State of Florida, according to the
161 United States official surveys of said lands.
162 TOGETHER WITH

163 The South 1/2 of Sections 7 and 8, T43S, R41E.
164 The South 1/2 of the East 1/4 of Section 12, The East
165 1/4 of Sections 13, 24, 25, T43S, R40E, and that part
166 of the East 1/4 of Section 36, T43S, R40E, lying North
167 of the North Right of Way of S.R. 80, all in Palm
168 Beach County, Florida, containing 1320 acres, more or
169 less.
170 LESS AND EXCEPT The All or Nothing Legislation Parcel
171 as described in Senate Bill No. 2616, Laws of Florida,
172 Chapter 99-425, formerly known as The Palms West
173 Hospital property
174 A parcel bounded by Southern Boulevard (S.R. 80) on
175 the South, the Southern boundary of the drainage/road
176 Right of Way known as collecting canal on the North,
177 Folsom/Crestwood of the East, and the Western boundary
178 of The All or Nothing Legislation Parcel as described
179 in Senate Bill No. 2616, Laws of Florida, Chapter 99-
180 425 on the west, said parcel being more particularly
181 described as follows:
182 A parcel of land located in the County of Palm Beach,
183 State of Florida, to wit:
184 The point of beginning being the intersection of the
185 Easterly line of Lot 4, Block K, Loxahatchee District,
186 according to the plat thereof on file in the Office of
187 the Clerk of the Circuit Court recorded in Plat Book
188 7, Page 81, of the Public Records of Palm Beach
189 County, Florida, and the Southerly boundary of the
190 "Collecting Canal" as shown on the Replat of

191 Loxahatchee Groves Subdivision according to the Plat
192 thereof, recorded in Plat Book 12, Page 29, of the
193 Public Records of Palm Beach County, Florida; Thence
194 Easterly along said Southerly boundary of the
195 "Collecting Canal" to the Easterly boundary of said
196 Replat of Loxahatchee Groves; Thence South along said
197 Easterly boundary line of the Replat of Loxahatchee
198 Groves to the North Right of Way line of State Road
199 80; Thence Westerly along said Northerly Right of Way
200 line of State Road 80 to the Easterly line of Lot 4,
201 Block K, Loxahatchee District;
202 Thence Northerly along said Easterly line of Lot 4 to
203 the Point of Beginning, and
204 A portion of Lot 4, Block "K," Loxahatchee District
205 subdivision, according to the map or plat thereof as
206 recorded in Plat Book 7, page 81, public records, Palm
207 Beach County, Florida, being more particularly described as
208 follows:
209 Commencing at the northeast corner of said lot 4; thence,
210 south 02°16'42" west, along the east line of said lot 4, a
211 distance of 834.00 feet for a point of beginning.
212 Thence, continue south 02°16'42" west along said east line,
213 a distance of 1221.92 feet, more or less, to the
214 intersection thereof with the north right-of-way line of
215 State Road No. 80 as recorded in official records book
216 12372, page 468, said public records; thence, north
217 88°08'61" west, departing said east line and along said
218 north right-of-way line, a distance of 260.20 feet; thence,

219 north 02°16'46" east, departing said right-of-way line, a
220 distance of 80.00 feet; thence, north 88°08'51" west, a
221 distance of 248.59 feet; thence, north 02°16'46" east, a
222 distance of 321.11; thence, north 88°08'51" west, a
223 distance of 275.01 feet, more or less, to the intersection
224 thereof with the west line of said lot 4; thence, north
225 02°16'46" east, along said west line, a distance of 806.33
226 feet; thence, south 89°12'21" east, departing said west
227 line and along the south line of the north 834.00 feet of
228 said lot 4, as measured along the east and west lines of
229 said lot 4, a distance of 784.02 feet to the point of
230 beginning.
231 Containing: 18.867 acres, more or less.
232 (b) The town shall not annex that area now known as
233 Callery-Judge Groves, generally described as that area of land
234 bounded on the north by M canal, on the south by the northern
235 border of the town, on the east by 140th, and on the west by M
236 canal.
237 (4) MUNICIPAL POWERS.--The town shall be a body corporate
238 and politic and shall have all available governmental,
239 corporate, and proprietary powers of a municipality under the
240 State Constitution and laws of the state, as fully and
241 completely as though such powers were specifically enumerated in
242 this charter, and may exercise them, except when prohibited by
243 law. Through the adoption of this charter, it is the intent of
244 the electors of the town that the municipal government
245 established herein have the broadest exercise of home rule
246 powers permitted under the State Constitution and laws of the

247 state. This charter and the powers of the town shall be
248 construed liberally in favor of the town. It is recognized that
249 certain services within the municipal boundaries are provided by
250 independent special districts created by special acts of the
251 Legislature and by Palm Beach County.
252 Section 2. Council; mayor and vice mayor.--
253 (1) TOWN COUNCIL.--There shall be a five-member town
254 council ("council") vested with all legislative powers of the
255 town, consisting of five members ("council members"), each
256 elected from and representing the town at large. Unless
257 otherwise stated within this charter, all charter powers shall
258 be exercised by the council.
259 (2) THE MAYOR; POWERS AND DUTIES.--
260 (a) The council, at its first regular meeting after the
261 fourth Tuesday of each March, shall elect from its members a
262 mayor who shall serve for a period of 1 year and who shall have
263 the same legislative powers and duties as any other council
264 member, except as provided herein.
265 (b) In addition to carrying out the regular duties of a
266 council member, the mayor shall preside at the meetings of the
267 council and shall be recognized as the head of town government
268 for service of process, ceremonial matters, and the signature or
269 execution of ordinances, contracts, deeds, bonds, and other
270 instruments and documents and for purposes of military law. The
271 mayor shall also serve as the ceremonial head of the town and
272 the town official designated to represent the town when dealing
273 with other entities. The mayor shall have no administrative
274 duties other than those necessary to accomplish these actions,

275 or such other actions as may be authorized by the town council,
276 consistent with general or special law.
277 (3) THE VICE MAYOR.--
278 (a) The council, at its first regular meeting after the
279 fourth Tuesday of each March, shall elect from its members a
280 vice mayor who shall serve for a period of 1 year and who shall
281 have the same legislative powers and duties while serving as any
282 other council member.
283 (b) The vice mayor shall serve as acting mayor during the
284 absence or disability of the mayor. In the absence of the mayor
285 and the vice mayor, the remaining council members shall select a
286 council member to serve as acting mayor.
287 Section 3. Election and terms of office.--
288 (1) TERM OF OFFICE.--Each council member shall be elected
289 at large for a 3-year term by the electors of the town in the
290 manner provided herein. Council members shall be sworn into
291 office at the first regularly scheduled meeting following their
292 election. Each council member shall remain in office until his
293 or her successor is elected and assumes the duties of the
294 position.
295 (2) SEATS.--The town council shall be divided into five
296 separate council seats to be designated as seats 1, 2, 3, 4, and
297 5, to be voted on townwide, with each qualified elector entitled
298 to vote for one candidate for each seat.
299 (3) QUALIFICATION.--Candidates for each council seat must
300 qualify for council elections by seat in accordance with
301 applicable general law, and the council members elected to those

302 seats shall hold the seats 1 through 5, respectively. To qualify
303 for office:
304 (a) Filing.--Each candidate for council member shall file
305 a written notice of candidacy with the town clerk at such time
306 and in such manner as may be prescribed by ordinance and shall
307 make payment to the town of any fees required by general law as
308 a qualifying fee.
309 (b) Registered elector.--Each candidate for council member
310 shall be a registered elector in the state.
311 (c) Residency.--Each candidate for council member shall
312 have maintained his or her domicile within the boundaries of the
313 town for a period of 1 year prior to qualifying for election
314 and, if elected, shall maintain such residency throughout his or
315 her term of office.
316 (d) Deadline.--Any resident of the town who wishes to
317 become a candidate for a council member seat shall qualify with
318 the town clerk no sooner than noon on the last Tuesday in
319 January, nor later than noon on the first Tuesday in February,
320 of the year in which the election is to be held.
321 (4) VACANCIES IN OFFICE; FORFEITURE; SUSPENSION; FILLING
322 OF VACANCIES.--
323 (a) Vacancies.--A vacancy in the office of mayor, vice
324 mayor, or any council member shall occur upon the death of the
325 incumbent, removal from office as authorized by law,
326 resignation, appointment to other public office which creates
327 dual office holding, judicially determined incompetence, or
328 forfeiture of office as described in paragraph (b).

329 (b) Forfeiture of office.--Any council member shall
330 forfeit his or her office upon determination by the council,
331 acting as a body, at a duly noticed public meeting that he or
332 she:
333 1. Lacks at any time, or fails to maintain during his or
334 her term of office, any qualification for the office prescribed
335 by this charter or otherwise required by law;
336 2. Is convicted of a felony or enters a plea of guilty or
337 nolo contendere to a crime punishable as a felony, even if
338 adjudication is withheld;
339 3. Is convicted of a first degree misdemeanor arising
340 directly out of his or her official conduct or duties, or enters
341 a plea of guilty or nolo contendere thereto, even if
342 adjudication of guilt has been withheld;
343 4. Is found to have violated any standard of conduct or
344 code of ethics established by law for public officials and has
345 been suspended from office by the Governor, unless subsequently
346 reinstated as provided by law; or
347 5. Is absent from three consecutive regular council
348 meetings without good cause, or for any other reason established
349 in this charter.
350
351 The council shall be the sole judge of the qualifications of its
352 members and shall hear all questions relating to forfeiture of a
353 council member's office, including whether good cause for
354 absence has been or may be established. The burden of
355 establishing good cause shall be on the council member in
356 question; however, any council member may at any time during any

357 duly held meeting move to establish good cause for his or her
358 absence or the absence of any other commission member from any
359 past, present, or future meeting or meetings, which motion, if
360 carried, shall be conclusive. A council member whose
361 qualifications are in question or who is otherwise subject to
362 forfeiture of his or her office shall not vote on any such
363 matters. The council member in question shall be entitled to a
364 public hearing on request regarding an alleged forfeiture of
365 office. If a public hearing is requested, notice thereof shall
366 be published in one or more newspapers of general circulation in
367 the town at least 1 week in advance of the hearing. Any final
368 determination by the council that a council member has forfeited
369 his or her office shall be made by resolution. All votes and
370 other acts of the council member in question prior to the
371 effective date of such resolution shall be valid regardless of
372 the grounds of forfeiture.
373 (c) Suspension from office.--Any council member shall be
374 suspended from office upon return of an indictment or issuance
375 of any information charging the council member with any crime
376 which is punishable as a felony or with any crime arising out of
377 his or her official duties which is punishable as a first degree
378 misdemeanor. Pursuant thereto:
379 1. During a period of suspension, a council member shall
380 not perform any official act, duty, or function or receive any
381 pay, allowance, emolument, or privilege of office.
382 2. If the council member is subsequently found not guilty
383 of the charge, or if the charge is otherwise dismissed, reduced,
384 or altered in such a manner that suspension would no longer be

385 required as provided herein, the suspension shall be lifted and
386 the council member shall be entitled to receive full back pay
387 and such other emoluments or allowances as he or she would have
388 been entitled to had the suspension not occurred.
389 (d) Filling of vacancies.--
390 1. If any vacancy occurs in the office of any council
391 member and the remainder of the council member's unexpired term
392 is less than 1 year and 81 days, the remaining council members
393 shall, within 30 days following the occurrence of such vacancy,
394 by majority vote, appoint a person to fill the vacancy for the
395 remainder of the unexpired term.
396 2. If any vacancy occurs in the office of any council
397 member and the remainder of the unexpired term is equal to or
398 exceeds 1 year and 81 days, the remaining council members shall,
399 within 30 days following the occurrence of such vacancy, by
400 majority vote, appoint a person to fill the vacancy until the
401 next regularly scheduled town election, at which time an
402 election shall be held to fill the vacancy.
403 3. If a vacancy occurs in the office of mayor and fewer
404 than 120 days remain in the term of the council member who was
405 elected mayor, the vice mayor shall serve as mayor until a new
406 mayor is elected by the council and assumes the duties of his or
407 her office. If a vacancy occurs in the office of mayor and 120
408 days or more remain in the term of the mayor, the vice mayor
409 shall serve as mayor until a new council member is elected and
410 the council elects a new mayor and vice mayor as provided by
411 this charter.

412 4. Any person appointed to fill a vacancy on the council
413 shall be required to meet the qualifications of the seat to
414 which he or she is appointed.
415 5. Notwithstanding any quorum requirements established
416 herein, if at any time the full membership of the council is
417 reduced to less than a quorum, the remaining members may, by
418 majority vote, appoint additional members to the extent
419 otherwise permitted or required under this subsection.
420 6. In the event that all the members of the council are
421 removed by death, disability, recall, forfeiture of office, or
422 resignation, or any combination thereof, the Governor shall
423 appoint interim council members who shall call a special
424 election within not fewer than 30 days or more than 60 days
425 after such appointment. Such election shall be held in the same
426 manner as the initial elections under this charter. However, if
427 there are fewer than 6 months remaining in any unexpired terms,
428 the interim council appointed by the Governor shall serve out
429 the unexpired terms. Appointees must meet all requirements for
430 candidates as provided in this charter.
431 (e) Compensation and expenses.--
432 1. Town council members shall be entitled to receive
433 reimbursement in accordance with general law for authorized
434 travel and per diem expenses incurred in the performance of
435 their official duties.
436 2. The town council, by not fewer than four affirmative
437 votes, may elect to provide for compensation and any increase in
438 such compensation by ordinance. However, no such ordinance
439 establishing or increasing compensation shall take effect until

440 the date of commencement of the terms of council members elected
441 at the next regular election which follows the adoption of such
442 ordinance.
443 Section 4. Administrative.--
444 (1) DESIGNATION OF CHARTER OFFICERS.--The town manager and
445 the town attorney are designated as charter officers, except
446 that the office of town attorney may be contracted to an
447 attorney or law firm.
448 (2) APPOINTMENT; REMOVAL; COMPENSATION; FILLING OF
449 VACANCIES.--
450 (a) The charter officers shall be appointed by a majority
451 vote of the full council and shall serve at the pleasure of the
452 council.
453 (b) The charter officers shall be removed from office only
454 by a super majority vote of the full council. Upon demand by a
455 charter officer, a public hearing shall be held prior to such
456 removal.
457 (c) The compensation of the charter officers shall be
458 fixed by the town council through the approval of an acceptable
459 employment contract.
460 (d) The town council shall begin the process to fill a
461 vacancy in a charter office within 90 days after the vacancy. An
462 acting town manager or an acting town attorney may be appointed
463 by the council during a vacancy in such charter office.
464 (e) A charter officer shall not be a member of the town
465 council or a candidate for town council while holding a charter
466 officer position.

467 (3) TOWN MANAGER.--The town manager shall be the chief
468 administrative officer of the town.
469 (a) The town council shall appoint a town manager who
470 shall be the administrative head of the municipal government
471 under the direction and supervision of the town council. The
472 town manager shall hold office at the pleasure of the town
473 council. The town manager shall be appointed by resolution
474 approving an employment contract between the town and the town
475 manager. The town manager shall receive such compensation as
476 determined by the town council through the adoption of an
477 appropriate resolution.
478 (b) The town manager shall have the minimum qualifications
479 of a combination of a bachelor's degree in public
480 administration, business administration, or other related fields
481 from an accredited college or university and 3 years' public
482 administration experience or 6 years' experience in a city
483 manager or assistant city manager position, preferably in an
484 International City/County Management Association-recognized
485 local government.
486 (c) It is preferred that the town manager be an
487 International City/County Management Association-credentialed
488 manager or obtain such credential within 2 years after being
489 appointed.
490 (d) During the absence or disability of the town manager,
491 the town council may by resolution designate some properly
492 qualified person to temporarily execute the functions of the
493 town manager. The person thus designated shall have the same
494 powers and duties as the town manager and shall be known while

495 serving as acting town manager. The town manager or acting town
496 manager may be removed by the town council at any time.
497 (e) As the chief administrative officer, the town manager
498 shall:
499 1. Direct and supervise the administration of all
500 departments, offices, and agencies of the town, except the
501 office of town attorney, and except as otherwise provided by
502 this charter or by law.
503 2. Appoint, suspend, or remove any employee of the town or
504 appointive administrative officer provided for, by, or under
505 this charter, except the office of town attorney, and except as
506 may otherwise be provided by law, this charter, or personnel
507 rules adopted pursuant to the charter. The town manager may
508 authorize any administrative officer who is subject to his or
509 her direction and supervision to exercise these powers with
510 respect to subordinates in that officer's department, office, or
511 agency.
512 3. Ensure that all laws, provisions of this charter, and
513 acts of the council are faithfully executed.
514 4. Prepare and submit the annual budget and capital
515 program to the council in the form prescribed by ordinance.
516 5. Attend meetings of the town council.
517 6. Draw and sign vouchers upon depositories as provided by
518 ordinance and keep, or cause to be kept, a true and accurate
519 account of same.
520 7. Sign all licenses issued by the town, issue receipts
521 for all moneys paid to the town, and deposit such moneys in the
522 proper depositories on the first banking day after receipt. The

523 town manager may delegate the responsibilities of this
524 subparagraph to an appropriate town employee who shall be
525 bonded.
526 8. Provide administrative services in support of the
527 official duties of the mayor and the council.
528 9. Keep the council advised as to the financial condition
529 and future needs of the town and make recommendations to the
530 council concerning the affairs of the town.
531 10. Submit to the council, and make available to the
532 public, a complete report on finances and administrative
533 activities of the town as of the end of each fiscal year.
534 11. Sign contracts on behalf of the town to the extent
535 authorized by ordinance.
536 12. Perform such other duties as are specified in this
537 charter or as may be required by the council.
538 (4) TOWN ATTORNEY.--
539 (a) The town attorney shall be employed under terms and
540 conditions deemed advisable by the town council, which may
541 include the appointment of a law firm.
542 (b) The town attorney shall be a member in good standing
543 with The Florida Bar, have been admitted to practice in the
544 state for at least 5 years, and have not less than 2 years'
545 experience in the practice of local government law.
546 (c) The town attorney has sole discretion to appoint,
547 promote, suspend, demote, remove, or terminate deputy and
548 assistant town attorneys, subject to the town's annual budget.

549 (d) The town attorney shall perform the following
550 functions in addition to other functions as designated by the
551 town council:
552 1. Serve as chief legal advisor to the town council, the
553 charter officers, and all town departments, offices, and
554 agencies.
555 2. Attend all regular and special town council meetings,
556 unless excused by the town council, and perform such
557 professional duties as may be required by law or by the council
558 in furtherance of the law.
559 3. Approve all contracts, bonds, and other instruments in
560 which the town is concerned and shall endorse on each his or her
561 approval of the form and correctness thereof. No contract with
562 the town shall take effect until his or her approval is so
563 endorsed thereon.
564 4. When requested to do so by the council, prosecute and
565 defend on behalf of the town all complaints, suits, and
566 controversies in which the town is a party.
567 5. Perform such other professional duties as required of
568 him or her by resolution of the council or as prescribed for
569 municipal attorneys in the general laws of the state which are
570 not inconsistent with this charter.
571 6. Prepare an annual budget for the operation of the
572 office of the town attorney and submit this budget to the town
573 manager for inclusion in the annual town budget, in accordance
574 with uniform town procedures.
575 (5) TOWN CLERK.--The town manager shall appoint a town
576 clerk or management firm to serve as town clerk (the "clerk").

577 The clerk shall give notice of council meetings to its members
578 and the public, keep minutes of its proceedings, and perform
579 such other duties as the council or town manager may prescribe
580 from time to time. The clerk shall report to the town manager.
581 (6) EXPENDITURE OF TOWN FUNDS.--No funds of the town shall
582 be expended except pursuant to duly approved appropriations or
583 for the payment of bonds, notes, or other indebtedness duly
584 authorized by the council and only from such funds so
585 authorized.
586 (7) TOWN BOARDS AND AGENCIES.--Except as otherwise
587 provided by law, the council may establish or terminate such
588 boards and agencies as it may deem advisable from time to time.
589 The boards and agencies shall report to the council. Members of
590 boards and agencies shall be appointed by the council by
591 resolution.
592 Section 5. Legislative.--
593 (1) REGULAR MEETINGS.--The council shall conduct regular
594 meetings at such times and places as the council shall prescribe
595 by resolution. Such meetings shall be public meetings within the
596 meaning of state law and shall be subject to notice and other
597 requirements of law applicable to public meetings.
598 (2) SPECIAL MEETINGS.--Special meetings may be held at the
599 call of the mayor or, in his or her absence, at the call of the
600 vice mayor. Special meetings may also be called upon the request
601 of a majority of the council members. Unless the meeting is of
602 an emergency nature, the person or persons calling such a
603 meeting shall provide not less than 72 hours' prior notice of
604 the meeting to the public.

605 (3) COMMENCEMENT.--All meetings shall be scheduled to
606 commence no earlier than 7 a.m. nor later than 10 p.m.
607 (4) RULES; ORDER OF BUSINESS.--The council shall determine
608 its own rules and order of business.
609 (5) QUORUM.--A majority of the full council shall
610 constitute a quorum.
611 (6) VALIDITY OF ACTION.--No action of the council shall be
612 valid unless adopted by an affirmative vote of the majority of
613 the full council, unless otherwise provided by law.
614 (7) LEGISLATIVE POWERS.--Except as otherwise prescribed
615 herein or as provided by law, the legislative powers of the town
616 shall be vested in the council. The council shall provide for
617 the exercise of its powers and for the performance of all duties
618 and obligations imposed on the town by law.
619 (8) DEPARTMENTS.--The council may establish such other
620 departments as it determines necessary for the efficient
621 administration and operation of the town. Such departments,
622 offices, or agencies shall be established by ordinance.
623 (9) CODE.--The council may adopt any standard code of
624 technical regulations by reference thereto in an adopting
625 ordinance and may amend the code in the adopting ordinance or
626 later amendatory ordinance. The procedures and requirements
627 governing such an adopting ordinance shall be as prescribed for
628 ordinances generally, except that:
629 (a) Requirements regarding distribution and filing of
630 copies of the ordinance shall not be construed to require
631 distribution and filing of copies of the adopted code of
632 technical regulations.

633 (b) A copy of each adopted code of technical regulations,
634 as well as of the adopting ordinance, shall be authenticated and
635 recorded by the town clerk.
636 (10) EMERGENCY ORDINANCES.--
637 (a) To meet a public emergency affecting life, health,
638 property, or the public peace, the council may adopt, in the
639 manner provided by general law, one or more emergency
640 ordinances, but such ordinances may not enact or amend a land
641 use plan or rezone private property; levy taxes; grant, renew,
642 or extend any municipal franchise; set service or user charges
643 for any municipal services; or authorize the borrowing of money,
644 except as provided under the emergency appropriations provisions
645 of this charter, if applicable. An emergency ordinance shall be
646 introduced in the form and manner prescribed for ordinances
647 generally, except that it shall be plainly designated in a
648 preamble as an emergency ordinance and shall contain, after the
649 enacting clause, a declaration stating that an emergency exists
650 and describing it in clear and specific terms.
651 (b) Upon the affirmative vote of four council members, an
652 emergency ordinance may be adopted with or without amendment or
653 rejected at the meeting at which it is introduced. After its
654 adoption, the ordinance shall be advertised and printed as
655 prescribed for other ordinances.
656 (c) Emergency ordinances shall become effective upon
657 adoption or at such other date as may be specified in the
658 ordinance.
659 (d) Every emergency ordinance, except emergency
660 appropriation ordinances, shall automatically be repealed as of

661 the 61st day following its effective date, but this shall not
662 prevent reenactment of the ordinance under regular procedures
663 or, if the emergency still exists, in the manner specified in
664 this section. An emergency ordinance may also be repealed by
665 adoption of a repealing ordinance in the same manner specified
666 in this section for adoption of emergency ordinances.
667 (11) EMERGENCY APPROPRIATIONS.--To meet a public emergency
668 affecting life, health, property, or the public peace, the
669 council, by resolution, may make emergency appropriations. To
670 the extent that there are no unappropriated revenues to meet
671 such appropriation, the council may by such emergency resolution
672 authorize the issuance of emergency notes, which may be renewed
673 from time to time, but the emergency notes and renewals in any
674 fiscal year shall be paid not later than the last day of the
675 fiscal year succeeding that in which the emergency
676 appropriations were made.
677 (12) RECORDKEEPING.--The council shall, in a properly
678 indexed book kept for the purpose, provide for the
679 authentication and recording in full of all minutes of meetings
680 and all ordinances and resolutions adopted by the council, and
681 the same shall at all times be a public record. The council
682 shall further maintain a current codification of all ordinances.
683 Such codification shall be printed and shall be made available
684 for distribution to the public on a continuing basis. All
685 ordinances or resolutions of the council shall be signed by all
686 council members and attested to by the town clerk.
687 (13) DUAL OFFICE HOLDING.--No present elected town
688 official shall hold any compensated appointive office or

689 employment of the town while in office, nor shall any former
690 council member be employed by the town until after the
691 expiration of 1 year from the time of leaving office.
692 (14) NONINTERFERENCE BY TOWN COUNCIL.--Except for the
693 purposes of inquiry and information, council members are
694 expressly prohibited from interfering with the performance of
695 the duties of any employee of the town government who is under
696 the direct or indirect supervision of the town manager or town
697 attorney. Such action shall be malfeasance within the meaning of
698 section 112.51, Florida Statutes. Recommendations for
699 improvements in the town government operations shall come
700 through the town manager, but each member of the council shall
701 be free to discuss or recommend improvements to the town
702 manager, and the council is free to direct the town manager to
703 implement specific recommendations for improvement in town
704 government operations.
705 Section 6. Budget and appropriations.--
706 (1) FISCAL YEAR.--The town shall have a fiscal year which
707 shall begin on the first day of October and shall end on the
708 last day of September of the following calendar year, unless
709 otherwise defined by general law. Such fiscal year shall also
710 constitute the annual budget and accounting year.
711 (2) BUDGET ADOPTION.--The council shall adopt a budget in
712 accordance with applicable general law, following a minimum of
713 two public hearings on the proposed budget. A resolution
714 adopting the annual budget shall constitute appropriation of the
715 amounts specified therein as expenditures from funds indicated.

716 (3) EXPENDITURES.--The budget shall not provide for
717 expenditures in an amount greater than the revenues budgeted.
718 (4) APPROPRIATIONS.--
719 (a) If, during the fiscal year, revenues in excess of
720 those estimated in the budget are available for appropriation,
721 the council by resolution may make supplemental appropriations
722 for the year in an amount not to exceed such excess.
723 (b) If, at any time during the fiscal year, it appears
724 probable to the town manager that the revenues available will be
725 insufficient to meet the amount appropriated, the town manager
726 shall report to the council without delay, indicating the
727 estimated amount of the deficit, any remedial action taken, and
728 recommendations as to any other steps that should be taken. The
729 council shall then take such further action as it deems
730 necessary to prevent or minimize any deficit and, for that
731 purpose, the council may by resolution reduce one or more
732 appropriations accordingly.
733 (c) No appropriation for debt service may be reduced or
734 transferred, and no appropriation may be reduced below any
735 amount required by law to be appropriated, or by more than the
736 unencumbered balance thereof. Other provisions of law to the
737 contrary notwithstanding, the supplemental and emergency
738 appropriations and reduction or transfer of appropriations
739 authorized by this section may be made effective immediately
740 upon adoption.
741 (5) BONDS; INDEBTEDNESS.--
742 (a) Subject to the referendum requirements of the State
743 Constitution, if applicable, the town may from time to time

744 borrow money and issue bonds or other obligations or evidence of
745 indebtedness (collectively, "bonds") of any type or character
746 for any of the purposes for which the town is now or hereafter
747 authorized by law to borrow money, including to finance the cost
748 of any capital or other project and to refund any and all
749 previous issues of bonds at or prior to maturity. Such bonds may
750 be issued pursuant to one or more resolutions adopted by a
751 majority of the council.
752 (b) The town may assume all outstanding indebtedness
753 related to facilities it acquires from other units of local
754 government and be liable for payment thereon in accordance with
755 its terms.
756 (6) REVENUE BONDS; LEASE-PURCHASE CONTRACTS.--Unless
757 authorized by the electors of the town at a duly held referendum
758 election, the council shall not authorize or allow to be
759 authorized the issuance of revenue bonds or enter into lease-
760 purchase contracts or any other unfunded multiyear contracts for
761 the purchase of real property or the construction of any capital
762 improvement, the repayment of which extends in excess of 36
763 months, unless mandated by state or federal governing agencies.
764 (7) ANNUAL AUDIT.--The council shall provide for an
765 independent annual financial audit of all town accounts and may
766 provide for more frequent audits as it deems necessary. Such
767 audits shall be made by a certified public accountant or a firm
768 of such accountants who have no personal interest, direct or
769 indirect, in the fiscal affairs of the town government or in any
770 of its officers. Residency in the town shall not be construed as
771 a prohibited interest.

772 Section 7. Elections.--
773 (1) ELECTORS.--Any person who is a resident of the town,
774 who has qualified as an elector of this state, and who registers
775 in the manner prescribed by law shall be an elector of the town.
776 (2) NONPARTISAN ELECTIONS.--All elections for the town
777 council members shall be conducted on a nonpartisan basis
778 without any designation of political party affiliation.
779 (3) ELECTION DATES.--A special election shall be held on
780 the second Tuesday in March 2007, and regular elections shall be
781 held on the second Tuesday in March of each election year,
782 provided as follows:
783 (a) For the two council member seats that received the
784 highest number of votes in the March 2007 election, the next
785 election to fill the council member seats shall be held on the
786 second Tuesday in March after the first Monday in March in 2010,
787 and every 3 years thereafter.
788 (b) For the two council member seats that received the
789 next highest number of votes in the March 2007 election, the
790 next election to fill the council member seats shall be held on
791 the second Tuesday in March after the first Monday in March in
792 2009, and every 3 years thereafter.
793 (c) For the remaining council member seat, the next
794 election to fill the council member seat shall be held on the
795 second Tuesday in March after the first Monday in March in 2008,
796 and every 3 years thereafter.
797 (d) Such town elections shall be general town elections.
798 (4) RUNOFF ELECTIONS.--In the event no candidate for an
799 office receives a majority of the votes cast for such office,

800 the person receiving the largest number of votes cast will be
801 elected. In the event two candidates receive an equal number of
802 votes, a runoff election shall be held on the fourth Tuesday in
803 March.
804 (5) TOWN CANVASSING BOARD.--The town canvassing board
805 shall be composed of those members of the town council who are
806 not candidates for reelection and the town clerk, who shall act
807 as chair. At the close of the polls of any town election, or as
808 soon thereafter as practicable, the canvassing board shall meet
809 at a time and place designated by the chair and shall proceed to
810 publicly canvass the vote as shown by the returns then on file
811 in the office of the town clerk, and then shall publicly canvass
812 the absentee elector ballots. The canvassing board shall prepare
813 and sign a certificate containing the total number of votes cast
814 for each candidate or other measure voted upon. The certificate
815 shall be placed on file with the town clerk.
816 (6) SPECIAL ELECTIONS.--Special municipal elections, when
817 required, shall be held in the same manner as regular elections,
818 except that the town council, by ordinance, shall fix the time
819 for holding such elections consistent with this charter and
820 state law.
821 (7) GENERAL ELECTION.--
822 (a) The ballot for the general election shall contain the
823 names of all qualified candidates for each respective council
824 member seat and shall instruct electors to cast one vote for
825 each council member seat, with a maximum of one vote per
826 candidate. The candidate for each council member seat receiving

827 the most votes shall be the duly elected council member for that
828 designated council member seat.
829 (b) No election for any council member seat shall be
830 required in any election if there is only one duly qualified
831 candidate for the council member seat.
832 (c) If more than one candidate for a designated council
833 member seat receive an equal and highest number of votes, the
834 candidates for the office receiving the highest vote in the
835 general election shall run again in the runoff election.
836 (d) The candidate receiving the highest number of votes
837 cast for the designated council member seat in the runoff
838 election shall be elected to the designated council member seat.
839 If the vote at the runoff election results in a tie, the outcome
840 shall be determined by lot.
841 (e) The term of office of any elected official shall
842 commence immediately after the election.
843 (f) All elected officers, before entering upon their
844 duties, shall take and subscribe to the following oath of
845 office:
846 "I do solemnly swear (or affirm) that I will support, protect,
847 and defend the Constitution and Government of the United States
848 and of the state, and the charter of the Town of Loxahatchee
849 Groves; that I am duly qualified to hold office under the
850 Constitution of the State and the charter of the Town of
851 Loxahatchee Groves; and that I will well and faithfully perform
852 the duties of council member upon which I am now about to
853 enter."

854 (g) The election laws of the state shall apply to all
855 elections.
856 (h) Any member of the town council may be removed from
857 office by the electors of the town following the procedures for
858 recall established by general law.
859 Section 8. Initiative and referendum.--
860 (1) POWER TO INITIATE AND RECONSIDER ORDINANCES.--
861 (a) The electors of the town shall have the power to
862 propose ordinances to the town council and, if the town council
863 fails to adopt an ordinance so proposed without any change in
864 substance, to adopt or reject it at a town election, provided
865 that such power shall not extend to the annual budget or capital
866 program or any ordinance appropriating money, levying taxes, or
867 setting salaries of town officers or employees.
868 (b)1. The town council shall have the power, by
869 resolution, to call for a referendum vote by the electors of the
870 town at any time, provided that the purpose of such referendum
871 is presented to the town at a public hearing at least 60 days
872 prior to the adoption of such resolution. Any resolution calling
873 for a referendum vote of the electors of the town must be passed
874 by the affirmative vote of not less than four members of the
875 council.
876 2. The electors of the town shall have the power to
877 require reconsideration by the town council of any adopted
878 ordinance and, if the town council fails to repeal an ordinance
879 so reconsidered, to approve or reject it at a town election,
880 provided that such power shall not extend to the annual budget

881 or capital program or any ordinance appropriating money, levying
882 taxes, or setting salaries of town officers or employees.
883 (2) COMMENCEMENT OF PROCEEDINGS.--Any 10 electors may
884 commence initiative or referendum proceedings by filing with the
885 town clerk an affidavit stating that they shall constitute the
886 petitioner's committee and be responsible for circulating the
887 petition and filing it in proper form stating their names and
888 addresses and specifying the address to which all notices to the
889 committee are to be sent, and setting out in full the proposed
890 initiative ordinance or citing the ordinance sought to be
891 reconsidered. Promptly after the affidavit of the petitioner's
892 committee is filed, the town clerk may, at the committee's
893 request, issue the appropriate petition blanks to the
894 petitioner's committee at the committee's expense.
895 (3) PETITIONS.--
896 (a) Initiative and referendum petitions must be signed by
897 electors of the town equal in number to at least 10 percent of
898 the total number of electors registered to vote in the last
899 regular town election.
900 (b) All papers of a petition shall be assembled as one
901 instrument of filing. Each signature shall be executed in ink
902 and shall be followed by the printed name and address of the
903 person signing. Petitions shall contain or have attached thereto
904 throughout their circulation the full text of the ordinance
905 proposed or sought to be reconsidered.
906 (c) Each paper of a petition shall have attached to it
907 when filed an affidavit executed by the circulator thereof
908 stating that he or she personally circulated the paper, the

909 number of signatures thereon, that all signatures were affixed
910 in his or her presence, that he or she believes them to be the
911 genuine signatures of the persons whose names they purport to
912 be, and that each signer had an opportunity before signing to
913 read the full text of the ordinance proposed or sought to be
914 reconsidered.
915 (d) Except as otherwise provided herein, all initiative
916 and referendum petitions must be filed within 60 days of the
917 date on which proceedings with respect to such initiative or
918 referendum are commenced, and all requirements of the process,
919 including, but not limited to, the submission of the signatures
920 required, must be completed no later than 90 days following the
921 date of filing such initiative or referendum petition.
922 (4) PROCEDURE FOR FILING.--
923 (a) Within 20 days after an initiative petition or a
924 referendum petition is filed, the town clerk shall complete a
925 certificate as to its sufficiency, specifying, if it is
926 insufficient, the particulars wherein it is defective, and shall
927 promptly send a copy of the certificate to the petitioner's
928 committee by registered mail. Grounds for insufficiency are only
929 those specified herein that are not met. A petition certified
930 insufficient for lack of the required number of valid signatures
931 may be amended once if the petitioner's committee files a notice
932 of intent to amend it with the designated official within 2
933 business days after receiving the copy of the certificate and
934 files a supplementary petition upon additional papers within 10
935 days after receiving the copy of such certificate. Such
936 supplementary petition shall comply with original petition

937 requirements, and within 5 days after it is filed the town clerk
938 shall complete a certificate as to the sufficiency of the
939 petition as amended and promptly send a copy of such certificate
940 to the petitioner's committee by registered mail. If a petition
941 or an amended petition is certified sufficient, or if a petition
942 or amended petition is certified insufficient and the
943 petitioner's committee does not elect to amend or request the
944 town council review within the time required, the town clerk
945 shall promptly present a certificate to the town council and
946 such certificate shall then be a final determination as to the
947 sufficiency of the petition.
948 (b) If a petition has been certified insufficient and the
949 petitioner's committee does not file notice of intent to amend
950 it or if an amended petition has been certified insufficient,
951 the committee may, within 2 business days after receiving the
952 copy of such certificate, file a request that it be reviewed by
953 the town council. The town council shall review the certificate
954 at its next meeting following the town council's filing of such
955 request and approve or disapprove it, and determination shall
956 then be final as to the sufficiency of the petition.
957 (5) ACTION ON PETITIONS.--
958 (a) When an initiative or referendum petition has been
959 determined sufficient, the town council shall promptly consider
960 the proposed initiative ordinance or reconsider the referendum
961 ordinance by voting its repeal. If the town council fails to
962 adopt a proposed initiative ordinance without any change in
963 substance within 45 days or fails to repeal the referendum
964 ordinance within 30 days after the date on which the petition is

965 determined to be sufficient, it shall submit the proposed
966 initiative or referendum ordinance to the electors of the town.
967 If the town council fails to act on a proposed initiative
968 ordinance or a referendum ordinance within the time period
969 specified, the town council shall be deemed to have failed to
970 adopt the proposed initiative ordinance or failed to repeal the
971 referendum ordinance on the last day that the town council was
972 authorized to act on such matter.
973 (b) The vote of the town on a proposed initiative or
974 referendum ordinance shall be held not fewer than 30 days or
975 more than 60 days from the date the town council acted or was
976 deemed to have acted pursuant to this charter. If no regular
977 election is to be held within the period described in this
978 paragraph, the town council shall provide for a special
979 election, except that the town council may, in its discretion,
980 provide for a special election at an earlier date within the
981 described period. Copies of the proposed initiative or
982 referendum ordinance shall be made available at the polls.
983 (c) An initiative or referendum petition may be withdrawn
984 at any time prior to the 15th day preceding the day scheduled
985 for a vote of the town by filing with the town clerk a request
986 for withdrawal signed by at least eight members of the
987 petitioner's committee. Upon the filing of such request, the
988 petition shall have no further force or effect and all
989 proceedings thereon shall be terminated.
990 (6) RESULTS OF ELECTION.--
991 (a) If a majority of the qualified electors voting on a
992 proposed initiative ordinance vote in its favor, it shall be

993 considered adopted upon certification of the election results.
994 If conflicting ordinances are approved at the same election, the
995 one receiving the greatest number of affirmative votes shall
996 prevail to the extent of such conflict.
997 (b) If a majority of the qualified electors voting on a
998 referendum ordinance vote against it, it shall be considered
999 repealed upon certification of the election results.
1000 Section 9. General provisions.--
1001 (1) SEVERABILITY.--If any section or part of any section
1002 of this charter shall be held invalid by a court of competent
1003 jurisdiction, such holding shall not affect the remainder of
1004 this charter or the context in which such section or part of a
1005 section so held invalid may appear, except to the extent that an
1006 entire section or part of a section may be inseparably connected
1007 in meaning and effect with the section or part of a section to
1008 which such holding shall directly apply.
1009 (2) TOWN PERSONNEL SYSTEM.--All new employments,
1010 appointments, and promotions of town officers and employees
1011 shall be made pursuant to personnel procedures to be established
1012 by the town manager from time to time.
1013 (3) CHARITABLE CONTRIBUTIONS.--The town shall not make any
1014 charitable contribution to any person or entity unless
1015 authorized by the council.
1016 (4) VARIATION OF PRONOUNS.--All pronouns and any
1017 variations thereof used in this charter shall be deemed to refer
1018 to masculine, feminine, neutral, singular, or plural as the
1019 identity of the person or persons shall require and are not

1020 intended to describe, interpret, define, or limit the scope,
1021 extent, or intent of this charter.
1022 (5) CALENDAR DAY.--For the purpose of this charter, a day
1023 shall mean a calendar day.
1024 (6) CHARTER REVIEW COMMITTEE.--
1025 (a) At its first regular meeting in March 2012, and every
1026 10th year thereafter, the town council may appoint a charter
1027 review committee consisting of 15 individuals who are not
1028 members of the town council to serve in an advisory capacity to
1029 the town council.
1030 (b) Each council member shall recommend and nominate three
1031 individuals to serve on the committee as regular members, which
1032 appointments shall be approved by a majority vote of the town
1033 council. Individuals appointed to the charter review committee
1034 shall be citizens of the town.
1035 (c) The charter review committee shall appoint its own
1036 chair and vice chair and adopt its own rules and procedures.
1037 (d) The town clerk and the town attorney shall advise the
1038 town council in advance of the date when such appointments may
1039 be made.
1040 (e) If appointed, the charter review committee shall
1041 commence its proceedings within 30 days after the committee is
1042 appointed by the town council. The committee shall review the
1043 charter and provide input to the town council to modernize and
1044 improve the charter. The public shall be given an opportunity to
1045 speak and participate at charter review committee meetings in
1046 accordance with the rules of the charter review committee.

1047 (f) All recommendations by the charter review committee
1048 shall be forwarded to the town council in ordinance form for
1049 consideration no later than the 1st day of March of the year
1050 following the appointment of the charter review committee, and
1051 in sufficient time for any recommendations to be considered by
1052 the town council as provided herein.
1053 (g) The town council shall consider the recommendations of
1054 the charter review committee at the regular meeting in November
1055 and the regular meeting in December of the year following
1056 appointment of the charter review committee.
1057 (7) CHARTER AMENDMENTS.--This charter may be amended in
1058 accordance with the provisions for charter amendments as
1059 specified in general law or as may otherwise be provided by
1060 general law. The form, content, and certification of any
1061 petition to amend shall be established by ordinance.
1062 (8) INITIATION BY PETITION.--The electors of the town may
1063 propose amendments to this charter by petition to be submitted
1064 to the council to be placed before the electors, as provided by
1065 general law.
1066 (9) STANDARDS OF CONDUCT.--All elected officials and
1067 employees of the town shall be subject to the standards of
1068 conduct for public officers and employees set by general law. In
1069 addition, the town council shall, no later than 6 months from
1070 the effective date of incorporation, establish by ordinance a
1071 code of ethics for officials and employees of the town which may
1072 be supplemental to general law, but in no case may such an
1073 ordinance diminish the provisions of general law. The intent of

1074 this subsection is to require more stringent standards than
1075 those provided under general law.
1076 (10) LAND USE, REZONING.--Any change to the town's future
1077 land use map, or any change to the zoning designation for any
1078 parcel within the town shall require the affirmative vote of no
1079 fewer than four members of the town council.
1080 Section 10. Transition schedule.--
1081 (1) REFERENDUM.--The Palm Beach County Commission shall
1082 hold the referendum election called for by this act on October
1083 10, 2006, at which time the following question shall be placed
1084 upon the ballot:
1085
1086 "Shall the creation of the Town of Loxahatchee Groves and its
1087 charter be approved?"
1088
1089 Yes
1090
1091 No
1092
1093 (2) INITIAL ELECTION OF COUNCIL MEMBERS; DATES.--
1094 (a) Following the adoption of this charter, the Palm Beach
1095 County Commission shall call a special election for the election
1096 of the five town council members to be held on March 13, 2007.
1097 Candidates for the election shall qualify for seat 1, seat 2,
1098 seat 3, seat 4, and seat 5. The candidate receiving the highest
1099 number of votes for that seat shall be elected. If more than one
1100 candidate for a designated council member seat receives an equal
1101 and highest number of votes, then the candidates receiving the

1102 highest votes in the general election shall run again in the
1103 runoff election which shall be held on March 27, 2007.
1104 (b) Any individual who wishes to run for one of the five
1105 initial seats on the council shall qualify as a candidate with
1106 the Palm Beach County Supervisor of Elections in accordance with
1107 the provisions of this charter and general law.
1108 (c) The Palm Beach County Commission shall appoint a
1109 canvassing board which shall certify the results of the
1110 election.
1111 (d) Those candidates who are elected on March 13, 2007,
1112 and March 27, 2007, shall take office at the initial town
1113 council meeting, which shall be held at 7 p.m. on March 29,
1114 2007.
1115 (3) CREATION AND ESTABLISHMENT OF THE TOWN.--For the
1116 purpose of compliance with section 200.066, Florida Statutes,
1117 relating to assessment and collection of ad valorem taxes, the
1118 town is hereby created and established effective November 1,
1119 2006; notwithstanding anything to the contrary contained herein,
1120 the town, although created and established as of November 1,
1121 2006, shall not be operational until March 30, 2007.
1122 (4) FIRST YEAR EXPENSES.--The town council, in order to
1123 provide moneys for the expenses and support of the town, shall
1124 have the power to borrow money necessary for the operation of
1125 town government until such time as a budget is adopted and
1126 revenues are raised in accordance with the provisions of this
1127 charter.
1128 (5) TRANSITIONAL ORDINANCES AND RESOLUTIONS.--All
1129 applicable county ordinances currently in place at the time of

1130 passage of the referendum, unless specifically referenced
1131 herein, shall remain in place until and unless rescinded by
1132 action of the town council, except that a county ordinance,
1133 rule, or regulation which is in conflict with an ordinance,
1134 rule, or regulation of the town shall not be effective to the
1135 extent of such conflict, except as otherwise provided by the
1136 Palm Beach County Charter, as may be amended from time to time.
1137 Any existing Palm Beach County ordinances, rules, and
1138 regulations as of October 12, 2006, shall not be altered,
1139 changed, rescinded, or added to, nor shall any variance be
1140 granted thereto insofar as such action would affect the town
1141 without the approval of the town council.
1142 (6) TEMPORARY EMERGENCY ORDINANCES.--The town council
1143 shall adopt ordinances and resolutions required to effect the
1144 transition. Ordinances adopted within 60 days after the first
1145 council meeting may be passed as emergency ordinances. These
1146 transitional ordinances, passed as emergency ordinances, shall
1147 be effective for no longer than 90 days after adoption and
1148 thereafter may be readopted, renewed, or otherwise continued
1149 only in the manner normally prescribed for ordinances.
1150 (7) TRANSITIONAL COMPREHENSIVE PLAN AND LAND DEVELOPMENT
1151 REGULATIONS.--
1152 (a) Until such time as the town adopts a comprehensive
1153 plan, the Palm Beach County Future Land Use Map, the Palm Beach
1154 County Zoning Map, and all other applicable provisions
1155 applicable to the town, of the Comprehensive Plan and Land
1156 Development Regulations of Palm Beach County, as the same exist
1157 on the day the town commences corporate existence, shall remain

1158 in effect as the town's transitional comprehensive plan and land
1159 development regulations. However, all planning functions,
1160 duties, and authority shall thereafter be vested in the Town
1161 Council of Loxahatchee Groves which shall also be deemed the
1162 local planning agency until the council establishes a separate
1163 local planning agency.
1164 (b) Upon this act becoming a law, no changes in the future
1165 land use map or the zoning districts within the boundaries of
1166 the town shall be considered for alteration, amendment, or other
1167 modification in any way until such time as the town adopts
1168 appropriate procedures as referenced in this act.
1169 (c) All powers and duties of the planning commission,
1170 zoning authority, any boards of adjustment, and the County
1171 Commission of Palm Beach County, as set forth in these
1172 transitional zoning and land use regulations, shall be vested in
1173 the Town Council of Loxahatchee Groves until such time as the
1174 town council delegates all or a portion thereof to another
1175 entity.
1176 (d) Subsequent to the passage of this act, no amendment of
1177 the comprehensive plan or land development regulations enacted
1178 by the Palm Beach County Commission shall be deemed as an
1179 amendment of the town's transitional comprehensive plan or land
1180 development regulations or otherwise take effect within the
1181 town's corporate limits except in accordance with the
1182 requirements, and upon adoption of the procedures specified in
1183 this act.
1184 (e)1. The owner or assigns of the 97+/- acre property
1185 located at the northwest corner of B-Road and Southern

1186 Boulevard, commonly known as the "Simon property," have applied
1187 for a land use change through the Palm Beach County
1188 comprehensive plan amendment process (LGA 2004-00037). This
1189 parcel and it owners and assigns will remain subject to the Palm
1190 Beach County comprehensive plan and approval process until such
1191 time as the town adopts its own comprehensive plan.
1192 2. In the event that the town initiates a review and
1193 approval process in a timeframe that is faster than presently
1194 expected, the owner or assigns of the Simon property may elect,
1195 at their own option, to go through the town's zoning approval
1196 process.
1197 (8) COMMUNICATIONS SERVICES TAX.--The communications
1198 services tax imposed under s. 202.19, F.S., by Palm Beach County
1199 will continue within the town boundaries during the period
1200 commencing with the date of incorporation through December 31,
1201 2007. Revenues from the tax shall be shared by Palm Beach County
1202 with the town in proportion to the projected town population
1203 estimate of the Palm Beach County Planning Division compared
1204 with the unincorporated population of Palm Beach County before
1205 the incorporation of Loxahatchee Groves.
1206 (9) STATE SHARED REVENUES.--The Town of Loxahatchee Groves
1207 shall be entitled to participate in all shared revenue programs
1208 of the state available to municipalities effective April 1,
1209 2007. The provisions of section 218.23(1), Florida Statutes,
1210 shall be waived for the purpose of eligibility to receive
1211 revenue sharing funds from the date of incorporation through the
1212 state fiscal year 2009-2010. Initial population estimates for
1213 calculating eligibility for shared revenues shall be determined

1214 by the University of Florida Bureau of Economic and Business
1215 Research. Should the bureau be unable to provide an appropriate
1216 population estimate, the Palm Beach County Planning Division
1217 estimate should be utilized. For the purposes of qualifying for
1218 revenue sharing, the following revenue sources shall be
1219 considered: municipal service taxing units, fire municipal
1220 service taxing units, water control district revenues,
1221 occupational license taxes, ad valorem taxes, public utility
1222 service taxes, communication services tax, and franchise fees.
1223 (10) GAS TAX REVENUES.--The town shall be entitled to
1224 receive local option gas tax revenues beginning October 1, 2007.
1225 This specifically includes the relevant statutorily referenced
1226 interlocal agreements.
1227 (11) WAIVER.--The provisions of section 218.23(1), Florida
1228 Statutes, shall be waived for the purpose of conducting audits
1229 and financial reporting through fiscal year 2007-2008.
1230 Section 11. Continuation, merger, and dissolution of
1231 existing districts and service providers.--
1232 (1) PALM BEACH COUNTY FIRE RESCUE MUNICIPAL SERVICE TAXING
1233 UNIT; CONTINUATION.--Notwithstanding the incorporation of the
1234 Town of Loxahatchee Groves, that portion of the Palm Beach
1235 County Fire Rescue Municipal Service Taxing Unit, a special
1236 taxing district created by the Palm Beach County Commission that
1237 lies within the boundaries of the Town of Loxahatchee Groves, is
1238 authorized to continue in existence until the town adopts an
1239 ordinance to the contrary. However, the town shall not establish
1240 a town fire department without a referendum.

1241 (2) LAW ENFORCEMENT.--Law enforcement services will be
1242 provided by contract with the Palm Beach County Sheriff's
1243 Office, or contracted with other law enforcement agencies, until
1244 the town adopts an ordinance to the contrary, provided that the
1245 town shall not establish a town police department without a
1246 referendum.
1247 (3) PALM BEACH COUNTY LIBRARY DISTRICT;
1248 CONTINUATION.--Notwithstanding the incorporation of the Town of
1249 Loxahatchee Groves, that portion of the Palm Beach County
1250 Library District, a dependent district of Palm Beach County
1251 created by chapter 2000-405, Laws of Florida, that lies within
1252 the boundaries of the Town of Loxahatchee Groves, is authorized
1253 but not required to continue in existence, provided that in
1254 order to be excluded from the library district the town shall
1255 establish a municipal-funded library.
1256 (4) PALM BEACH COUNTY MUNICIPAL SERVICE TAXING UNIT
1257 B.--That portion of Palm Beach County Municipal Service Taxing
1258 Unit B, a dependent district of Palm Beach County created by the
1259 Palm Beach Commission that lies within the boundaries of the
1260 Town of Loxahatchee Groves, shall cease to exist within the
1261 municipal boundaries of the Town of Loxahatchee Groves on
1262 October 10, 2006.
1263 (5) PALM BEACH COUNTY MUNICIPAL SERVICE TAXING UNIT
1264 F.--That portion of Palm Beach County Municipal Service Taxing
1265 Unit F, a dependent district of Palm Beach County created by the
1266 Palm Beach County Commission that lies within the boundaries of
1267 the Town of Loxahatchee Groves, shall cease to exist within the

1268 municipal boundaries of the Town of Loxahatchee Groves on
1269 October 10, 2006.
1270 (6) LOXAHATCHEE GROVES WATER CONTROL DISTRICT;
1271 CONTINUATION.--Notwithstanding the incorporation of the Town of
1272 Loxahatchee Groves, the Loxahatchee Groves Water Control
1273 District, an independent special district created pursuant to
1274 the laws of the state, is authorized to continue in existence.
1275 (7) LOXAHATCHEE GROVES PARK;
1276 CONTINUATION.--Notwithstanding the incorporation of the Town of
1277 Loxahatchee Groves, the Loxahatchee Groves Park will continue to
1278 be operated by the Palm Beach County Department of Parks and
1279 Recreation, in accordance with existing Palm Beach County
1280 standards. All planned improvements to the park shall be subject
1281 to approval of the Town of Loxahatchee Groves but are the
1282 responsibility of Palm Beach County. Nothing contained herein
1283 shall prevent Palm Beach County and the Town of Loxahatchee
1284 Groves from entering into an interlocal agreement related to
1285 maintenance, planned improvements, sale, or transfer of the
1286 park.
1287 Section 12. Repeal.--Section 6 of section 2 of chapter 99-
1288 425, Laws of Florida, is repealed.
1289 Section 13. Waivers.--The thresholds established by
1290 section 165.061, Florida Statutes, for incorporation have been
1291 met with the following exceptions:
1292 (1) A waiver is granted to provisions of section
1293 165.061(1)(b), Florida Statutes, relating to minimum population
1294 requirements of 5,000, due to the rural character of the Town of
1295 Loxahatchee Groves.

1296 (2) A waiver is granted to provisions of section
1297 165.061(1)(c), Florida Statutes, relating to the minimum density
1298 of population of 1.5 persons per acre, to protect the historic,
1299 rural, and agricultural character of the town from surrounding
1300 development pressure.
1301 (3) A waiver is granted to provisions of section
1302 165.061(1)(d), Florida Statutes, relating to the minimum
1303 distance of 2 miles from the town to an existing municipality
1304 due to the marked difference in character between the town, a
1305 historic and rural community, and surrounding communities with
1306 significantly greater density and urban characteristics.
1307 Section 14. This act shall only take effect upon approval
1308 by a majority of those qualified electors residing within the
1309 proposed corporate limits of the proposed Town of Loxahatchee
1310 Groves as described in section 1, voting in a referendum
1311 election to be called by the Board of County Commissioners of
1312 Palm Beach County and to be held on October 10, 2006, in
1313 accordance with the provisions relating to elections currently
1314 in force, except that section 10(1) and this section shall take
1315 effect upon this act becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **951 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax
2 Representative(s) Vana offered the following:
3
4 **Amendment**
5 Remove line(s) 1222-1226 and insert:
6
7 service taxes, communications services tax, and franchise fees.
8 (10) GAS TAX REVENUES. --- Notwithstanding the requirements
9 of section 336.025, F.S., to the contrary, the town shall be
10 entitled to receive local option gas tax revenues beginning
11 October 1, 2007. These revenues shall be distributed in
12 accordance with the interlocal agreements with Palm Beach
13 County.
14
15
16

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CS/HB 993

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 993 CS City of Southport, Bay County
SPONSOR(S): Coley
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	7 Y, 0 N, w/CS	Nelson	Hamby
2) Finance & Tax Committee		Monroe KDM	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

The CS for HB 993 creates a charter for the City of Southport in Bay County. The bill provides for:

- establishing the City of Southport;
- a commission-manager form of government, municipal powers and boundaries;
- a city commission and its composition and qualifications; terms of office; powers and duties; and compensation and expenses;
- a mayor and vice mayor; and their powers and duties;
- vacancies; forfeiture of office; and filling of vacancies;
- commission meetings;
- a city manager and city attorney; and their qualifications, powers and duties;
- elections;
- municipal services;
- charter amendment and review;
- standards of conduct;
- a transition schedule;
- state shared and gas tax revenues;
- a referendum; and
- an effective date.

According to the Economic Impact Statement, the estimated cost of administration, implementation and enforcement for this bill is $1,777,169 in FY 06-07, and $1,830,484 in FY 07-09.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

If incorporation of the proposed municipality is approved, it will create an additional local government entity.

B. EFFECT OF PROPOSED CHANGES:

Background/Municipal Incorporation

Constitutional Provisions

Section 2, Art. VII of the State Constitution provides that municipalities[1] may be established or abolished and their charters amended pursuant to general or special law. Municipalities are constitutionally granted all governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and 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 be elected.

Statutory Provisions

Florida law governing the formation and dissolution of municipal governments is found in ch. 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 so as to:

- allow orderly patterns of urban growth and land use;
- assure adequate quality and quantity of local public services;
- ensure financial integrity of municipalities;
- eliminate or reduce avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions; and
- promote equity in the financing of municipal services.

Under ch.165, F.S., there is only one way to establish a city government where no such government exists: the Legislature must pass a special act creating the city's charter, upon determination that the standards provided in that chapter have been met. [2]

Requirements and Standards for Municipal Incorporation

Submittal of a feasibility study and a local bill that proposes the local government charter is required for consideration of incorporation. In addition, the new municipality must meet the following conditions in the area proposed for incorporation pursuant to s. 165.061(1), F.S.:

1. It must be compact, contiguous and amenable to separate municipal government.

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[1] 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] An exception to this rule exists in Miami-Dade County where the county has been granted the exclusive power to create cities through the State Constitution and its home rule powers. See, s. 165.022, F.S., and s. 6(e), Art. VIII of the State Constitution. Adopted in 1957, the Miami-Dade Home Rule Charter provides for the creation of new municipalities at section 5.05.

2. It 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 persons in counties with a population of more than 75,000.
3. It 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.
4. It must be 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 government.
5. It must have a proposed municipal charter that clearly prescribes and defines the form of government and its functions and does not prohibit or restrict the levy of authorized tax.
6. In accordance with s. 10, Art. I of the State Constitution, the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation.

Feasibility Study

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 or not the area: 1) meets the statutory requirements for incorporation, and 2) is financially feasible. The feasibility study must be completed and submitted to the Legislature at least 90[3] days prior to the first day of the regular legislative session during which the municipal charter would be enacted.

In 1999, the Legislature revised s.165.041, F.S., by adding new, detailed requirements for the preparation of the required feasibility study for any area requesting incorporation. Specifically, the study must include:

1. The general location of territory subject to a boundary change and a map of the area that identifies the proposed change.
2. The major reasons for proposing the boundary change.
3. 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.
4. 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.
5. 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 service.
6. A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such services.
7. The names and addresses of three officers or persons submitting the proposal.
8. Evidence of fiscal capacity and an organizational plan that, at a minimum, includes:

[3] Section 165.041(1)(b), F.S.

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

9. 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.
10. Evaluation of the alternatives available to the area to address its policy concerns.
11. Evidence that the proposed municipality meets the standards for incorporation of s.165.061, F.S.

Section 165,081, F.S., provides that any special law enacted pursuant to ch. 165, F.S., is reviewable by certiori if the appeal is brought before the effective date of the incorporation.

Formation Activity In Florida

Municipal Incorporations and Mergers

From 1972 to the present, 25 municipalities have been incorporated, with 17 municipalities created by special act (Bonita Springs, DeBary, Deltona, Destin, Ft. Myers Beach, Islamorada, Jacob City, Lake Mary, Marathon, Marco Island, Midway, Palm Coast, Sanibel, Southwest Ranches, Wellington, West Park and Weston). During this time, one municipality 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, Sunny Isles Beach, Miami Lakes, Palmetto Bay, Doral and Cutler Bay were created under the charter provisions of Miami-Dade County's Charter. The following table indicates recent municipal incorporations by year, county and enabling law.

YEAR	MUNICIPALITY	COUNTY	ENABLING LAW
1973	LAKE MARY	Seminole County	ch. 73-522, L.0.F.
1974	SANIBEL	Lee County	ch. 74-606, L.O.F.
1983	JACOB CITY	Jackson County	ch. 83-434, L.O.F. ch. 84-456, L.O.F.
1984	DESTIN	Okaloosa County	ch. 84-422, L.O.F. ch. 85-471, L.O.F.
1986	MIDWAY	Gadsden County	ch. 86-471, L.O.F.
1991	KEY BISCAYNE	Miami-Dade County	by authority of the Miami-Dade County Charter
1993	DEBARY	Volusia County	ch. 93-351, L.O.F. ch. 93-363, L.O.F.
1995	AVENTURA	Miami-Dade County	by authority of the Miami-Dade County Charter
1995	PINECREST	Miami-Dade County	by authority of the Miami-Dade County Charter

1995	FT. MYERS BEACH	Lee County	ch. 95-494, L.O.F.
1995	DELTONA	Volusia County	ch. 95-498, L.O.F.
1995	WELLINGTON	Palm Beach County	ch. 95-496, L.O.F.
1996	WESTON	Broward County	ch. 96-472, L.O.F.
1997	ISLAMORADA	Monroe County	ch. 97-348, L.O.F.
1997	MARCO ISLAND	Collier County	ch. 97-367, L.O.F.
1997	SUNNY ISLES BEACH	Miami-Dade County	by authority of the Miami-Dade County Charter
1999	BONITA SPRINGS	Lee County	ch. 99-428, L.O.F.
1999	MARATHON	Monroe County	ch. 99-427, L.O.F.
1999	PALM COAST	Flagler County	ch. 99-448, L.O.F.
2000	SOUTHWEST RANCHES	Broward County	ch. 2000-475, L.O.F.
2000	MIAMI LAKES	Miami-Dade County	by authority of the Miami-Dade County Charter
2002	PALMETTO BAY	Miami-Dade County	by authority of the Miami-Dade County Charter
2003	DORAL	Miami-Dade County	by authority of the Miami-Dade County Charter
2003	MIAMI GARDENS	Miami-Dade County	by authority of the Miami-Dade County Charter
2004	WEST PARK	Broward	ch. 2004-454, L.O.F.
2005	CUTLER BAY	Miami-Dade County	by authority of the Miami-Dade County Charter

Failed Attempts at Municipal Incorporation

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

- A city in the Halifax area of Volusia County (1985)
  (ch. 85-504, L.O.F.)

- The City of Fort Myers Beach (1982/1986)
  (chs. 82-295 and 86-413, L.O.F.)

- The City of Spring Hill (1986)
  (ch. 86-463, L.O.F.)

- The City of Deltona Lakes (1987)
  (ch. 87-449, L.O.F.)

- The City of Deltona (1990)
  (ch. 90-410, L.O.F.)

- The City of Marco Island (1980/1982/1986/1990/1993)
  (chs. 80-541, 82-330, 86-434, 90-457 and 93-384, L.0.F.)

- The City of Port LaBelle (1994)
  (ch. 94-480, L.O.F.)

- The City of Destin (1995)
  (by authority of the Miami-Dade County Charter)

- The City of Ponte Vedra (1998)
  (ch. 98-534, L.O.F.)

- The Village of Key Largo (1999)
  (ch. 99-430, L.O.F.)

- The City of Southport (1999)
  (ch. 99-444, L.O.F.)

- The Village of the Lower Keys (2000)
  (ch. 2000-383, L.O.F.)

- The Village of Paradise Islands (2000)
  (ch. 2000-382, L.O.F.)

Municipal Mergers

A few previously existing cities have been incorporated through mergers with other cities. Examples include:

- In Brevard County, the merger of Eau Gallie with Melbourne (chs. 67-1156, 69-879 and 70-807, L.O.F.) and the merger of the Town of Whispering Hills Golf Estates with the City of Titusville (chs. 59-1991 and 63-2001, L.O.F.).
- In Pinellas County, the merger of Pass-A-Grille Beach with the City of St. Petersburg Beach (ch. 57-1814, L.O.F.).
- In Bay County, the merger of Longbeach Resort and Edgewater Gulf Beach with the City of Panama City Beach (chs.67-2174 and 70-874, L.O.F.).

Municipal Dissolutions

During the last several decades, numerous cities have been dissolved:

- Bithlo in Orange County by authority of the Secretary of State in January 1977;
- Bayview in Bay County by ch. 77-501, L.O.F.;
- Munson Island in Monroe County by ch. 81-438, L.O.F.;
- Painters Hill in Flagler County by ch. 81-453, L.O.F.;
- Hacienda Village in Broward County by ch. 84-420, L.O.F.;
- Pennsuco in Miami-Dade County under authority of the Miami-Dade County Charter;

- Golfview in Palm Beach County by ch. 97-329, L.O.F.; and
- North Key Largo by ch. 2003-318, L.O.F.

The City of Southport

The unincorporated area known as Southport is located in the mid-section of Bay County in the Florida Panhandle. The latest official population estimate for Bay County placed its population at 161,721.[4] Southport is estimated to have a current population of approximately 6,500 persons.[5] The community is bordered to the north by unincorporated Bay County, to the east by Deer Point Lake, to the south by North Bay and the City of Lynn Haven, and to the west by a wildlife management area.

In June 1988, the City of Lynn Haven purchased a 640 acre parcel north of Southport in an effort to comply with state and federal requirements to remove effluent disposal from the newly classified Class II water of North Bay. The city was prohibited from utilizing the parcel for this purpose as a result of an administrative hearing and subsequent ruling. The complaint was brought by citizens concerned with a raw sewage line crossing the bay.

The land laid idle for six years, until 1994, when the City of Lynn Haven began to utilize part of the property as a borrow pit, as a construction-and-debris landfill, and for managed timber growth. Additionally, the city established a full service commerce park, which allowed light industrial, manufacturing, technology and research uses to operate on the parcel. The city wanted to annex this property, but the action would not comply with its comprehensive plan unless the unincorporated area known as Southport also was annexed. During the 1998 Legislative Session, the City of Lynn Haven proposed to annex, by special act, all of this property.

Residents within the community of Southport resisted the annexation efforts by the City of Lynn Haven, and worked with their legislative delegation to ensure that a straw ballot would be held during the 1998 general election. This straw ballot asked the voters in the area identified as Southport if they supported the incorporation of the City of Southport, in an effort to avoid annexation. The support for the incorporation of the City of Southport was overwhelming with nearly 79 percent voting in its favor. The 1999 Florida Legislature passed a bill creating the City of Southport, contingent upon a referendum.[6] This referendum failed.

The current effort to incorporate is spearheaded by the "Southport Incorporation Committee."

Effect of Proposed Changes

The CS for HB 993 provides a proposed charter for the City of Southport. A feasibility study on the creation of the city, as required by ch. 165, F.S., was submitted to the Florida House of Representatives on November 30, 2005. This study and the charter were reviewed by the: Legislative Committee on Intergovernmental Relations; Office of Economic & Demographic Research; Department of Revenue; and Department of Community Affairs. Selected and edited responses of these reviewers are noted in "Comments" in Section III C. of this analysis.[7]

These reviewers noted that certain statutory requirements for incorporation and the feasibility study did not appear to be met. In reaction to these comments, provisions of the bill were amended as noted in **Section VI, Amendments/Committee Substitute & Combined Bill Changes,** of this analysis. Also, the Southport Incorporation Committee indicated that it intends to issue an addendum to its feasibility study to correct any perceived deficiencies, and provided responses to other miscellaneous issues raised by the reviewers. These comments are on file with the Local Government Council.

Proposed Charter

The proposed charter for the City of Southport provides as follows:

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[4] Official 4/1/2005 estimate from the Bureau of Economic and Business Research, University of Florida).

[5] Office of Economic and Demographic Research, January 23, 2006.

[6] See, HB 1017 (ch. 99-444,L.O.F.), and Committee on Community Affairs' staff analysis.

[7] It is noted that any comments regarding the charter by these reviewers were in response to the language of the original bill.

Section 1: Charter; creation. Provides that the act will be known as the "City of Southport Charter," and creates the City of Southport.

Section 2: Legislative intent. Provides a finding that the Southport area of Bay County includes a compact and contiguous urban community amenable to separate municipal government, and that it is in the best interests of the public health, safety and welfare of the citizens of the community to form a separate municipality.

Section 3: Powers. Provides that the city shall have a commission-manager form of government; provides that the city shall be a body corporate and politic and have all the powers of a municipality under the State Constitution and laws, unless otherwise prohibited; provides that the city shall have all governmental, corporate and proprietary powers necessary to enable it to conduct municipal government, perform municipal functions, and render municipal services; provides that the powers of the city be liberally construed in its favor.

Section 4: Corporate limits. Provides a legal description of the city's boundaries.

Section 5: City commission.
(1) COMPOSITION; QUALIFICATIONS FOR OFFICE: Provides for a five-member city commission, consisting of a mayor and four commissioners, all elected at large; provides that each candidate for the office of city commissioner be a qualified elector of the city; provides that at the time of qualification, each candidate for a seat on the commission reside within the boundaries of the city and remain a resident for the length of his or her term; requires that candidates submit a petition or pay the qualifying fee required by the Florida Elections Code.
(2) TERMS OF OFFICE: Provides for four-year, staggered terms for commissioners.
(3) POWERS AND DUTIES OF COMMISSION: Provides that the legislative powers of the city shall be vested in the commission, except as otherwise provided by law.
(4) MAYOR: Provides for a mayor to be elected at large who has the same legislative powers and duties as the other commissioners, except as provided in the charter; provides that the mayor shall preside at the meetings of the commission, be recognized as the head of city government for ceremonial matters, and sign ordinances, contracts, deeds, bonds, and other instruments and documents; provides that the mayor shall have no administrative duties other than those necessary to accomplish these actions, or other actions as may be authorized by the city commission.
(5) VICE MAYOR: Provides for a vice mayor to be elected annually by the commission; provides that he or she shall serve as acting mayor during the absence of the mayor; provides for the election of an acting mayor in the absence of the mayor and vice mayor.
(6) COMPENSATION AND EXPENSES: Provides that the mayor and commissioners will serve without compensation for their first three months in office; provides that the commission may determine an annual salary for commissioners or the mayor, but that no ordinance increasing such salaries will become effective until the date of commencement of the terms of the commissioners elected at the next regular election; provides that the commission may provide for reimbursement of actual expenses incurred by members while performing their official duties.
(7) VACANCIES; FORFEITURE OF OFFICE; FILLING OF VACANCIES: Provides when a vacancy in the office of a commissioner occurs; provides circumstances under which a commissioner shall forfeit his or her office; provides that if a vacancy occurs in the office of mayor, the vice mayor shall serve in that position until a new mayor is elected; provides for temporary filling of seats; provides for filling of seats bases on the remainder of unexpired terms; provides for the filling of extraordinary vacancies.

Section 6: City commission meetings. Provides that the commission meet regularly at least once a month in public meetings; provides that a majority of the commission shall constitute a quorum; provides that all actions of the city commission be by ordinance, resolution or motion; provides for special meetings and their notice.

Section 7: Designated charter officers.
(1) DESIGNATED CHARTER OFFICERS: Provides that the initial designated charter officer shall be the city manager; provides for appointment of other charter officers by majority vote of the commission; provides that charter officers serve at the pleasure of the commission, and may be removed from office by a majority vote; provides that the compensation of the charter officers be fixed by the city commission; provides that the city commission shall begin the process to fill a vacancy in a charter office within 90 days after the vacancy occurs; provides for the appointment of an acting charter officer; provides that no charter officer may be a candidate for any elected office while holding his or her charter office position.
(2) CITY MANAGER: Provides that the city manager is the chief administrative officer of the city and serves at the direction and discretion of the city commission; provides for his or her qualifications; provides for his or her powers and duties.
(3) CITY ATTORNEY: Provides that the commission members may contract with a city attorney; provides that the city attorney or his or her designee be a member in good standing of the Florida Bar; provides for the duties of the city attorney.

Section 8: Elections.
(1) ELECTORS: Provides that any person who is a resident of the city, who has qualified as an elector of the state, and who registers in the manner prescribed by law, shall be an elector of the city.
(2) NONPARTISAN ELECTIONS: Provides that all elections for the office of mayor or other city commissioners be conducted on a nonpartisan basis.
(3) QUALIFICATIONS: Provides that candidates for the office of city commission member or mayor shall qualify for office by filing a written notice of candidacy.
(4) PROCEDURE FOR REGULAR ELECTIONS AND RUNOFF ELECTIONS: Provides for the regular election of city commission members and mayor and for runoff elections to be conducted in the manner provided for by the charter and general law; provides for qualifying for office; provides for the Bay County Commission to appoint a canvassing board; provides that after the initial election, the city commissioners shall decide how results are certified by ordinance; provides that in the event of a tie vote for any seat, the names of the candidates who tied shall be placed in a box and one name shall be drawn by a member of the canvassing board.
(5) INDUCTION INTO OFFICE: Provides that those elected shall be inducted into office at a meeting held at the regular meeting place of the commission no more than 30 days after the final election requirements are determined to be in compliance; provides that initial elections will be held after the referendum for incorporation.
(6) RECALL OF CITY COMMISSIONERS: Provides that any member of the city commission may be removed from office by the electors of the city following the procedures of recall established in general law.
(7) DISTRICT BOUNDARIES: Provides that elections shall be held at large until such time as the commissioners pass an ordinance providing for voting districts; provides that in the event that the commissioners pass an ordinance providing for voting districts, such districts shall come up for review every five years, unless an earlier review is determined necessary.

Section 9: Southport area municipal services. Provides that after the first general election, the commissioners may authorize the city manager to enter into contracts for municipal services on behalf of the City of Southport; provides that before a city manager is hired, the mayor is authorized to enter into contracts for services on behalf of the city.

Section 10: General provisions.
(1) CHARTER AMENDMENT: Provides that the charter may be amended in accordance with the provisions of the ch. 166, F.S., or as may otherwise be provided by general law; provides that the form, content, and certification of any petition to amend the charter be established by ordinance.
(2) CHARTER REVIEW: Provides that the standards for charter review be established by ordinance.
(3) INITIATIVE AND REFERENDUM: Provides that at least 25 percent of the qualified electorate of the city shall have the power to petition to propose an ordinance or to require reconsideration of an adopted ordinance.

(4) STANDARDS OF CONDUCT: Provides that all elected officials and employees of the city be subject to the standards of conduct for public officials and employees set by general law; provides for establishment of a supplemental code of ethics by ordinance.

Section 11: Severability. Provides for severability of invalid provisions of the act.

Section 12: Transition schedule.
(1) REFERENDUM: Provides that the referendum election called for by the act be held no later than 90 days from the date of legislative approval of the act, unless a different municipal election date is established; provides that the issue of whether to incorporate the City of Southport be placed on the ballot; provides for an affirmative vote by a majority of electors voting in the referendum to incorporate and establish the City of Southport, and for the provisions of the charter to take effect.
(2) CREATION AND ESTABLISHMENT OF CITY: Provides that for the purpose of compliance with general law, relating to assessment and collection of ad valorem taxes, the City of Southport is created and established effective the date the charter becomes law.
(3) INITIAL ELECTION OF COMMISSIONERS; DATES, QUALIFYING PERIOD, CERTIFICATION OF ELECTION RESULTS; INDUCTION INTO OFFICE: Provides that, following the adoption of the charter, the county commission call a special election for the mayor and other four city commissioners to be held no more than 90 days after an affirmative vote to incorporate; provides that any necessary runoff election be held as soon as possible but no sooner than14 days and no more than 60 days after the special election; provides that after the initial election, the city commissioners shall decide how results are certified by ordinance.
(4) INDUCTION INTO OFFICE: Provides that those candidates who are elected be inducted into office at the initial city commission meeting, which shall be held no more than 30 days after the final election requirements are determined to be in compliance at the Southport Community Center, located at 7334 Franklin Street, Southport, Florida.
(5) TRANSITION SERVICES AND COMPENSATION: Provides that it is intended that Bay County provide and be compensated for the provision of services for the City of Southport as budgeted for in the fiscal year 2006-2007 Bay County Budget as far as the revenue will provide; requires that the level of services to be provided be consistent with the level upon which the fiscal year 2006-2007 expense budget was predicted and in accordance with adopted revenue; provides that it is the responsibility of the city to adopt appropriate ordinances, resolutions or agreements as required to ensure the continued collection of budgeted revenues with which to fund services beginning January 1, 2007; provides that any revenues adopted or received by the City of Southport upon which delivery of services was not predicted within the county's fiscal year 2006-2007 adopted budget shall accrue to the City of Southport; provides that services that the county shall provide under the terms of "this agreement" include all services provided to the Southport municipal district as adopted by the Bay County Commission prior to the City of Southport becoming operational.
(6) FIRST-YEAR EXPENSES: Provides that the commission has the power to borrow money necessary for the operation of city government until a budget is adopted and revenues are raised.
(7) TRANSITIONAL ORDINANCES AND RESOLUTIONS: Provides for the city commission to adopt ordinances and resolutions required to effect the transition; provides that ordinances adopted within 60 days after the first commission meeting shall be passed as emergency ordinances; provides that these transitional ordinances shall be effective for no longer than 90 days after adoption and thereafter may be readopted, renewed or otherwise continued only in the manner normally prescribed for ordinances.
(8) TRANSITIONAL COMPREHENSIVE PLAN AND LAND DEVELOPMENT REGULATION: Provides that until the city adopts a comprehensive plan, the applicable provisions of the Comprehensive Plan of Bay County will remain in effect as the city's transitional comprehensive plan; provides that all planning functions, duties and authority will thereafter be vested in the City Commission of Southport, which shall be deemed the local planning agency until the commission establishes a separate local planning agency; provides that all powers and duties of the Bay County Planning and Land Development Regulations Commission, any boards of adjustment and appeals created pursuant to statutory trade codes, and the Bay County Commission, as set forth in traditional zoning and land use regulations, shall be vested in the City Commission of Southport until it delegates all or a portion hereof to another entity; provides that upon the city's incorporation, the city shall use Bay County's Comprehensive Plan

and land development regulations, and that after the incorporation, any amendment to the county's comprehensive plan and land development regulations will not apply to the city unless approved by the City Commission.
(9) STATE-SHARED REVENUES; CITY PARTICIPATION IN STATE-SHARED REVENUES PROGRAMS: Provides that the City of Southport shall be entitled to participate in the state-shared revenues programs effective immediately on the first day of the month occurring after the first meeting of the commission; provides that the provisions of s. 218.23, F.S., shall be waived for the purpose of eligibility to receive revenue sharing funds from the date of incorporation through the state fiscal year 2006-2007; provides that initial population estimates for calculating eligibility for shared revenues shall be determined by the University of Florida Bureau of Economic and Business Research or, under certain circumstances, the Bay County Planning Department.
(10) GAS TAX REVENUES: Provides that the City of Southport be entitled to receive local option gas tax revenue beginning the first full fiscal year following incorporation; provides that the gas tax distribution shall be made in accordance with an interlocal agreement entered into prior to June 1, 2007.

Section 13. Provides that the act take effect upon its approval by a majority vote of qualified electors residing within the proposed corporate limits of the City of Southport voting in a referendum election to be called by the Bay County Commission; provides for this section to take effect upon becoming a law.

C. SECTION DIRECTORY:

Section 1: Provides for charter and creation of City of Southport.

Section 2: Provides for legislative intent.

Section 3: Provides for a commission-manager form of government, and municipal powers.

Section 4: Provides a legal description of the city's boundaries.

Section 5: Provides for a city commission; its composition; member qualifications; terms of office; powers and duties; a mayor and vice mayor; compensation and expenses; vacancies; and forfeiture of office.

Section 6: Provides for city commission meetings.

Section 7: Provides for designated charter officers.

Section 8: Provides for elections.

Section 9: Provides for Southport area municipal services.

Section 10: Provides for charter amendments; charter review initiative; and referendum and standards of conduct.

Section 11: Provides for severability.

Section 12: Provides a transition schedule.

Section 13. Provides for effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 5, 2006

WHERE? *The News Herald*, a daily newspaper published in Bay County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [x] No []

IF YES, WHEN? No later than 90 days from the date of legislative approval of this act, unless a different municipal election date is established.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

According to the Economic Impact Statement, the estimated cost of administration, implementation and enforcement for this bill is $1,777,169 in FY 06-07, and $1,830,484 in FY 07-09. The anticipated sources of funding are noted as follows:

	FY 07-08	FY 08-09
State:	$1,005,282	$1,035,441
Local:	$771,886	$795,043

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Exemptions to General Law

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill may create exemptions to the following general laws:

1) Section 165.061(1)(c), F.S., which requires that a proposed municipality have a minimum density of 1.5 persons per acre, or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.
2) Section 165.01(1)(d), F.S., which requires that the boundaries of a proposed municipality be a minimum distance of two miles from an existing municipality, or have an extraordinary natural boundary which requires separate municipal government.
3) Section 165.061(1)(e)1., F.S., which required that the proposed charter prescribe the form of government and clearly define the responsibilities for legislative and executive functions.

4) Section 165.061(1)(f), F.S., which requires that the plan for incorporation must honor existing solid-waste contracts in the affected geographic area for five years or the remainder of the contract term, whichever is less.
5) Section 218.23(1), F.S., which provides eligibility requirements for revenue sharing, that s. 12 (9) of the bill seeks to waive.

Feasibility Study Reviews

The Legislative Committee on Intergovernmental Relations (LCIR)

The following includes comments from the Legislative Committee on Intergovernmental Relations regarding the proposed incorporation of the City of Southport.

The LCIR indicated that its review determined that the proposed incorporation met state standards for municipal incorporations specified in s. 165.061, F.S., (see, "Requirements and Standards for Municipal Incorporation" on page 2 of this analysis) with the following exceptions:

The *Study* (page 1) reports the number of acres proposed for incorporation at 9,978 acres and the estimated population at 6,943. Based on these data, the density of the area proposed for incorporation is 0.7 persons per acre, less than one-half of the required minimum under s. 165.061(1)(c), F.S., of 1.5 persons per acre.

Alternatively, the statutes provide that the area have extraordinary conditions requiring the establishment of a municipal incorporation with less existing density. The *Study* (pages 1 and 2) suggests that the historical character of Southport and its standing as a readily identified community meet this statutory condition. However, it offers no additional information or materials to substantiate this claim. In addition, the *Study* notes that the resident population will soon increase as a result of numerous large developments proposed within Southport's boundaries. As such, it cannot be ascertained whether the unique characteristics of Southport serve as extraordinary conditions as required by law.

Information in the *Study* acknowledges that the area to be incorporated does not maintain a distance of at least two miles from a boundary of recently annexed property by the City of Lynn Haven. It notes, however, that Deer Point Lake and North Bay might serve as natural boundaries on two sides of Southport. Based on the information in the *Study*, it cannot be ascertained whether they constitute an extraordinary natural boundary that requires separate municipal government as required by s. 165.061(1)(d), F.S. In addition, the *Study* suggests that the aggressive annexation policies of Lynn Haven brought it within the two mile limit of Southport, and have contributed to its wish to incorporate as a means to protect the community from further expansion by this municipality.

Under s. 165.061(1)(e)1., F.S., the proposed charter must prescribe the form of government and clearly define the responsibilities for legislative and executive functions. The *Charter* prescribes the commission-manager form of government. Powers and duties of the mayor and city manager overlap, are vague, and require clarification. In addition, there is no provision prohibiting the commission from involvement in the administration functions. As such, it cannot be ascertained whether the *Charter* meets this criterion.

Under s. 165.061(1)(e)2., F.S., the proposed charter must not prohibit the legislative body of the municipality from exercising its powers to levy any tax authorized by the Florida Constitution or general law. The *Charter* is mute on this issue. As noted in the below review of the *Charter*, provisions need to be included that ensure the legislative body of the municipality is not prohibited from exercising this power. As such, it cannot be ascertained whether the Charter meets this criterion.

Pursuant to s. 165.061(1)(f), F.S., the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation for five years or the remainder of the contract

term, whichever is less. Neither the *Study* nor the *Charter* addresses this issue. Thus, the *Study* does not meet this criterion.

The LCIR additionally indicated that its review determined that the proposed incorporation met state standards for a municipal incorporation feasibility study pursuant to s. 165.041(1)(b), F.S., (see, "Feasibility Study" on pages 3 and 4 of this analysis) with the following exceptions:

- The *Study* does not meet the requirement that the study include a list of current land use designations applied to the area as currently contained in the county comprehensive plan. (s. 165.041(b)3.a., F.S.)

- The *Study* does not meet the requirement that it include a list of current zoning designations. (s. 165.041(b)3.b., F.S.)

- The *Study* does not meet the requirement that it include a general statement of present land use characteristics of the area. (s. 165.041(b)3.c., F.S.)

- The *Study* does not appear to identify all local public agencies with boundaries lying within the territory proposed for incorporation. (s. 165.041(b)4., F.S.)

- The *Study* does not appear to identify all current public service providers for the services identified in s. 165.041(1)(b)5., F.S, and cost estimates for each of those services. The *Study* appears to meet the requirement that it identify proposed services (pages 5, A5-A6, and Exhibit F). Based on information contained in the *Study*, we cannot ascertain whether it meets the requirement to identify estimated costs for the proposed services. The *Study* (pages A5-A6, and Exhibit F), notes that it will contract certain basic services including: police protection, fire protection, streets and roads maintenance and repair, stormwater, recreation, planning and zoning to include code enforcement, and certain general administration services from Bay County government. However, there are no memoranda of understanding or letters of agreement that indicate that Bay County government will provide the services identified in the *Study* and for the amount identified in the *Study*.

It should be noted that fire protection is currently funded through a municipal services taxing unit (MSTU) and could do so after incorporation. It also should be noted that the *Study* includes worksheets (Exhibits G-1 and G-2) identifying "costs per deputy" for 2005-06 and subsequent years. However, these worksheets include no endorsement from the Bay County Sheriff's office. In addition, although Bay County government staff assisted in preparing the *Study*, discussion with staff indicated that this assistance should not be interpreted as an endorsement of the proposed budget for Southport.

- The *Study* does not meet the s. 165.041(1)(b)(7), F.S., requirement that it include the name and address of three persons submitting the proposal.

- The *Study* appears to meet some but not all elements of the requirement that it provide evidence of the fiscal capacity for the area proposed for incorporation with the following caveats:

    1. The *Study* addresses the majority of tax bases and revenue sources available to a municipality and provides revenue estimates for them. The amount of revenues that can be generated by certain revenue sources appear overstated. These and other revenue sources included in the *Study* require some clarification.

    2. Southport proposes to levy a "utility tax" of 8.5 percent on the purchase of electricity, water, cable television and telephone. Pursuant to s. 166.231(1), F.S., municipalities are authorized to levy, by ordinance, a public service tax on the purchase of electricity, metered natural gas, liquefied petroleum gas, manufactured gas, and water service. The

tax rate cannot exceed 10 percent of payments received by the seller of the taxable item.

However, Southport cannot levy 8.5 percent on cable television and telephone. Pursuant to s. 202.19(1), F.S., (2005), a county or municipality may, by ordinance, levy a local communications services tax. The definition of communications services encompasses voice, data, audio, video, or any other information or signals, including cable services that are transmitted by any medium. For municipalities that have chosen to levy permit fees, the tax may be levied at a rate up to 4.98 percent; those municipalities without permit fees may levy the tax at a rate up to 5.1 percent. In accordance with s. 202.19(2)(c), F.S., municipalities may levy an additional rate of up to 0.12 percent if they elect not to require and collect permit fees for rightaway for utilities authorized pursuant to s. 337.401, F.S.

It is unclear whether Southport intends to impose an impact fee to offset costs associated with new infrastructure that will be needed to service proposed new developments. If the tax was levied at its maximum rate, of 5.22 percent, Southport would realize a reduction of approximately $64,500. This shortfall could be addressed if Southport would increase the public service tax on water and electricity to its maximum rate of 10 percent. This would generate an estimated $69,130 in additional revenues.

3. State shared revenues (SSR) are identified as revenue sources for Southport. In order to be eligible to participate in these programs, a municipality is required to meet certain criteria. These requirements include, among others, certain financial and audit reports and a minimum local taxing effort equal to the amount that would be generated by three mills of ad valorem property taxes. The *Study* presents the 2005 taxable value of property within Southport at $179,949,817. Based on this projected taxable value, the three-mill equivalency for Southport is equal to approximately $539,849. The *Study* requests that its estimated "utility tax" revenues be credited towards its three-mill equivalency requirement. The types of revenues that may be credited towards the three-mil equivalency are noted in s. 218.23(1)(c), F.S. Although utility tax is identified as an eligible revenue source, the term "utility tax" is not defined. As such, it is unclear whether revenues from local communication service taxes may be credited towards the three-mill equivalency requirement.

   Without the communication service tax revenues, estimated revenues generated by the tax on water and electricity purchases ($391,735.47) are insufficient to meet Southport's three-mill equivalency noted above. Crediting contributions for the fire MSTU serving the Southport area ($45,222) is insufficient to meet the three-mill equivalency requirement.

4. The *Study* (pages A2-A3) requests a waiver until FY 2006-07 in order to enact required organization and administrative steps need to participate in state shared revenue programs. The requirements regarding financial and audit reporting requirements have been temporarily waived in the past until such reports are available. However, the Legislature, in most instances, has required that a proposed incorporation show a minimum local taxing effort in order to qualify for SSR programs.

5. State revenue sharing estimates provided in the *Study* (page 7) are inconsistent with those estimates calculated by the Office of Research and Analysis, Florida Department of Revenue. The *Study* estimates Southport's Municipal Revenue Sharing revenues (reported as State Revenue Sharing) at $515,746 and One-Half Cent Sales Tax revenues at $489,536. The Office of Research and Analysis estimated Southport's 2005-06 Municipal Revenue Sharing and One-Half Cent Sales Tax distributions at $248,798 and $567,049, respectively. The Office of Research and Analysis estimated

revenue from these two programs is approximately $190,000 less than that proposed in the *Study*.

6. The *Study* calculates estimates for several of its minor revenue sources (Mobile Home Licenses Tax, Alcoholic Beverage License Tax, court fines, and police education) at 80 percent of revenues reported by the City of Springfield, a municipality in Bay County with an estimated 2005 population of 9,039 residents. Using cities of similar size to estimate revenues and expenditures is a common practice. However, using a single city as a "model" to base its revenues may provide a skewed budget profile as a result of some unanticipated factors associated with the comparison city.

7. The *Study* (page 8 and Exhibit F) appears to calculate estimated expenditures for the majority of its basic public services (Fire-Administration, Roads and Streets, Stormwater, Recreation, and Planning and Zoning) based on a proportional share of county budgeted expenditures for these services. The rationale for calculating expenditure estimates in this fashion is unclear.

- The *Study* does not include a five-year operational plan and budget as required by s. 165.041(1)(b)8.b., F.S., although it does provide estimated revenues and expenses for a three-year time period (pages 7 and 8). The revenue totals include funds projected from sources for which the proposed municipality may not be eligible to receive and, as noted above, include provisions for other entities to continue providing services or provide under contract or through interlocal agreement without providing evidence that these entities are willing to provide all such services for the amount identified in the budget. In addition, the three-year estimated revenues and expenses allocate relatively little funding for administrative salaries, operational costs, and planning and zoning.

  Also, although the *Charter* includes numerous provisions for council member elections, referenda, and initiatives, neither the *Charter* nor the three-year budget specify how such elections will be administered or funded. Given this list of concerns, we cannot ascertain whether the requirement for the five-year operational plan and budget is adequately addressed.

- The *Study* appears to address portions of the requirement that it provide data and analysis to support the conclusions that incorporation is necessary and financially feasible, including population projections and population density calculations. Concerns regarding methodology used in the analysis and estimated revenues and expenditures are addressed in Section 8 above. Given these concerns, we cannot ascertain whether the *Study* data and analysis meet this requirement.

- The *Study* does not meet the requirement for evaluating alternatives available to the area regarding the policy concerns.

- As noted above, the *Study* does not provide evidence that the proposed municipality meets the requirements for incorporation pursuant to s. 165.061, F.S. It does acknowledge, however, that certain criteria will need to be waived.

The LCIR additionally evaluated whether the proposed revenues and expenditures contained in the Study are consistent with revenues and expenditures of municipalities of similar size:

The *Study's* proposed budget includes revenue sources that a municipality is eligible to levy or receive. With the exception of state shared revenues (SSR) and other comments referenced above, the potential revenues identified in the *Study* appear consistent with statutory provisions.

The revenue and expenditure estimates for 10 "similarly sized" municipalities in Florida are compared with those for the proposed City of Southport in **Table 1**. Revenues estimates for Southport reflect altered tax rates on cable television and telephone and estimated SSR distributions calculated by the

Office of Research and Analysis, Department of Revenue as noted above. Consequentially, Southport total expenditures are greater than total revenues. Differences between expenditures and revenues could be addressed through another tax source available to Southport such as ad valorem taxes.

As presented in **Table 1**, all comparison municipalities reported FY 2002-03 total expenditures greater than those projected for Southport. The estimated expenditures projected for Southport ($1,777,169) is approximately one-sixth of the "average" reported expenditures for the 10 comparison municipalities ($10,809,353).

Table 1

Comparison of Total Revenues and Expenditures for 10 Municipalities with Populations Similar to the Population Estimate for the Proposed Municipality of Southport[8]

Municipality	2003 Pop. Est.[9]	Revenues	Expenditures
Southport	6,943	$1,522,669	$1,777,169
Dade City	6,476	$7,630,247	$7,152,018
Clewiston	6,572	$19,962,974	$20,136,882
Alachua	6,721	$16,349,370	$15,034,201
Fort Myers Beach	6,792	$5,428,123	$5,387,670
Perry	6,824	$8,143,070	$8,456,423
Arcadia	6,860	$8,209,890	$9,012,421
Islamorada	6,970	$14,235,012	$13,693,180
Inverness	7,020	$7,406,563	$9,521,411
Neptune Beach	7,217	$7,663,681	$8,057,037
Brooksville	7,297	$9,713,576	$11,642,289
AVERAGE	**6,875**	**$10,474,251**	**$10,809,353**

[8] FY 2002-2003 reported revenues and expenditures by the 10 comparison municipalities and projected 2006 revenue and expenditure estimate for Southport contained within the Southport Incorporation Feasibility Study. Southport revenue estimates were adjusted in accordance with State Revenue Sharing estimates calculated by the Office of Research and Analysis, Department of Revenue, and communication services tax revenues authorized by law.

[9] 2003 population counts for comparison municipalities reported by the Bureau of Economic and Business Research, University of Florida. Population estimates for Southport for calendar year 2005 contained within the Southport Incorporation Feasibility Study.

Sources: Florida LCIR using fiscal data submitted by municipalities to the Department of Financial Services; Florida Estimates of Population 2003, Bureau of Economic and Business Research, University of Florida, 2004; information contained within the Southport Incorporation Feasibility Study.

Two additional issues should be noted in this comparison. First, the projected expenditures for Southport does not include expenditures associated with costs for services that Bay County may continue to provide to the residents of Southport under the current county tax structure. If included, such costs would increase the proposed expenditures and somewhat reduce the expenditure differential between Southport and the comparison municipalities.

The second issue regarding the proposed expenditures is that the fiscal data for the 10 comparison municipalities reflect total reported revenues and expenditures for FY 2002-03, while the fiscal estimates for Southport are those projected for FY 2006-07. It can be assumed that total expenditures and revenues for these 10 municipalities will have increased during this time period, and as a result, the gap has increased between their "average" reported expenditures and those projected for Southport.[10]

Lastly, the LCIR evaluated the distribution of State Shared Revenues (SSR) and impact the incorporation would have on existing local governments:

While the statutory requirements for a feasibility study do not include identifying fiscal impacts to neighboring units of local government, such information is useful for these local governments as they begin to plan for their next budget cycle. A newly created municipality will impact the amount of funds that existing municipalities receive in the two major SSR programs: Local Government Half-Cent Sales Tax and the Municipal Revenue Sharing (MRS). The county government within which the new municipality is formed will realize fiscal impacts in two SSR programs: Local Government Half-Cent Sales Tax and County Revenue Sharing.

The Office of Research and Analysis, Department of Revenue, prepared SSR estimates for the proposed City of Southport and estimates on the impact from such an incorporation to SSR distribution to other units of local government within Bay County. As noted, if Southport had incorporated in 2005, Bay County government would realize a reduction in 2005-06 SSR distributions totaling an estimated $495,297. The extent to which revenue reductions are offset by reductions in services is not known. Municipalities within the County would realize estimated SSR reductions ranging from a low of $8,413 (Parker) to a high of $64,996 (Panama City).[11]

Office of Economic and Demographic Research

The Office of Economic and Demographic Research reached the same conclusions as the LCIR with regard to its analysis, and so its comments have been omitted.[12]

Department of Revenue

The Department of Revenue provided the following comments:

The actual dates of events related to the incorporation of Southport are not dates certain, but may occur within stated time periods relative to other events that may also occur within stated time periods. This use of relative dates rather than dates certain makes it impossible to determine the date when certain key events will occur. It is recommended that dates certain be specified for the referendum, council elections, incorporation, and first council meeting and that the designated incorporation date be the first day of a month following the first council meeting.

[10] Detailed summaries of the FY 2002-02 revenue and expenditure data for the 10 municipalities are on file with the Local Government Council.
[11] Complete figures are on file with the Local Government Council.
[12] The review of the feasibility study conducted by the Office of Economic and Demographic Research is on file with the Local Government Council.

Revenue Sharing

Section 12(9) of the proposed Charter provides that Southport shall be entitled to participate in all state shared revenue programs effective on the first day of the month following the first meeting of the city commission. Section 12(2) provides that the City of Southport is created and established effective the date the Charter becomes effective.

Section 218.21(3), F.S., requires that in order to be a "municipality" and thus be eligible for revenue sharing, a municipality "must have held an election for its legislative body pursuant to law and established such a legislative body, which meets pursuant to law. In this instance, s. 12(4) of the Charter provides that Southport's initial commission meeting shall be held no more than 30 days after the election of the commission is final. Thus, Southport will not be a municipality until that date uncertain and will not be entitled to revenue sharing until after that date.

It is recommended that a date certain for the first council meeting be stated in the Charter.

Although the Charter does not specify when Southport will be incorporated, s. 12(9) of the Charter does waive s. 218.23, F.S., through the state fiscal year 2006-2007. It is possible that if the referendum is held in the summer of 2006 and the council is elected and takes office soon thereafter, then Southport's waiver could entitle it to revenue sharing beginning in the fall of 2006. However, if the incorporation occurs later and the council takes office after October 1, 2006, then Southport could not complete the full local fiscal year 2006-2007 and would not be entitled to participate in revenue sharing until the beginning of the 2008-2009 state fiscal year without a waiver of s. 218.23, F.S., through the end of state fiscal year 2007-2008.

It is recommended that a date certain for the first council meeting be stated in the Charter. Additionally, the waiver of s. 218.23, F.S., should be extended through the state fiscal year 2007-2008.

Local Communications Services Tax

The draft charter does not specifically address communications services tax. Pursuant to s. 202.21 F.S., local communications services taxes imposed under s. 202.19, F.S., are effective with respect to taxable services dated on or after January 1 of a year. A municipality adopting, changing or repealing this tax must notify the Department of Revenue by September 1, prior to the January 1 effective date. It is unlikely that Southport could hold its referendum and elect and install its council quickly enough to be able to impose a communications services tax prior to the September 1, 2006 notification date in order to entitle Southport to participate in this revenue source on January 1, 2007. Thus, the most likely notification date would be September 1, 2007, with the imposition beginning January 1, 2008.

The charter language could also be added to provide for a sharing of the CST currently imposed by Bay County within the boundaries of Southport, beginning with the date of incorporation through December 31, 2007. The proportion could be based on the population of Southport compared to unincorporated population of Bay County before the incorporation of Southport.

Discretionary Sales Surtax

Currently, Bay County imposes a .5 percent School Capital Outlay Surtax, which by statute cannot be shared with municipalities. In the future, if Bay County imposes a discretionary sales surtax that can be shared with the municipalities, that sharing will be determined by an interlocal entered into by municipalities with more than 50 percent of the incorporated population or if there is no interlocal, according to the formula provided in s. 218.62, F.S.

REVENUE ESTIMATES

The Department has prepared revenue sharing estimates for the 2005-2006 state fiscal year which are on file with the Local Government Council.

Department of Community Affairs

The Florida Department of Community Affairs had the following comments, and suggestions for amending the proposed charter:

Pursuant to s.163.3167(4), F.S., a new comprehensive plan must be adopted within three years of incorporation. The approximate cost of a new comprehensive plan for a City of this size is $100,000. Pursuant to s. 63.3202(1), F.S. within one year of an adopted comprehensive plan, a new municipality must adopt land development regulations. The approximate cost of new land development regulations for a City of this size is $200,000. In addition, new cities typically become responsible for providing and maintaining certain types of infrastructure and services.

Section 12: Pursuant to s.163.3167(4), F.S., a new comprehensive plan must be adopted within three years of incorporation.

Section 12, Section (8)(c): should be revised to state "Upon the City's incorporation, the City shall use Bay County's Comprehensive Plan and land development regulations. However, after the City's incorporation, any amendment to the County's comprehensive plan and land development regulations shall not apply to the City unless approved by the City Commission."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Local Government Council adopted a strike-all amendment to HB 993 which:

- makes technical changes;
- clarifies that elections will be conducted in compliance with general law;
- changes the date that the city will be entitled to participate in state revenue sharing programs to comply with general law;
- changes the date that the city will be able to receive local gas tax revenues to comply with general law; and
- provides that gas tax revenue distributions will be made in accordance with an interlocal agreement.

CHAMBER ACTION

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1 The Local Government Council recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to the City of Southport, Bay County;
7 creating the City of Southport; providing a charter;
8 providing legislative intent; providing for a commission-
9 manager form of government; providing municipal powers;
10 providing boundaries; providing for a city commission and
11 its composition and qualifications; providing terms of
12 office, powers, and duties of commissioners; providing for
13 a mayor and vice mayor and their powers and duties;
14 providing for compensation and expenses of the commission;
15 providing for vacancies, forfeiture of office, and filling
16 of vacancies; providing for commission meetings; providing
17 for a city manager and city attorney and their
18 qualifications, powers, and duties; providing for
19 elections; providing for elections to be held at large
20 until the commission creates voting districts; providing
21 for municipal services; providing for charter amendment
22 and review; providing for standards of conduct; providing
23 severability; providing a transition schedule, including

24 initial elections; providing for state-shared revenue;
25 providing for gas tax revenues; requiring a referendum;
26 providing an effective date.
27
28 Be It Enacted by the Legislature of the State of Florida:
29
30 Section 1. Charter; creation.--This act shall be known and
31 may be cited as the "City of Southport Charter" ("charter"), and
32 the City of Southport ("city") is hereby created and
33 established.
34 Section 2. Legislative intent.--The Legislature hereby
35 finds and declares that:
36 (1) The Southport area of Bay County includes a compact
37 and contiguous urban community amenable to separate municipal
38 government.
39 (2) It is in the best interests of the public health,
40 safety, and welfare of the citizens of this community to form a
41 separate municipality for the Southport area with all powers and
42 authority necessary to provide efficient and adequate municipal
43 services to its residents.
44 Section 3. Powers.--
45 (1) CREATION.--The city shall have a commission-manager
46 form of government.
47 (2) MUNICIPAL POWERS.--The city shall be a body corporate
48 and politic and shall have all the powers of a municipality
49 under the State Constitution and laws of the state, as fully and
50 completely as though such powers were specifically enumerated in
51 this charter, unless otherwise prohibited by or contrary to the

52 provisions of this charter. The city shall have all
53 governmental, corporate, and proprietary powers necessary to
54 enable it to conduct municipal government, perform municipal
55 functions, and render municipal services and may exercise any
56 power for municipal purposes unless expressly prohibited by law.
57 The powers of this city shall be liberally construed in favor of
58 this city.
59 Section 4. Corporate limits.--The following areas shall
60 constitute the corporate limits of the City of Southport:
61
62 BEGIN AT THE INTERSECTION OF THE NORTH LINE OF SECTION
63 17, TOWNSHIP 2 SOUTH, RANGE 14 WEST, BAY COUNTY,
64 FLORIDA WITH THE WEST RIGHT OF WAY LINE OF STATE ROAD
65 NO. 77. THENCE EAST ALONG THE NORTH LINE OF SECTIONS
66 17, 16, AND 15 TO THE NORTHEAST CORNER OF SECTION 15,
67 TOWNSHIP 2 SOUTH, RANGE 14 WEST, THENCE NORTH ALONG
68 THE WEST LINE OF SECTION 11, TOWNSHIP 2 SOUTH, RANGE
69 14 WEST TO THE NORTHWEST CORNER OF SAID SECTION 11.
70 THENCE EAST ALONG THE NORTH LINE OF SECTIONS 11 AND
71 12, TOWNSHIP 2 SOUTH, RANGE 14 WEST AND THE NORTH LINE
72 OF SECTION 7, TOWNSHIP 2 SOUTH, RANGE 13 WEST TO THE
73 CENTER OF CEDAR CREEK. THENCE SOUTHERLY ALONG THE
74 CENTER OF CEDAR CREEK AND DEER POINT LAKE TO THE
75 MIDPOINT OF DEER POINT LAKE DAM, THENCE SOUTHWESTERLY
76 ALONG THE CENTER OF NORTH BAY TO THE SOUTHERLY
77 PROJECTION OF THE EAST LINE OF SECTION 4, TOWNSHIP 3
78 SOUTH, RANGE 14 WEST, THENCE NORTH ALONG SAID EAST
79 LINE TO THE SOUTHEAST CORNER OF SECTION 33, TOWNSHIP 2

80 SOUTH, RANGE 14 WEST, THENCE WEST ALONG THE SOUTH LINE
81 OF SAID SECTION 33 TO THE SOUTHERLY PROJECTION OF A
82 LINE PARALLEL WITH AND 202.50 FEET EAST OF THE WEST
83 LINE OF LOT 97, ST. ANDREWS BAY PECAN & FIG GROVES
84 COMPANY'S SUBDIVISION, THENCE NORTH PARALLEL WITH SAID
85 WEST LINE OF LOT 97 TO A LINE PARALLEL WITH AND 175
86 FEET SOUTH OF THE NORTH LINE OF SAID LOT 97, THENCE
87 EAST PARALLEL WITH SAID NORTH LINE OF LOT 97 FOR 455
88 FEET, MORE OR LESS, TO THE EAST LINE OF SAID LOT 97,
89 THENCE NORTH 175 FEET TO THE NORTHEAST CORNER OF SAID
90 LOT 97, THENCE WEST 647.5 FEET, MORE OR LESS, TO THE
91 NORTHEAST CORNER OF LOT 98, SAID SUBDIVISION, THENCE
92 WEST ALONG THE NORTH LINE OF SAID LOT 98 AND THE
93 WESTERLY PROJECTION THEREOF TO THE NORTHEAST CORNER OF
94 LOT 99, SAID SUBDIVISION, THENCE NORTH ALONG THE EAST
95 LINE OF LOT 94, SAID SUBDIVISION TO THE NORTHEAST
96 CORNER OF SAID LOT 94, THENCE WEST ALONG THE NORTH
97 LINE OF SAID LOT 94 TO THE EAST LINE OF THE "LANGLEY"
98 TRACT, SAID PLAT OF ST. ANDREWS BAY PECAN & FIG GROVES
99 COMPANY'S SUBDIVISION, THENCE NORTH ALONG THE EAST
100 LINE OF THE "LANGLEY" TRACT FOR 3.8 FEET TO THE NORTH
101 LINE OF THE 15 FOOT STRIP DESCRIBED IN OFFICIAL
102 RECORDS BOOK 1104, PAGE 666 OF THE PUBLIC RECORDS OF
103 BAY COUNTY, FLORIDA, THENCE WEST FOR 15 FEET, THENCE
104 SOUTH FOR 90 FEET, THENCE WEST ALONG THE NORTH LINE OF
105 THE PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 1104,
106 PAGE 666 TO THE EDGE OF NORTH BAY, THENCE
107 SOUTHWESTERLY ALONG THE RIPARIAN RIGHTS LINE OF SAID

108 PARCEL TO THE CENTER OF NORTH BAY, THENCE WESTERLY
109 ALONG THE CENTER OF NORTH BAY TO THE SOUTHERLY
110 PROJECTION OF THE WEST LINE OF THE EAST HALF OF THE
111 EAST HALF OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 14
112 WEST, THENCE NORTH ALONG SAID WEST LINE OF THE EAST
113 HALF OF THE EAST HALF OF SAID SECTION 31 AND THE
114 SOUTHERLY PROJECTION THEREOF TO THE NORTH LINE OF SAID
115 SECTION 31, THENCE NORTH ALONG THE WEST LINE OF THE
116 EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 30,
117 TOWNSHIP 2 SOUTH, RANGE 14 WEST TO THE NORTHWEST
118 CORNER OF SAID EAST HALF OF THE SOUTHEAST QUARTER,
119 THENCE EAST ALONG THE NORTH LINE OF SAID EAST HALF OF
120 THE SOUTHEAST QUARTER TO THE WEST LINE OF SECTION 29,
121 TOWNSHIP 2 SOUTH, RANGE 14 WEST, THENCE SOUTH ALONG
122 SAID WEST LINE OF SECTION 29 TO THE NORTHWEST CORNER
123 OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SAID
124 SECTION 29, THENCE EAST ALONG THE NORTH LINE OF SAID
125 SOUTH HALF OF THE SOUTHWEST QUARTER TO THE NORTHEAST
126 CORNER OF SAID SOUTH HALF OF THE SOUTHWEST QUARTER,
127 THENCE NORTH ALONG THE WEST LINE OF THE EAST HALF OF
128 SAID SECTION 29 TO THE NORTHWEST CORNER OF THE
129 NORTHEAST QUARTER OF SAID SECTION 29, THENCE EAST
130 ALONG THE NORTH LINE OF SAID SECTION 29 TO THE
131 NORTHEAST CORNER OF SAID SECTION 29, THENCE NORTH
132 ALONG THE WEST LINE OF SECTION 21, TOWNSHIP 2 SOUTH,
133 RANGE 14 WEST TO THE NORTHWEST CORNER OF THE SOUTH
134 HALF OF THE SOUTH HALF OF SAID SECTION 21, THENCE EAST
135 ALONG THE NORTH LINE OF SAID SOUTH HALF OF THE SOUTH

136 HALF TO THE INTERSECTION OF THE WEST RIGHT OF WAY LINE
137 OF STATE ROAD NO. 77 WITH THE NORTH LINE OF SAID SOUTH
138 HALF OF THE SOUTH HALF OF SECTION 21, THENCE
139 NORTHWESTERLY ALONG SAID WEST RIGHT OF WAY LINE TO THE
140 POINT OF BEGINNING.
141
142 Section 5. City commission.--
143 (1) COMPOSITION; QUALIFICATIONS FOR OFFICE.--
144 (a) Composition.--There shall be a five-member city
145 commission, consisting of a mayor and four commissioners, all
146 elected from the Southport area at large. For purposes of proper
147 interpretation of this charter, unless the context otherwise
148 requires, the term "commissioner" shall include the mayor.
149 (b) Qualifications for office.--
150 1. Each candidate for the office of city commissioner
151 shall be a qualified elector of this city.
152 2. At the time of qualification, each candidate for a seat
153 on the commission shall reside within the boundaries of the city
154 of Southport and shall remain a resident of the city for the
155 length of his or her term.
156 3. For the initial election of commissioners and mayor and
157 for each election thereafter, each individual seeking to qualify
158 as a candidate for a seat on the commission shall submit a
159 petition or application supporting his or her candidacy to the
160 city manager (or, for the initial election, to the Supervisor of
161 Elections of Bay County) containing the signatures of 1 percent
162 of the electors residing within the boundaries of the City of
163 Southport at large or payment of the required fee according to

164 the Florida Election Code and declaring which seat he or she is
165 endeavoring to obtain.
166 (2) TERMS OF OFFICE.--The term of office for each
167 commissioner shall be 4 years. In order to provide for
168 staggering of terms, the initial terms of office for seats one
169 and three and the mayor's seat shall be for 2 years each.
170 (3) POWERS AND DUTIES OF COMMISSION.--Except as otherwise
171 prescribed herein or provided by law, all legislative powers of
172 the city shall be vested in the commission.
173 (4) MAYOR.--
174 (a) Powers.--There shall be a mayor who shall be elected
175 at large and who shall have the same legislative powers and
176 duties as any of the other commissioners, except as herein
177 provided.
178 (b) Duties.--The mayor shall preside at the meetings of
179 the commission, be recognized as the head of city government for
180 ceremonial matters, and sign and execute ordinances, contracts,
181 deeds, bonds, and other instruments and documents. The mayor
182 shall have no administrative duties other than those necessary
183 to accomplish these actions, or such other actions as may be
184 authorized by city commission, consistent with general or
185 special law.
186 (5) VICE MAYOR.--
187 (a) Election.--There shall be a vice mayor elected
188 annually by the commission from among the commissioners. Such
189 election shall take place at the first meeting after each
190 regular city general election.

191 (b) Powers and duties.--The vice mayor shall have the same
192 legislative powers and duties as any other commissioner, except
193 that he or she shall serve as acting mayor during the absence or
194 disability of the mayor and, during such period, shall have the
195 same duties as provided for in paragraph (4)(b). In the absence
196 of the mayor and vice mayor, the remaining commissioners shall
197 elect a commissioner to serve as acting mayor.
198 (6) COMPENSATION AND EXPENSES.--
199 (a) Compensation.--The mayor and commissioners shall serve
200 without compensation for the first 3 months in office. The
201 commission may determine an annual salary for commissioners or
202 the mayor, but no ordinance providing for such salaries shall
203 become effective until the date of commencement of the terms of
204 the commissioners elected at the next regular election, except
205 for any annual salary provided for after the initial election.
206 Any salary provided for during the initial term will become
207 effective 91 days after the commissioners take office unless a
208 later date is established.
209 (b) Expenses.--The commission may provide for
210 reimbursement of actual expenses incurred by members while
211 performing their official duties.
212 (7) VACANCIES; FORFEITURE OF OFFICE; FILLING OF
213 VACANCIES.--
214 (a) Vacancies.--A vacancy in the office of a commissioner
215 shall occur upon the incumbent's death, removal from office as
216 authorized by law, resignation, appointment to other public
217 office which creates dual officeholding, judicially determined
218 incompetence, or forfeiture of office as herein described.

219 (b) Forfeiture of office.--A commissioner shall forfeit
220 his or her office if he or she:
221 1. Is determined by the commission, acting as a body, to
222 lack at any time or fail to maintain during his or her term of
223 office any qualification for the office as prescribed by this
224 charter or otherwise required by law;
225 2. Is convicted of a felony or enters a plea of guilty or
226 nolo contendere to a crime punishable as a felony, even if
227 adjudication of guilt has been withheld;
228 3. Is found by the commission, acting as a body, to have
229 violated any standard of conduct or code of ethics established
230 by law for public officials and has been suspended from office
231 by the Governor, unless subsequently reinstated as provided by
232 law; or
233 4. Is absent from three consecutive regular commission
234 meetings without being excused by the commission.
235 (c) Filling of vacancies.--
236 1. If a vacancy occurs in the office of mayor, the vice
237 mayor shall serve as mayor until a new mayor is elected at the
238 next regularly scheduled city election and assumes the duties of
239 his or her office. The commission shall fill the commissioner's
240 seat temporarily vacated by the vice mayor by appointment as
241 herein provided.
242 2. If a vacancy occurs in the office of any commissioner
243 other than mayor and the remainder of the unexpired term is less
244 than 2 years, the remaining commissioners shall, within 30 days
245 following the occurrence of such vacancy, by majority vote,
246 appoint a person to fill the vacancy for the remainder of the

247 unexpired term. If the remainder of the unexpired term exceeds 2
248 years, the remaining commissioners shall, within 30 days
249 following the occurrence of such vacancy, by majority vote,
250 appoint a person to fill the vacancy until the next regularly
251 scheduled city election.
252 3. Any person appointed to fill a vacancy on the
253 commission is required to meet the qualifications of the seat to
254 which he or she is appointed, except the petition requirement.
255 (d) Extraordinary vacancies.--In the event that all
256 members of the council are removed by death, disability, law, or
257 forfeiture of office, the Governor shall appoint an interim
258 commission that shall call a special election to be held 60 to
259 90 days after the interim commission's appointment. Such
260 election shall be held in the same manner as the initial
261 election under this charter.
262 Section 6. City commission meetings.--The commission shall
263 meet regularly at least once a month at such times and places as
264 the commission may prescribe. Such meetings shall be public
265 meetings and shall be subject to notice and other requirements
266 of law applicable to public meetings.
267 (1) The first meeting following a general city election at
268 which elected or reelected commissioners are inducted into
269 office shall be held on the first Monday following such
270 election.
271 (2) A majority of the commission shall constitute a
272 quorum. No action of the commission shall be valid unless
273 adopted by an affirmative vote of a majority of the
274 commissioners in attendance, unless otherwise provided by law or

275 stated herein. All actions of the city commission shall be by
276 ordinance, resolution, or motion.
277 (3) Special meetings may be held at the call of the mayor
278 or, in his or her absence, the vice mayor. Special meetings may
279 also be called upon the request of a majority of the
280 commissioners. The city manager shall provide no less than 12
281 hours' notice of the meeting to the public, when practical.
282 Section 7. Designated charter officers.--
283 (1) DESIGNATED CHARTER OFFICERS.--The initial designated
284 charter officer shall be the city manager. Other charter
285 officers may be appointed by majority vote of the commission.
286 (a) Appointment.--The charter officers shall be appointed
287 by a majority vote of the full commission and shall serve at the
288 pleasure of the commission.
289 (b) Removal.--The charter officers shall be removed from
290 office by a majority vote of the full commission. If the vote is
291 not unanimous, the charter officer may, within 7 days after the
292 dismissal motion by the commission, submit to the mayor a
293 written request for reconsideration. Any action taken by the
294 commission at the reconsideration hearing shall be final.
295 (c) Compensation.--The compensation of the charter
296 officers shall be fixed by the city commission.
297 (d) Filling of vacancies.--The city commission shall begin
298 the process to fill a vacancy in the charter office of the city
299 manager or the city attorney within 90 days after the vacancy
300 occurs. An acting city manager or acting city attorney may be
301 appointed by the city commission during a vacancy in office.

302 (e) Candidate for city office.--No charter officer shall
303 be a candidate for any elected office while holding his or her
304 charter office position.
305 (2) CITY MANAGER.--The city manager shall be the chief
306 administrative officer of the city and shall serve at the
307 direction and discretion of the city commission.
308 (a) Qualifications.--The city manager shall be selected on
309 the basis of qualifications the commissioners deem appropriate,
310 including, but not limited to, experience, expertise, and
311 management ability as they pertain to running municipal
312 government.
313 (b) Powers and duties.--The city manager shall:
314 1. Attend all meetings of the city commission.
315 2. Be responsible to the commission for the administration
316 of all city affairs placed in his or her charge by majority vote
317 of the commission or under this charter.
318 (3) CITY ATTORNEY.--The commission members may contract
319 with a city attorney.
320 (a) Qualifications.--The city attorney shall be a member
321 in good standing of The Florida Bar.
322 (b) Powers and duties.--The city attorney or his or her
323 designee, who shall be a lawyer and a member in good standing of
324 The Florida Bar, shall:
325 1. Attend all city commission meetings unless excused by
326 the city commission.
327 2. Perform such professional duties as may be required by
328 law or by the commission in furtherance of the law.

329 3. Be the chief legal officer of the city and serve as
330 chief legal advisor to the commission, the city manager, and all
331 city departments, offices, city advisory boards, and agencies.
332 Section 8. Elections.--
333 (1) ELECTORS.--Any person who is a resident of the city,
334 who has qualified as an elector of the state, and who registers
335 in the manner prescribed by law shall be an elector of this
336 city.
337 (2) NONPARTISAN ELECTIONS.--All elections for the office
338 of mayor or other city commissioners shall be conducted on a
339 nonpartisan basis without any designation of political party
340 affiliation.
341 (3) QUALIFICATIONS.--Candidates for the office of city
342 commission member or mayor shall qualify for office by filing a
343 written notice of candidacy with the designated official at such
344 time and in such manner as may be prescribed by the Florida
345 Election Code and as otherwise provided in this charter.
346 (4) PROCEDURE FOR REGULAR ELECTIONS AND RUNOFF
347 ELECTIONS.--
348 (a) The regular election of the city commission members
349 and mayor shall be held on the third Tuesday after the third
350 Monday in April in each even-numbered year when the 4-year term
351 for each respective seat has expired, in the manner provided for
352 by this charter and general law. Runoff elections, if necessary,
353 shall be held on the third Tuesday after the third Monday in May
354 in the same year.
355 (b) No later than noon Friday, 3 weeks before the election
356 for office, any individual who wishes to run for one of the five

357 initial seats on the commission shall qualify as a candidate
358 with the Bay County Supervisor of Elections in accordance with
359 the provisions of this charter and general law. Each candidate
360 must specify for which of the seats he or she desires to
361 campaign and serve.
362 (c)1. The Bay County Commission shall appoint a canvassing
363 board of three members who are not candidates, which shall
364 certify the results of the election. At least one citizen from
365 the area or municipality of Southport shall be appointed to
366 serve on the canvassing board.
367 2. After the initial election, the city commissioners
368 shall decide how results are certified by ordinance.
369 3. If two or more persons qualify for a seat and none
370 receive a majority of the votes cast for that seat, the two
371 candidates receiving the highest number of votes shall face each
372 other in a runoff election. The person receiving the highest
373 number of votes at said runoff election shall be elected. The
374 canvass of returns for said runoff election shall be the same as
375 for a general election.
376 (d) In the event of a tie vote for any seat, the names of
377 the candidates who tied shall be placed in a box and one name
378 shall be drawn by a member of the canvassing board. The
379 candidate whose name is drawn from the box shall be the winning
380 candidate.
381 (e) The result of the voting, when ascertained, shall be
382 certified by a return in duplicate, signed by two of the members
383 of the canvassing board. One copy shall be delivered to the city
384 attorney and the other copy shall be delivered to the city

385 manager. Both returns are to be delivered to the city commission
386 at a meeting to be held at noon on the day following
387 certification of the election results. At such meeting, the city
388 commission shall convey the return and announce the results of
389 the election on the official record.
390 (5) INDUCTION INTO OFFICE.--
391 (a) Those candidates who are elected shall be inducted
392 into office and take office at a meeting held at the regular
393 meeting place of the commission no more than 30 days after the
394 final election requirements are determined to be in compliance.
395 (b) Initial elections shall be held after the referendum
396 for incorporation as stated in section 12.
397 (6) RECALL OF CITY COMMISSIONERS.--Any member of the city
398 commission may be removed from office by the electors of the
399 city following the procedures of recall established in general
400 law.
401 (7) DISTRICT BOUNDARIES.--
402 (a) Elections shall be held at large until such time as
403 the commissioners pass an ordinance providing for voting
404 districts.
405 (b) In the event that the commissioners pass an ordinance
406 providing for voting districts, such districts shall come up for
407 review every 5 years after the first election they are in use,
408 unless an earlier review is determined necessary by the
409 supervisor of elections and the commission.
410 Section 9. Southport area municipal services.--After the
411 first general election, the city commissioners may authorize the
412 city manager to enter into contracts for municipal services on

413 behalf of the City of Southport. Before a city manager is hired,
414 the mayor is authorized to enter into contracts for services on
415 behalf of the city.
416 Section 10. General provisions.--
417 (1) CHARTER AMENDMENT.--This charter may be amended in
418 accordance with the provisions of the Municipal Home Rule Powers
419 Act, chapter 166, Florida Statutes, or as may otherwise be
420 provided by general law. The form, content, and certification of
421 any petition to amend the charter shall be established by
422 ordinance.
423 (2) CHARTER REVIEW.--The standards for charter review
424 shall be established by ordinance.
425 (3) INITIATIVE AND REFERENDUM.--At least 25 percent of the
426 qualified electorate of the city shall have the power to
427 petition to propose an ordinance or to require reconsideration
428 of an adopted ordinance, and if the commission fails to adopt
429 such ordinance so proposed or to repeal such adopted ordinance
430 without any change in substance, then the commission shall place
431 the proposed ordinance or the repeal of the adopted ordinance on
432 the ballot at the next general election.
433 (4) STANDARDS OF CONDUCT.--All elected officials and
434 employees of the city shall be subject to the standards of
435 conduct for public officials and employees set by general law.
436 In addition, the city commission may by ordinance establish a
437 code of ethics for officials and employees of the city which may
438 be supplemental to the general law, but in no case may such an
439 ordinance diminish the provisions of general law.

440 Section 11. Severability.--If any provision of this act or
441 the application thereof to any person or circumstance is held
442 invalid, the invalidity shall not affect other provisions or
443 applications of this act which can be given effect without the
444 invalid provision or application, and to this end the provisions
445 of this act are declared severable.
446 Section 12. Transition schedule.--
447 (1) REFERENDUM.--The referendum election called for the
448 purposes of this act shall be held no later than 90 days from
449 the date of legislative approval of this act, unless there is
450 established a different municipal election date, in which case
451 the election shall be on the date so established. At such time,
452 the issue of whether to incorporate the City of Southport shall
453 be placed upon the ballot. In the event the electorate votes
454 affirmatively by a majority of electors voting in the referendum
455 to incorporate and establish the City of Southport, the
456 provisions of this charter shall take effect as provided herein.
457 (2) CREATION AND ESTABLISHMENT OF CITY.--For the purpose
458 of compliance with general law, relating to assessment and
459 collection of ad valorem taxes, the City of Southport is hereby
460 created and established effective the date this charter becomes
461 law.
462 (3) INITIAL ELECTION OF COMMISSIONERS; DATES, QUALIFYING
463 PERIOD, CERTIFICATION OF ELECTION RESULTS; INDUCTION INTO
464 OFFICE.--
465 (a) Following the adoption of this charter in accordance
466 with section 13, the Bay County Commission shall call a special
467 election of a mayor and the other four city commissioners to be

468 held as soon as possible but no more than 90 days after an
469 affirmative vote to incorporate by referendum at the convenience
470 of the supervisor of elections. Any necessary runoff elections
471 shall be held as soon as possible but no sooner than 14 days and
472 no more than 60 days after the special election at the
473 convenience of the supervisor of elections.
474 (b) No later than noon Friday, 3 weeks before the election
475 of commissioners, any individual who wishes to run for one of
476 the five initial seats on the commission shall qualify as a
477 candidate with the Bay County Supervisor of Elections in
478 accordance with the provisions of this charter and general law.
479 Each candidate must specify for which of the seats he or she
480 desires to campaign and serve.
481 (c)1. The Bay County Commission shall appoint a canvassing
482 board of three members who are not candidates which shall
483 certify the results of the election. At least one citizen from
484 the area or municipality of Southport shall be appointed to
485 serve on the canvassing board.
486 2. After the initial election, the city commissioners
487 shall decide how results are certified by ordinance.
488 3. If two or more persons qualify for a seat and none
489 receives a majority of the votes cast for that seat, the two
490 candidates receiving the highest number of votes shall face each
491 other in a runoff election. The person receiving the highest
492 number of votes at said runoff election shall be elected. The
493 canvass of returns for said runoff election shall be the same as
494 for a general election.

495 4. In the event of a tie vote for any seat, the names of
496 the candidates who tied shall be placed in a box and one name
497 shall be drawn by a member of the canvassing board. The
498 candidate whose name is drawn from the box shall be the winning
499 candidate.
500 (4) INDUCTION INTO OFFICE.--Those candidates who are
501 elected shall be inducted into office and take office at the
502 initial city commission meeting, which shall be held no more
503 than 30 days after the final election requirements are
504 determined to be in compliance at the Southport Community
505 Center, located at 7334 Franklin Street, Southport, Florida.
506 (5) TRANSITION SERVICES AND COMPENSATION.--It is intended
507 that Bay County provide and be compensated for the provision of
508 services for the City of Southport as budgeted for in the fiscal
509 year 2006-2007 Bay County Budget as far as the revenue will
510 provide. The level of services to be provided will be consistent
511 with the level upon which the fiscal year 2006-2007 expense
512 budget was predicted and in accordance with adopted revenue. It
513 is the responsibility of the city to adopt appropriate
514 ordinances, resolutions, or agreements as required to ensure the
515 continued collection of budgeted revenues with which to fund
516 services beginning January 1, 2007. Any revenues adopted or
517 received by the City of Southport upon which delivery of
518 services was not predicted within the county's fiscal year 2006-
519 2007 adopted budget shall accrue to the City of Southport.
520 Services that the county shall provide under the terms of this
521 agreement include all services provided to the Southport

522 municipal district as adopted by the Bay County Commission prior
523 to the City of Southport becoming operational.
524 (6) FIRST-YEAR EXPENSES.--The commission, in order to
525 provide moneys for the expenses and support of this city, shall
526 have the power to borrow money necessary for the operation of
527 city government until such time as a budget is adopted and
528 revenues are raised in accordance with the provisions of this
529 charter.
530 (7) TRANSITIONAL ORDINANCES AND RESOLUTIONS.--The city
531 commission shall adopt ordinances and resolutions required to
532 effect the transition. Ordinances adopted within 60 days after
533 the first commission meeting shall be passed as emergency
534 ordinances. These transitional ordinances shall be effective for
535 no longer than 90 days after adoption and thereafter may be
536 readopted, renewed, or otherwise continued only in the manner
537 normally prescribed for ordinances.
538 (8) TRANSITIONAL COMPREHENSIVE PLAN AND LAND DEVELOPMENT
539 REGULATION.--
540 (a) Until such time as the city adopts a comprehensive
541 plan, the applicable provisions of the Comprehensive Plan of Bay
542 County, as the same exists on the day the city commences
543 corporate existence, shall remain in effect as the city's
544 transitional comprehensive plan. However, all planning
545 functions, duties, and authority shall thereafter be vested in
546 the City Commission of Southport, which shall be deemed the
547 local planning agency until the commission establishes a
548 separate local planning agency.

549 (b) All powers and duties of the Bay County Planning and
550 Land Development Regulations Commission, any boards of
551 adjustment and appeals created pursuant to statutory trade
552 codes, and the Bay County Commission, as set forth in these
553 traditional zoning and land use regulations, shall be vested in
554 the City Commission of Southport until such time as the city
555 commission delegates all or a portion hereof to another entity.
556 (c) Upon the city's incorporation, the city shall use Bay
557 County's Comprehensive Plan and land development regulations.
558 However, after the city's incorporation, any amendment to the
559 county's comprehensive plan and land development regulations
560 shall not apply to the city unless approved by the city
561 commission.
562 (9) STATE-SHARED REVENUES; CITY PARTICIPATION IN STATE-
563 SHARED REVENUES PROGRAMS.--The City of Southport shall be
564 entitled to participate in the state-shared revenues programs
565 effective on the first day of the month occurring after the
566 first meeting of the commission. The provisions of section
567 218.23, Florida Statutes, shall be waived for the purpose of
568 eligibility to receive revenue sharing funds from the date of
569 incorporation through the state fiscal year 2006-2007. Initial
570 population estimates for calculating eligibility for shared
571 revenues shall be determined by the University of Florida Bureau
572 of Economic and Business Research. Should the bureau be unable
573 to provide an appropriate population estimate, the Bay County
574 Planning Department shall provide an appropriate estimate.
575 (10) GAS TAX REVENUES.--

576 (a) The City of Southport shall be entitled to receive a
577 local option gas tax revenue beginning the first full fiscal
578 year following incorporation.
579 (b) The gas tax distribution shall be made in accordance
580 with an interlocal agreement entered into prior to June 1, 2007.
581 Section 13. This act shall take effect only upon its
582 approval by a majority vote of those qualified electors residing
583 within the proposed corporate limits of the proposed City of
584 Southport voting in a referendum election to be called by the
585 Bay County Commission and to be held in accordance with the
586 provisions of law currently in force, except that this section
587 shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **993 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax
2 Representative(s) Coley offered the following:
3
4 **Amendment**
5 Remove line(s) 576-578 and insert:
6 (a) Notwithstanding the provisions of s. 336.025, F.S., the
7 City of Southport shall be entitled to receive local option gas
8 tax revenue beginning October 1 of the first year that the city
9 is eligible for state-shared revenues under subsection
10 (9),above.
11

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1079 CS — Exemption from the Tax on Sales, Use, and Other Transactions
SPONSOR(S): Altman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1832

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	10 Y, 0 N, w/CS	Carlson	Carlson
2) Finance & Tax Committee		Rice ACR	Diez-Arguelles
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

The bill will create a new exemption from sales and use tax under chapter 212, F.S., for advertising materials such as individual coupons or other individual cards, sheets, or pages of printed advertising, that are distributed free of charge by mail in an envelope for ten or more persons on a monthly, bimonthly or other regular basis.

The Revenue Estimating Conference has estimated the impact of the bill on state revenues to be ($0.7) million in FY 2006-07 and ($0.7) million in FY 2007-08. For local revenues the impact is estimated to be ($0.2) million in FY 2006-2007 and ($0.2) million in FY 2007-2008.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – The bill will exempt from sales and use tax advertising materials distributed free of charge in an envelope under certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Section 212.08(7)(w), F.S., provides an exemption from the sales and use tax for newspaper, magazine, and newsletter subscriptions in which the product is delivered to the customer by mail and for free, circulated publications that are published on a regular basis, the content of which is primarily advertising, and that are distributed through the mail, home delivery, or newsstands. The exemption for newspaper, magazine, and newsletter subscriptions applies only to subscriptions entered into after March 1, 1997.

The Second District Court of Appeal has ruled that the exemption from sales and use tax for advertising publications provided in s. 212.08(7)(w), F.S., does not apply to advertising materials provided free of charge in an envelope because such advertising materials are not in a "publication" under s. 212.08(7)(w).[1]

Effect of Proposed Changes:

The bill will create a new exemption from sales and use tax under chapter 212, F.S., for advertising materials such as individual coupons or other individual cards, sheets, or pages of printed advertising, that are distributed free of charge by mail in an envelope for ten or more persons on a monthly, bimonthly, or other regular basis.

C. SECTION DIRECTORY:

Section 1. Creates s. 212.08(7)(ccc), relating to sales and use tax, providing a tax exemption.
Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The Revenue Estimating Conference estimated the following impact of the bill:

	FY 2006-07	FY 2007-08
General Revenue:	($0.7)m	($0.7)m
State Trust:	(Insignificant)	(Insignificant)
Total:	($0.7)m	($0.7)m

2. Expenditures:

None

[1] See *Dep't of Revenue v. Val-Pak Direct Marketing Systems, Inc.*, 863 So.2d 1 (Fla. 2d DCA 2003).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The Revenue Estimating Conference Estimated the following impact of the bill:

	FY 2006-07	FY 2007-08
Local Government Half Cent	($0.1)m	($0.1)m
Local Option	($0.1)m	($0.1)m
Total	($0.2)m	($0.2)m

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill will provide an exemption to any entity that provides advertising materials through the mail in an envelope under certain circumstances.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill reduces the authority that municipalities or counties have to raise revenues in the aggregate through local option sales taxes. However, the reduction in authority is insignificant. Therefore, this bill is not a mandate.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Economic Development, Trade and Banking Committee adopted a technical amendment that replaces the word "to" with the word "for" on line 40.

CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to an exemption from the tax on sales, use, and other transactions; amending s. 212.08, F.S.; exempting certain advertising materials distributed free of charge by mail in an envelope; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (ccc) is added to subsection (7) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

23 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
24 entity by this chapter do not inure to any transaction that is
25 otherwise taxable under this chapter when payment is made by a
26 representative or employee of the entity by any means,
27 including, but not limited to, cash, check, or credit card, even
28 when that representative or employee is subsequently reimbursed
29 by the entity. In addition, exemptions provided to any entity by
30 this subsection do not inure to any transaction that is
31 otherwise taxable under this chapter unless the entity has
32 obtained a sales tax exemption certificate from the department
33 or the entity obtains or provides other documentation as
34 required by the department. Eligible purchases or leases made
35 with such a certificate must be in strict compliance with this
36 subsection and departmental rules, and any person who makes an
37 exempt purchase with a certificate that is not in strict
38 compliance with this subsection and the rules is liable for and
39 shall pay the tax. The department may adopt rules to administer
40 this subsection.
41 (ccc) Advertising materials distributed free of charge by
42 mail in an envelope.--Likewise exempt are materials consisting
43 exclusively of advertisements, such as individual coupons or
44 other individual cards, sheets, or pages of printed advertising,
45 that are distributed free of charge by mail in an envelope for
46 10 or more persons on a monthly, bimonthly, or other regular
47 basis.
48 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1143 CS Economic Development Incentives
SPONSOR(S): McInvale
TIED BILLS: **IDEN./SIM. BILLS:** SB 350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	15 Y, 0 N, w/CS	Olmedillo	Carlson
2) Finance & Tax Committee		Rice ACR	Diez-Arguelles
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

The bill requires the Department of Revenue to distribute monthly, to qualified local governments, one-half of the proceeds of the sales tax collections generated by the use and operations of eligible convention centers and reported on the convention center's sales and use tax return. The eligible convention centers must be certified pursuant to new s. 288.1171, F.S. Program distributions cannot exceed $5 million per state fiscal year and no local government may receive more than $1 million per state fiscal year.

Distributions may only be used to encourage and provide economic development for the attraction, recruitment, and retention of corporate headquarters and of high-technology, manufacturing, research and development, entertainment, and tourism industries as designated by the unit of local government by resolution of its governing body and to assist the eligible convention centers to attract more business and expand their offerings, including developing their own events and shows.

The bill creates s. 288.1171, F.S., which sets the criteria for eligible convention centers, which include that they:

- Be owned by a unit of local government,
- Contain more than 60,000 square feet of exhibit space,
- Be certified by resolution as serving a public purpose, and
- Be located in a county levying a local option tourist development tax under s. 125.0104, F.S.

The bill is estimated to result in a ($3.4) million reduction in state revenues and a $3.4 million increase in local revenues for FY2006-2007. It will also cause a ($4.5) million reduction in state revenues and a $4.5 million increase to local revenues in FY 2007-2008.

The provisions of this bill will be repealed on June 30, 2009.

The bill will take effect on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-- The bill provides the Office of Tourism, Trade, and Economic Development the authority to adopt rules for the receipt and processing of applications for funding.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Economic Incentives in Florida

The Florida Legislature encourages economic development through the enactment of several programs and tax incentives enumerated in the Florida Statutes.

The majority of the programs and incentives are coordinated and administered by the Office of Tourism, Trade, and Economic Development (OTTED) in conjunction with several public-private organizations such as Enterprise Florida, Inc. and The Sports Foundation. OTTED and associated groups are charged with the attraction, recruitment, and retention of high-technology, research and development, entertainment, and tourism industries.

The following are some of the types of programs currently available in the state.

The Qualified Targeted Industry Tax Refund Program

The Qualified Targeted Industry Tax Refund (QTI) Program (s.288.106, F.S.) encourages quality job growth in targeted high-wage, value-added businesses. Approved businesses receive refunds on taxes paid (corporate income, sales, and certain other taxes) for creating new jobs in specified industry categories. This program defines a "target industry business" as a corporate headquarters business or any business that is engaged in a stable industry with high job growth, output, and wages, with strong economic benefits.

The High-Impact Business Performance Incentive Grant

The High-Impact Business Performance Incentive (HIPI) Grant (s. 288.108, F.S.) is an incentive used to attract and grow high-impact facilities. These incentive programs apply to high technology and manufacturing businesses operating in one of the following sectors: biomedical technology, financial services, silicon technology, or transportation equipment. The business must also create at least 100 new full time equivalent jobs (75 for a research and development facility) in Florida for a three year period and invest $100 million cumulatively in the state.

Florida Small Business Technology Growth Program

Florida Small Business Technology Growth Program (s. 288.95155, F.S.) is designated to provide financial assistance to businesses in this state having high job growth and emerging technology potential and fewer than 100 employees. Successful applicants receive funding in the form of loans and grants from state appropriations and Enterprise Florida. Funding priority is given to moderate and high risk ventures that offer the greatest opportunity for compelling economic development impact.

Convention Centers in Florida

Section 212.0305, F.S., is the "Convention Development Tax Act" and s. 125.0104, F.S., is the "Local Option Tourist Development Act". As listed under s. 212.0305(2), "[o]ne of the principal purposes of the convention development tax is to promote tourism and the use of hotel facilities by facilitating the improvement and construction of convention centers". Both ss. 212.0305, and 125.0104 F.S., authorize counties to impose a tax on transient rentals through ordinance. The proceeds of these taxes are to be used to build, acquire, remodel, maintain, expand, improve, and enlarge publicly owned convention centers in the county or to pay debts created for those purposes.[1]

There are ten publicly owned convention centers that currently contain at least 60,000 square feet of exhibit space[2]:

- Orange County Convention Center (2,100,000 sq. ft.)
- Miami Beach Convention Center (502,848 sq. ft.)
- Palm Beach County Convention Center (100,000 sq. ft.)
- Broward County Convention Center (199,526 sq. ft.)
- Tampa Convention Center (200,000 sq. ft.)
- Coconut Grove Convention Center in Miami(150,000 sq. ft.)
- Lakeland Center (100,000 sq. ft.)
- Prime F. Osborn III Convention Center in Jacksonville (100,000 sq. ft.)
- Expo Centre in Orlando (65,200)
- Ocean Center in Volusia (60,000)

Effect of Proposed Changes:

The bill amends s. 212.20(6)(d)7., F.S., to require the Department of Revenue (DOR) to distribute monthly, to qualified local governments, one-half of the proceeds of the sales tax collections generated by the use and operations of eligible convention centers and reported on the convention center's sales and use tax return. Proceeds eligible for partial reimbursement include standard services provided by convention center staff to users of the center. Some examples include parking, admission, ticket sales, and food and utility services. The eligible convention centers must be certified pursuant to s. 288.1171, F.S. Distributions cannot exceed $5 million per fiscal year and no local government may receive more than $1 million per state fiscal year. Such distributions are required to begin 60 days following notification of certification. The bill provides for the apportionment of sales tax proceeds in the case where the fiscal year cap of $5 million is exceeded.

Distributions may only be used to encourage and provide economic development for the attraction, recruitment, and retention of corporate headquarters and of high-technology, manufacturing, research and development, entertainment, and tourism industries as designated by the unit of local government by resolution of its governing body and to assist the eligible convention centers to attract more business and expand their offerings, including developing their own events and shows. The bill provides for the repeal of the incentive on June 30, 2009.

The bill creates s. 288.1171, F.S., which requires the Office of Tourism, Trade, and Economic Development (OTTED) to adopt rules to screen applicants and certify those meeting the criteria as an "eligible convention center." As provided in the bill, a center must do the following in order to be eligible:

- must be owned by a unit of local government,
- must contain more than 60,000 square feet of exhibit space,

[1] The funds received under s. 212.0305, F.S., may also be used for the improvement of stadiums, auditoriums, coliseums and exhibition centers in the county. The funds under that section may also be used for advertising if the municipality has a population of at least 10,000. Funds under s. 125.0104, F.S., may also be used for a professional sport franchise facility or a spring training facility.
[2] Source: 2006 REC Impact Conference

- must be certified by resolution as serving a public purpose, and
- must be located in a county levying a local option tourist development tax under s. 125.0104, F.S.[3]

Previously certified applicants are ineligible for additional certifications.

Funds distributed to a local government are required to be used for the economic development purposes set forth above as designated in a resolution adopted by the governing board of the local government. The bill provides that failure to use the funds pursuant to the bill is grounds for revoking certification. The bill provides for the repeal of s. 288.1171, F.S., on June 30, 2009.

C. SECTION DIRECTORY:

Section 1: Creates s. 212.20(6)(d)7.e., F.S., relating to the distribution of proceeds from tax on sales, use, and other transactions; requiring monthly distributions to eligible units of local government; providing definitions; providing limits and methods for distributions; establishing provisions for use of funding; providing a repeal date of June 30, 2009.

Section 2: Creates s. 288.1171, F.S., providing a certification process for a local government applicant owning a convention center; providing the Office of Tourism, Trade, and Economic Development rule making authority for the receipt and processing of applications for funding; providing definitions; establishing conditions; establishing provisions for use of funding; providing a repeal date of June 30, 2009.

Section 3: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2006-2007	FY 2007-2008
General Revenue	($3.4)m	($4.5)m
State Trust	(Insignificant)	(Insignificant)
Total	($3.4)m	($4.5)m

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

	FY 2006-2007	FY 2007-2008
Sales and Use Tax Refund	$3.4m	$4.5m
Total	$3.4m	$4.5m

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

[3] Currently, 58 counties charge a local tourist development tax.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill provides the Office of Tourism, Trade, and Economic Development the authority to adopt rules for the receipt and processing of applications for funding.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Economic Development, Trade and Banking Committee adopted one amendment to the bill on March 16, 2005. The amendment removed language permitting the Auditor General to conduct an audit of a convention center receiving a distribution authorized by the bill.

CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to economic development incentives; amending s. 212.20, F.S.; providing for distribution of a portion of revenues from the tax on sales, use, and other transactions to specified units of local government owning eligible convention centers; providing limitations; requiring the Department of Revenue to prescribe certain forms; providing for future repeal; creating s. 288.1171, F.S.; providing for certification by the Office of Tourism, Trade, and Economic Development of units of local government owning eligible convention centers; requiring the office to adopt specified rules; providing a definition; providing requirements for certification; providing for use of proceeds distributed to units of local government under the act; providing for revocation of certification; providing for future repeal; providing an effective date.

24 Be It Enacted by the Legislature of the State of Florida:
25
26 Section 1. Paragraph (d) of subsection (6) of section
27 212.20, Florida Statutes, is amended to read:
28 212.20 Funds collected, disposition; additional powers of
29 department; operational expense; refund of taxes adjudicated
30 unconstitutionally collected.--
31 (6) Distribution of all proceeds under this chapter and s.
32 202.18(1)(b) and (2)(b) shall be as follows:
33 (d) The proceeds of all other taxes and fees imposed
34 pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)
35 and (2)(b) shall be distributed as follows:
36 1. In any fiscal year, the greater of $500 million, minus
37 an amount equal to 4.6 percent of the proceeds of the taxes
38 collected pursuant to chapter 201, or 5 percent of all other
39 taxes and fees imposed pursuant to this chapter or remitted
40 pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in
41 monthly installments into the General Revenue Fund.
42 2. Two-tenths of one percent shall be transferred to the
43 Ecosystem Management and Restoration Trust Fund to be used for
44 water quality improvement and water restoration projects.
45 3. After the distribution under subparagraphs 1. and 2.,
46 8.814 percent of the amount remitted by a sales tax dealer
47 located within a participating county pursuant to s. 218.61
48 shall be transferred into the Local Government Half-cent Sales
49 Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to
50 be transferred pursuant to this subparagraph to the Local
51 Government Half-cent Sales Tax Clearing Trust Fund shall be

52 reduced by 0.1 percent, and the department shall distribute this
53 amount to the Public Employees Relations Commission Trust Fund
54 less $5,000 each month, which shall be added to the amount
55 calculated in subparagraph 4. and distributed accordingly.
56 4. After the distribution under subparagraphs 1., 2., and
57 3., 0.095 percent shall be transferred to the Local Government
58 Half-cent Sales Tax Clearing Trust Fund and distributed pursuant
59 to s. 218.65.
60 5. After the distributions under subparagraphs 1., 2., 3.,
61 and 4., 2.0440 percent of the available proceeds pursuant to
62 this paragraph shall be transferred monthly to the Revenue
63 Sharing Trust Fund for Counties pursuant to s. 218.215.
64 6. After the distributions under subparagraphs 1., 2., 3.,
65 and 4., 1.3409 percent of the available proceeds pursuant to
66 this paragraph shall be transferred monthly to the Revenue
67 Sharing Trust Fund for Municipalities pursuant to s. 218.215. If
68 the total revenue to be distributed pursuant to this
69 subparagraph is at least as great as the amount due from the
70 Revenue Sharing Trust Fund for Municipalities and the former
71 Municipal Financial Assistance Trust Fund in state fiscal year
72 1999-2000, no municipality shall receive less than the amount
73 due from the Revenue Sharing Trust Fund for Municipalities and
74 the former Municipal Financial Assistance Trust Fund in state
75 fiscal year 1999-2000. If the total proceeds to be distributed
76 are less than the amount received in combination from the
77 Revenue Sharing Trust Fund for Municipalities and the former
78 Municipal Financial Assistance Trust Fund in state fiscal year
79 1999-2000, each municipality shall receive an amount

80 proportionate to the amount it was due in state fiscal year
81 1999-2000.
82 7. Of the remaining proceeds:
83 a. In each fiscal year, the sum of $29,915,500 shall be
84 divided into as many equal parts as there are counties in the
85 state, and one part shall be distributed to each county. The
86 distribution among the several counties shall begin each fiscal
87 year on or before January 5th and shall continue monthly for a
88 total of 4 months. If a local or special law required that any
89 moneys accruing to a county in fiscal year 1999-2000 under the
90 then-existing provisions of s. 550.135 be paid directly to the
91 district school board, special district, or a municipal
92 government, such payment shall continue until such time that the
93 local or special law is amended or repealed. The state covenants
94 with holders of bonds or other instruments of indebtedness
95 issued by local governments, special districts, or district
96 school boards prior to July 1, 2000, that it is not the intent
97 of this subparagraph to adversely affect the rights of those
98 holders or relieve local governments, special districts, or
99 district school boards of the duty to meet their obligations as
100 a result of previous pledges or assignments or trusts entered
101 into which obligated funds received from the distribution to
102 county governments under then-existing s. 550.135. This
103 distribution specifically is in lieu of funds distributed under
104 s. 550.135 prior to July 1, 2000.
105 b. The department shall distribute $166,667 monthly
106 pursuant to s. 288.1162 to each applicant that has been
107 certified as a "facility for a new professional sports

108 franchise" or a "facility for a retained professional sports
109 franchise" pursuant to s. 288.1162. Up to $41,667 shall be
110 distributed monthly by the department to each applicant that has
111 been certified as a "facility for a retained spring training
112 franchise" pursuant to s. 288.1162; however, not more than
113 $208,335 may be distributed monthly in the aggregate to all
114 certified facilities for a retained spring training franchise.
115 Distributions shall begin 60 days following such certification
116 and shall continue for not more than 30 years. Nothing contained
117 in this paragraph shall be construed to allow an applicant
118 certified pursuant to s. 288.1162 to receive more in
119 distributions than actually expended by the applicant for the
120 public purposes provided for in s. 288.1162(6). However, a
121 certified applicant is entitled to receive distributions up to
122 the maximum amount allowable and undistributed under this
123 section for additional renovations and improvements to the
124 facility for the franchise without additional certification.
125 c. Beginning 30 days after notice by the Office of
126 Tourism, Trade, and Economic Development to the Department of
127 Revenue that an applicant has been certified as the professional
128 golf hall of fame pursuant to s. 288.1168 and is open to the
129 public, $166,667 shall be distributed monthly, for up to 300
130 months, to the applicant.
131 d. Beginning 30 days after notice by the Office of
132 Tourism, Trade, and Economic Development to the Department of
133 Revenue that the applicant has been certified as the
134 International Game Fish Association World Center facility
135 pursuant to s. 288.1169, and the facility is open to the public,

136 $83,333 shall be distributed monthly, for up to 168 months, to
137 the applicant. This distribution is subject to reduction
138 pursuant to s. 288.1169. A lump sum payment of $999,996 shall be
139 made, after certification and before July 1, 2000.
140 e. The department shall distribute monthly to units of
141 local government that have been certified as owning eligible
142 convention centers pursuant to s. 288.1171 an amount equal to 50
143 percent of the proceeds, as defined in this sub-subparagraph,
144 received and collected in the previous month by the department
145 under the provisions of this chapter which are generated by such
146 eligible convention centers and remitted on the sales and use
147 tax returns of eligible convention centers. Proceeds, for the
148 purposes of this sub-subparagraph, are limited to all applicable
149 sales taxes collected by an eligible convention center for
150 standard services provided by center staff to users of the
151 center, which include the following: parking, admission and
152 ticket sales, food services, utilities services, space rentals,
153 equipment rentals, security services, decorating services,
154 business services, advertising services, communications
155 services, exhibit supply sales and rentals, locksmith services,
156 and sales of gifts and sundries. The total distribution to each
157 unit of local government shall not exceed $1 million per state
158 fiscal year. However, total distributions to all units of local
159 government shall not exceed $5 million per state fiscal year,
160 and such distribution shall be limited exclusively to the taxes
161 collected and remitted under the provisions of this chapter. If
162 collections and remittances of eligible convention centers
163 exceed the $5-million maximum amount authorized for

164 distribution, the department shall distribute proceeds to each
165 eligible unit of local government using an apportionment factor,
166 the numerator of which is the amount remitted by an eligible
167 convention center and the denominator of which is the total
168 amount remitted by all eligible convention centers. The
169 apportionment factor for each eligible convention center shall
170 be applied to the $5-million maximum amount authorized for
171 distribution to determine the amount that shall be distributed
172 to each local government unit. The department shall prescribe
173 forms required to be filed with the department by eligible
174 convention centers. Distributions shall begin 60 days following
175 notification of certification by the Office of Tourism, Trade,
176 and Economic Development pursuant to s. 288.1171. Distributions
177 shall be used solely to encourage and provide economic
178 development for the attraction, recruitment, and retention of
179 corporate headquarters and of high-technology, manufacturing,
180 research-and-development, entertainment, and tourism industries
181 as designated by the unit of local government by resolution of
182 its governing body, and to assist the eligible convention
183 centers to attract more business and expand their offerings,
184 including developing their own events and shows. This sub-
185 subparagraph is repealed June 30, 2009.
186 8. All other proceeds shall remain with the General
187 Revenue Fund.
188 Section 2. Section 288.1171, Florida Statutes, is created
189 to read:

190 288.1171 Convention centers owned by units of local
191 government; certification as owning eligible convention centers;
192 duties.--
193 (1) The Office of Tourism, Trade, and Economic Development
194 shall serve as the state agency for screening applicants for
195 state funding pursuant to s. 212.20(6)(d)7.e. and for certifying
196 an applicant as owning an eligible convention center.
197 (2) The Office of Tourism, Trade, and Economic Development
198 shall adopt rules pursuant to ss. 120.536(1) and 120.54 for the
199 receipt and processing of applications for funding pursuant to
200 s. 212.20(6)(d)7.e.
201 (3) As used in this section, the term "eligible convention
202 center" means a publicly owned facility having exhibition space
203 in excess of 60,000 square feet, the primary function of which
204 is to host meetings, conventions, or trade shows.
205 (4) Prior to certifying an applicant as owning an eligible
206 convention center, the Office of Tourism, Trade, and Economic
207 Development must determine that:
208 (a) The unit of local government, as defined in s.
209 218.369, owns an eligible convention center.
210 (b) The convention center contains more than 60,000 square
211 feet of exhibition space.
212 (c) The unit of local government in which the convention
213 center is located has certified by resolution after a public
214 hearing that the application serves a public purpose pursuant to
215 subsection (7).
216 (d) The convention center is located in a county that is
217 levying a tourist development tax pursuant to s. 125.0104.

218 (5) Upon certification of an applicant, the Office of
219 Tourism, Trade, and Economic Development shall notify the
220 executive director of the Department of Revenue of such
221 certification by means of an official letter granting
222 certification. The Department of Revenue shall not begin
223 distributing proceeds until 60 days following notice by the
224 Office of Tourism, Trade, and Economic Development that a unit
225 of local government has been certified as owning an eligible
226 convention center.
227 (6) An applicant previously certified under any provision
228 of this section who has received proceeds under such
229 certification is not eligible for an additional certification.
230 (7) A unit of local government certified as owning an
231 eligible convention center may use proceeds provided pursuant to
232 s. 212.20(6)(d)7.e. solely to encourage and provide economic
233 development for the attraction, recruitment, and retention of
234 corporate headquarters and of high-technology, manufacturing,
235 research-and-development, entertainment, and tourism industries
236 as designated by the unit of local government by resolution of
237 its governing body, and to assist the eligible convention
238 centers to attract more business and expand their offerings,
239 including developing their own events and shows.
240 (8) Failure to use the proceeds as provided in this
241 section shall be grounds for revoking certification.
242 (9) This section is repealed June 30, 2009.
243 Section 3. This act shall take effect July 1, 2006.

CS/HB 1199

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1199 CS Statewide Cable Television Franchises
SPONSOR(S): Traviesa and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	11 Y, 4 N, w/CS	Cater	Holt
2) Finance & Tax Committee		Noriega	Diez-Arguelles
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

This bill establishes the authority to issue statewide cable franchises within the Department of State (DOS), and designates DOS as the state franchising authority. The bill preempts local government authority to negotiate cable service franchises.

The bill creates ss. 610.102 through 610.116, F.S., to create the new franchising authority. Generally, the bill:

- Provides definitions;
- Provides procedures for application of a state-issued certificate of franchise authority (certificate), including provisions for a cable operator with an existing franchise in a municipality or county to obtain a certificate for its current franchise area;
- Prohibits franchise fees imposed by the state or by local governments, although franchise fees are collected through the Communications Services Tax (CST);
- Prohibits buildout requirements;
- Provides that an incumbent cable provider must abide by customer service standards reasonably comparable to those in the Federal Communications Commission (FCC or Commission) rules until there are two or more cable service providers in the relevant area;
- Provides guidelines for the number of public, educational, and government (PEG) channels to be provided in a certain area, including guidelines to demonstrate when a channel is considered substantially used;
- Prohibits municipalities or counties from discriminating against certificateholders for items such as access to rights-of-ways, buildings or property, terms of utility pole attachments, filing certain documents with the municipality or county;
- Prohibits discrimination against subscribers based on income;
- Provides that following a transition period, complaints regarding cable service are to be accepted by the Department of Agriculture and Consumer Services (DACS);
- Requires the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to submit a report to the Legislature on the status of cable competition; and
- Requires rulemaking by DOS and DACS.

The bill also amends statutes related to the CST and the use of rights-of-way to conform to this act.

The Revenue Estimating Conference has estimated that, over time, this bill will have a statewide indeterminate fiscal impact in local governments of at least $30.0 million, with the potential to be significantly higher.

The bill may be a mandate requiring a two-thirds vote of the membership of each house.

This act shall take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill establishes the authority to issue statewide cable franchises within the Department of State (DOS), and designates DOS as the state franchising authority. The bill preempts local government authority to negotiate cable service franchises. Further, the Department of Agriculture and Consumer Services (DACS) is authorized to handle cable service complaints.

B. EFFECT OF PROPOSED CHANGES:

Background

Federal Law

In 1965, the FCC established rules for cable systems that used microwave antennas to receive signals. The following year, the FCC established rules for all cable systems. In 1968, The United States Supreme Court affirmed the FCC's jurisdiction over cable. In 1972, FCC rules went into effect that required cable television operators to obtain a certificate of compliance from the FCC prior to operating a cable television system or adding a television broadcast signal. Two other issues addressed in these rules were franchise standards and technical standards. Soon afterwards many of these rules were either modified or eliminated.

In 1984, Congress passed the Cable Communications Policy Act of 1984 (1984 Cable Act). This law established policies in such areas as franchise provisions and renewals, subscriber rates and policy, as well as pole attachments. This law also defined jurisdictional boundaries among federal, state, and local governments regulating cable television systems, and prohibited cable operators from providing service without obtaining a franchise from the local franchise authority (LFA). Also, this law required the LFA's to assure that cable service is not denied to residential customers based on their income, and allows a reasonable period of time for a cable company to provide service to all households in the franchise area. Additionally, the law provided that the LFA may require assurances from the cable company that it will provide adequate capacity, facilities, or financial support for PEG access channels.

In 1992, Congress passed the 1992 Cable Act, which provides that a franchising authority may award one or more franchises within its jurisdiction, but it may not award an exclusive franchise or unreasonably refuse to award an additional competitive franchise.

Current Cable Act

The purposes of the Federal Cable Act (Cable Act), as found in 47 U.S.C. s. 521 are to:

> **(1)** Establish a national policy concerning cable communications;
> **(2)** Establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;
> **(3)** Establish guidelines for the exercise of Federal, state, and local authority with respect to the regulation of cable systems;
> **(4)** Assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;
> **(5)** Establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this subchapter; and

(6) Promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

Federal Franchise Requirements

The Federal Cable Act, 47 U.S.C. s. 541 et. seq., allows a franchising authority to award one or more franchises within its jurisdiction, except that it may not issue an exclusive franchise or unreasonably refuse to award an additional competitive franchise.

The franchise is to be construed to authorize the construction of a cable system over public rights-of-way and through easements; except that in using the easements the cable operator shall ensure:

- The safety, functioning, and appearance of the property and the convenience and safety of others not adversely affected by the installation or construction of cable facilities;
- The cost of installation, construction, operation, or removal of such facilities by the cable operator or subscribers, or both; and
- The owner of the property is justly compensated by the cable operator for any damages caused by the installation, construction, and operation of facilities.

In awarding the franchise, the LFA:

- Shall allow the applicant's cable system reasonable time to be able to provide cable service to all households;
- May require adequate assurance that the cable operator will provide adequate PEG access channel capacity, facilities, or financial support; and
- May require adequate assurances that the cable operator has the financial, technical, and legal qualifications to provide cable service.

In awarding franchises, the LFA shall assure that access to cable service is not denied to a group of potential subscribers because of their economic status.

Also, federal law does not require persons who lawfully provided cable service without a franchise on July 1, 1984, to obtain a franchise, unless the LFA requires them to do so.

Pending Federal Legislation

There are several proposals concerning cable regulation that are currently pending in Congress. The following are summaries of some of those proposals:

Broadband Investment and Consumer Choice Act, by S.1504, by Ensign (R-NV)
This bill provides that any provider of video services, including existing cable operators, may provide service without obtaining a state or local video franchise. State or local governments may require a reasonable fee to compensate the local government for the costs of managing the public rights-of-way used by the provider, which may not exceed five percent of gross revenues received from subscribers for the provision of video service.

Video Choice Act of 2005- S. 1349, by Rockefeller (D-WV), by Smith (R-OR)
This bill provides that any entity with existing rights-of-way authority (*e.g.*, the Bells and other utilities) may provide video programming without obtaining a cable franchise. Existing cable operators would not be entitled to any relief. A "competitive video services provider" "may" be subject to the payment of local franchise fees.

Digital Age Communications Act -S. 2113, by DeMint (R-TN)
This bill provides that existing cable franchise agreements remain in effect until the earlier of the agreement's expiration or four years after enactment. States and their political subdivisions may not renew, extend or otherwise enforce the terms of existing cable franchise agreement beyond these

limits. Until an existing agreement is terminated, a state or political subdivision may require competing video service providers to contribute an equitable portion of costs associated with any fees directly attributable to the agreement and the provision of any public access channels required by such agreement.

Reps. Barton (R-TX), Rush (D-IL), Upton (R-MI), Pickering (R-MS) (no bill number assigned yet) This bill provides that a "new cable operator" that begins providing cable service in a franchise area after date of enactment may elect to obtain a national franchise in lieu of a local franchise. An existing cable operator can obtain national franchise for franchise areas where a new entrant "is providing" service under a national franchise. The franchise fee is the same as current law (up to 5 percent of gross revenues, with the exact level determined by LFA), plus any additional fee imposed by locality for rights-of-way "management."

Principles of Sens. Burns (R-MT) and Inouye (D-HI)

- Recognize and Reaffirm the Role of States and Localities in the Video Franchising Process;
- Promote Competition by Facilitating Speedy Entry on Fair Terms; and
- Promote Competitive Neutrality and a Level Playing Field.

Federal Rulemaking

On November 18, 2005, the FCC released a *Notice of Proposed Rulemaking (NOPR)* to initiate a proceeding to further the interrelated goals of enhanced cable competition and accelerated broadband deployment. The FCC tentatively concluded that the mandate of Section 621(a)(1) of the Cable Act (47 U.S.C. s. 547(a)(1)) should be interpreted to prohibit not just the ultimate refusal to award a franchise, but also a broader range of behaviors, and the *NOPR* seeks comment on that conclusion.

The relevant section of the federal Cable Act states:

(a) Authority to award franchises; public rights-of-way and easements; equal access to service; time for provision of services; assurances

(1) A franchising authority may award, in accordance with the provisions of this subchapter, 1 or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 555 of this title [judicial proceedings] for failure to comply with this subsection.

The NOPR addresses a broad range of questions, including:

- If local franchising authorities are unreasonably refusing to grant competitive franchises. The *Notice* also asks what problems cable incumbents have encountered with LFAs, including how best the Commission can ensure that the local franchising process is not inhibiting the ability of incumbent cable operators to invest in broadband services;

- Whether the Commission has authority to implement the pro-competitive mandate of Section 621(a)(1). The *NOPR* tentatively concludes that the Commission is empowered by provisions of both Title I and Title VI of the Communications Act to take steps appropriate to ensure that the local franchising process does not serve as an unreasonable barrier to entry for competitive cable operators. The *NOPR* also tentatively concludes that the Commission may deem to be preempted and superseded any law or regulation of a State or LFA that causes an unreasonable refusal to award a competitive franchise in contravention of Section 621(a);

- The *NOPR* tentatively concludes that it is not unreasonable for an LFA, in awarding a franchise, to "assure that access to cable service is not denied to any group of potential

residential cable subscribers because of the income of the residents of the local area in which such group resides"; "allow [a] cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area"; and "require adequate assurance that the cable operator will provide adequate public, educational and governmental access channel capacity, facilities, or financial support";

- Assuming there is both the need and the authority for Commission intervention, the *NOPR* asks how the Commission should interpret the mandate of Section 621(a)(1). The item tentatively concludes that the Commission should interpret the relevant language of Section 621(a)(1) broadly in order to prohibit not only unreasonable refusals to award competitive franchises, but also the establishment of procedures and other requirements that unreasonably interfere with the ability of would-be new entrants to introduce their competitive offerings quickly;

- What specific steps the Commission should take to implement Section 621(a)(1);

- The *NOPR* additionally seeks comment on whether the Commission has the authority to establish a minimum amount of time for potential competitors with existing facilities to build out their networks beyond their current service territories. It also seeks comment on what would constitute a reasonable minimum timeframe; and

- The *NOPR* asks whether the Commission should address actions at the state level, to the extent we find such actions create unreasonable barriers to entry for potential competitors.

Comments were filed on February 13, 2006. Reply comments were filed March 28, 2006. It is unknown when the FCC will make its decision.

State Law

In 1987, the Legislature enacted s. 166.046, F.S., providing minimum standards for cable television franchises. Section 166.046(2), F.S., provides that:

> 2) No municipality or county shall grant a franchise for cable service to a cable system within its jurisdiction without first, at a duly noticed public hearing, having considered:
> (a) The economic impact upon private property within the franchise area;
> (b) The public need for such franchise, if any;
> (c) The capacity of public rights-of-way to accommodate the cable system;
> (d) The present and future use of the public rights-of-way to be used by the cable system;
> (e) The potential disruption to existing users of the public rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public;
> (f) The financial ability of the franchise applicant to perform;
> (g) Other societal interests as are generally considered in cable television franchising; and
> (h) Such other additional matters, both procedural and substantive, as the municipality or county may, in its sole discretion, determine to be relevant.

Moreover, s. 166.046(3), F.S., provides that a municipality or county cannot grant any overlapping cable franchises on terms or conditions that are more favorable or less burdensome than existing franchises.

Cable service is taxed pursuant to the Communications Services Tax (CST) contained in ch. 202, F.S. Cable companies are subject to regulation for the use of rights-of-way under s. 337.401, F.S.

Franchise Agreements

In order to provide cable service in Florida, a cable company is required to obtain a franchise agreement from the LFA, which is either the municipality or the county. The local franchise agreements address issues such as rates, customer service standards, buildout, the number of PEG channels, support for PEG channels, use of rights-of-way, and service to government buildings.

Proposed Changes

The bill creates the "Consumer Choice Act of 2006."

Statewide Cable Franchises

The bill creates ss. 610.102 through 610.116, F.S., to provide for statewide franchising authority.

Section 610.102, F.S., establishes authority within DOS to issue statewide cable franchises, and designates DOS as the state franchising authority, pursuant to 47 U.S.C. s. 522(10). The bill preempts local government authority to negotiate cable service franchises. Additionally, municipalities and or counties are prohibited from granting new franchises for provisioning cable service within their respective jurisdictions.

Definitions

Section 610.103, F.S., provides the following definitions as used in ss. 610.102-610.115, F.S.:

Cable service-(a) The one-way transmission to subscribers of video programming or any other programming service; (b) Subscriber interaction, if any, that is required for the selection of such video programming or other programming service.

Cable system-a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, but such term does not include: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way; (c) a facility that serves subscribers without using any public right-of-way (i.e. satellite service); (d) a facility of a common carrier that is subject, in whole or in part, to the provisions of 47 U.S.C. s. 201 et. seq. (federal common carrier regulation), except the specific bandwidths or wavelengths over such facility shall be considered a cable system only to the extent such bandwidths or wavelengths are used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services (i.e. video programming from internet websites), in which case it is not a cable system; or (e) any facilities of any electric utility used solely for operating its electric utility systems.

With the definition of "cable system" exempting interactive on-demand service, concern has been raised that the definition also creates an exemption from the requirement to obtain a franchise for providers of internet-protocol television (IPTV). However, some providers have argued that IPTV does not trigger local cable franchise requirements. The IPTV technology is an interactive delivery service as opposed to a traditional cable service that provides one-way transmission.[1]

Cable service provider-a person that provides cable service over a cable system.

Certificateholder-a cable service provider that has been issued and holds a certificate of franchise authority from the department.

[1] AT&T and BellSouth Comments to the FCC in MB Docket No. 05-311. February 13, 2006.

Department-the Department of State.

Franchise-an initial authorization or renewal of an authorization, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, to construct and operate a cable system in the public right-of-way.

Franchise authority-any governmental entity empowered by federal, state, or local law to grant a franchise.

Incumbent cable service provider-the cable service provider serving the largest number of cable subscribers in a particular municipal or county franchise area on July 1, 2006.

Public right-of-way-the area on, below, or above a public roadway, highway, street, sidewalk, alley, or waterway, including, without limitation, a municipal, county, state, district, or other public roadway, highway, street, sidewalk, alley, or waterway.

Video programming-programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

State Authorization to Provide Cable Service

Section 610.104, F.S., outlines the procedures and requirements associated with applying to DOS for a state-issued certificate, including applicant criteria and information to be included in the application. The bill provides that after July 1, 2006, an entity or person who seeks to provide cable service, over a cable system, shall file an application with DOS for a state-issued certificate of franchise authority. An incumbent cable provider operating under an unexpired franchise agreement is not subject to this subsection with respect to that municipality or county until the franchise agreement or ordinance expires, except as provided in subsection (2) and s. 610.105(4). Additionally, as of July 1, 2006, an incumbent may seek a state-issued certificate to provide service in an area where it does not have an existing franchise agreement. Concern has been raised that this provision creates an unfair advantage for incumbent providers who are restricted to the terms and conditions of the unexpired franchise agreement.

A cable service provider who is not an incumbent may within 90 days after July 1, 2006,[2] elect to terminate an existing local franchise and seek a state-issued certificate by providing written notice to DOS, and the affected municipality, or county no later than 180 days after July 1, 2006. This non-incumbent provider also is required to provide cable service to less than 40 percent of the total cable service subscribers in a particular franchise area. The franchise is terminated on the date DOS issues the certificate of franchise authority. It is unclear how 40 percent was established as the criteria. Also, no methodology is included for determining the service area percentage or the entity that performs the calculation.

DOS is required to notify the applicant within 10 business days as to whether the application is complete. If DOS denies the application, it must specify the particular reason that it is denying the application and allow the applicant to amend the application to cure the deficiency. The applicant shall be permitted to amend the application to cure any deficiency and DOS shall act upon the amended application within five business days.

By the 15th business day after receiving a completed affidavit signed by an officer of general partner of the applicant, DOS shall issue a certificate of franchise authority. The affidavit shall affirm:

- That the applicant has filed or will timely file with the FCC, all forms required by the agency in advance of offering cable service;

[2] The actual time frame would be between September 29 and December 28, 2006.

- That the applicant agrees to comply with all applicable federal and state laws and regulation, to the extent that such state laws and rules are not in conflict with or superseded by provisions of this chapter or other applicable state law;
- That the applicant agrees to comply with all lawful state laws and regulations regarding the placement and maintenance of communications facilities in public right-of-way that are generally applicable to providers of communications services;
- A description of the service area for which the applicant seeks certificate of franchise authority, which need not be coextensive with municipal, county, or other political boundaries; and
- The location of the applicant's principal place of business and the names of the applicant's principal executive office.

If DOS does not act on an application within 15 business days, the application shall be deemed granted. If an application is denied, the applicant may challenge the denial through a petition of mandamus[3] in a court of competent jurisdiction. Concern has been raised that no financial viability needs to be demonstrated in order for an entity to obtain a state-issued certificate. However, proponents feel the market will determine company success in a franchise area.

The certificate of franchise authority issued by DOS shall contain:

- A grant of authority to provide cable service over a cable system as requested in the application;
- A grant of authority to construct, maintain, and operate facilities through, upon, over, and under any public right-of-way or waters; and
- A statement that the grant of authority is subject to the lawful operation of the cable system to provide cable service to the applicant or successor in interest.

If a certificateholder seeks to include additional service areas in its current certificate, it shall file notice with DOS to reflect the new service area or areas.

Federal law allows franchises to require the franchise authority to approve the sale or transfer of a cable system, and gives the franchise authority 120 days to act upon the request for approval or the approval is deemed granted. (47 U.S.C. s. 537). The bill provides that the certificate issued by DOS is fully transferable to any successor in interest to the applicant to which the certificate was initially granted. The notice of transfer shall be filed with DOS and the relevant municipality or county within 14 business days following the completion of the transfer.

The certificate of franchise authority issued by DOS may be terminated by the cable service provider by written notice. Concern was raised that DOS has no grounds to cancel a certificate of franchise authority.

DOS is granted rulemaking authority pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section. DOS may also establish a standard application form, in which case the application shall be on such form and must be accompanied by a fee. The fee to be established by DOS is not to exceed $150.

Eligibility for State-Issued Franchises

Section 610.105, F.S., establishes, in more detail, eligibility for a state-issued franchise. The bill provides in s. 610.105(1), except as otherwise provided, an incumbent cable service provider with an existing, unexpired cable franchise, as of July 1, 2006, is not eligible to seek a state-issued certificate until the franchise expires.

For purposes of this section, a cable service provider is deemed to have or have had a franchise to provide cable service in a specific municipality or county, if any affiliate or successor entity of the cable service provider has or had a franchise agreement granted, by that specific municipality or county. Also, for

[3] Mandamus is ordering a public agency or government body to perform an act required by law when it has neglected to do so. mandamus. (n.d.) *The People's Law Dictionary*. (2005). Retrieved March 27, 2006 from http://legal-dictionary.thefreedictionary.com/mandamus.

purposes of this section, "affiliate or successor entity" refers to an entity receiving, obtaining, or operating under a franchise that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with the cable service provider.

Section 610.105(4), F.S., provides that an incumbent cable service provider may elect to terminate an existing local franchise agreement and seek a state-issued certificate of franchise authority when another provider has been granted a state-issued certificate for an area located in whole or in part within the service area covered by the incumbent's existing franchise.

Termination of the existing franchise under this subsection is achieved by submitting written notice to DOS, and to the affected municipality or county within 180 days following the issuance of the state certificate to the non-incumbent.

The existing franchise may be terminated by providing written notice to DOS and the municipality or county within 180 days of the issuance of the state-issued certificate to the nonincumbent cable service provider. The franchise issued by the municipality or county is terminated as of the date the state-issued certificate to the non-incumbent provider. Concern has been raised regarding this provision being an unconstitutional impairment of contracts.

Franchise Fees

The Federal Cable Act allows LFAs to assess a franchise fee. The fee is not to exceed five percent of the cable operator's gross revenues derived from the operation of the cable system to provide cable service.

Section 610.106, F.S., prohibits DOS, as well as municipalities and counties from imposing any taxes, fees, charges, or other impositions, or extractions on certificate holders in connection with use of public right-of-way as a condition of doing business in a municipality or county, except those permitted by the Communications Services Tax (ch. 202, F.S.) and the use of the right-of-way (s. 337.401(6), F.S.).

Buildout

Federal law provides that in awarding a franchise, the LFA is required to allow the applicant cable system a reasonable amount of time to become capable of providing cable service to all households in the franchise area.

Section 610.107 prohibits any franchising authority, state agency, or political subdivision from imposing any buildout requirements on a state-issued certificate holder.

Buildout is a requirement in a franchise that requires the cable service provider to provide a service to customers in the local franchise area within a reasonable period of time. According to information provided by local governments, buildout requirements prevent the cable operators from "cherry picking" markets and individual customers within a franchise area. Local governments also argue that the buildout requirements let local governments discourage disparage levels of service in their franchise area.

Customer Service Standards

Federal rules in 47 C.F.R. s. 76.309(c), provide the following minimum cable service standards, which the LFA may enforce with 90 days written notice to the cable provider:

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability--

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week;

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours;
(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day;

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis;

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply;

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time; and

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system;

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem;

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer);

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment; and

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers--

(i) Refunds--Refund checks will be issued promptly, but no later than either--

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits--Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

Currently, many cable franchise agreements and cable television ordinances include customer service provisions. In addition to the above requirements, there may be provisions concerning notice prior to construction, and requiring employees in the field to carry photo identification.

Section 610.608, F.S., requires an incumbent cable service provider to comply with customer service standards reasonably comparable to the federal standards, until there are two or more providers in the relevant service area, excluding direct-to-home satellite service.

On or before January 1, 2009, cable service providers in municipalities or counties that have an office or department dedicated to cable service quality complaints as of January 1, 2006, are to redirect any complaints to DACS. However, until this function is transferred to DACS, these complaints are to be handled by the municipality or county, but this shall not be construed to allow them to impose customer service standards that conflict with s. 610.608, F.S. The bill is silent as to whether or not DACS, prior to January 1, 2009, would handle cable service quality complaints from municipalities and counties that do not have a department or office to handle complaints.

The bill requires DACS to address cable service quality complaints in an expeditious manner by helping resolve the complaint between the complainant and the certificateholder. DACS is granted rulemaking authority to implement this section.

The term "reasonably comparable" is not defined in the bill. Concerns have been raised regarding: 1) DACS' lack of enforcement provisions; and 2) that there is no enforcement mechanism concerning these standards once two or more providers are providing service in a given area whether the standards are abandoned once an area has multiple providers.

Local governments have collected fines from cable operators as a result of violating the customer service provisions of a franchise.

Public, Educational, and Government (PEG) Access Channels

Since the 1984 Cable Act, LFAs may require cable operators to set aside channels for PEG use. In addition, LFAs may require cable operators to provide services, facilities, and equipment for the use of these channels. In general, cable operators are not permitted to control the content of programming PEG channels, but they may impose non-content-based requirements, such as minimum production standards, and they may mandate equipment user training.

PEG channel capacity which is not used for its designated purpose may, with the LFA's permission, be used by the cable operator to provide other services. Under certain conditions, a franchising authority may authorize the use of unused PEG channels to carry low power commercial television stations and local non-commercial educational television stations.

In s. 610.109, F.S., the bill provides detailed requirements for a certificateholder to provide PEG channels or equivalent capacity to municipalities and counties. This section also requires active use of these channels by the municipality or county using a variety of programming or the PEG channels will revert to the certificateholder. Additionally, this section requires interconnection, where technically feasible, between the certificateholder and the incumbent's cable systems for the purpose of providing PEG programming, so long as the programming does not bear the logo or name of the other cable service provider.

Additionally, if a certificateholder is providing cable service within a municipality's or county's jurisdiction, the certificateholder must designate a sufficient amount of capacity for non-commercial programming, as set forth in the bill, within 180 days.

If PEG channels were provided by the incumbent cable provider, the certificateholder must provide the same number of PEG channels supplied by the incumbent, until the expiration of the incumbent's existing franchise agreement or ordinance. For purposes of this section, a PEG channel is deemed activated if the channel is being used for PEG programming within the municipality for at least 10 hours a day.

In a municipality or county receiving any PEG channels, the certificateholder must provide: i) up to three PEG channels for a municipality or county with a population of at least 50,000, or ii) up to two PEG channels for a municipality county with a population of less than 50,000.

If a municipality or county has not used the number of access channels or capacity equivalent to the number described above, access to additional channels or capacity shall be provided upon 180 days written notice, if the municipality or county meets the following standard:

- If the municipality or county has one active PEG channel and wished to activate one additional PEG channel, the initial channel is considered substantially used when it is programmed for 12 hours each calendar day. At least 40 percent of the twelve hours of programming for each business day on average must be nonrepeat programming, which is the first three videocastings of a program; and
- If the municipality or county is entitled to three PEG channels and has in service two active PEG channels, each of the two active channels shall be considered substantially used when 12 hours are programmed on each channel each calendar day and at least 50 percent of the 12 hours for each business day for each calendar quarter is nonrepeat programming for three consecutive quarters.

The operation of any PEG channel or capacity equivalent is the responsibility of the municipality or county receiving the benefit of such channel or capacity equivalent, and a certificateholder is only responsible for the transmission of the channel's content. The certificateholder is responsible for providing the connectivity to each PEG access channel distribution point up to the first 200 feet.

Municipalities and counties are responsible for ensuring that all transmissions, content, or programming transmitted over a channel or facility by a certificateholder are provided or submitted to the cable service provider in a way that is capable of being accepted and transmitted by a provider without any requirement for additional alteration or change in content by the provider, over the particular network or the provider, which is compatible to the protocol utilized by the cable service provider to deliver services. The provision of PEG content to the provider authorizes the provider to carry such content, including, at the provider's option, the authority to carry contents beyond the jurisdictional boundaries of the municipality or county.

Where it is technically feasible, the certificateholder and incumbent cable service provider are to use reasonable efforts to interconnect their cable systems to provide PEG programming. This interconnection may be accomplished through any reasonable means of interconnecting. The certificateholders and incumbent cable service providers are to negotiate in good faith and incumbent cable service providers may not withhold PEG channels.

A certificateholder is not required to interconnect, or otherwise transmit, PEG content that is branded with the identifying mark of another cable service provider, and the municipality or county may require a cable service provider to remove identifying marks from PEG content made available to another provider.

A court of competent jurisdiction has the exclusive jurisdiction to enforce any requirement under this section.

Nondiscrimination by Municipality or County

The bill creates s. 610.110, F.S., which requires a municipality or county to allow a certificate holder, to install, construct, and maintain a network within a public right-of-way and provide the certificateholder with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way in accordance with the state law regulating the use of the right-of-way by utilities.[4] The use of a right-of-way by a certificateholder is nonexclusive.

The municipality or county also may not discriminate against a certificateholder regarding the authorization or placement of a network in a public right-of-way, access to buildings or other property, or the terms of utility pole attachments.

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[4] S. 337.401, F.S.

Limitations on Local Authority

Section 610.112, F.S., prohibits a municipality or county from imposing additional requirements, except those expressly permitted by this chapter, on certificateholders, including financial, operational, and administrative requirements. A municipality or county may not impose on a certificateholder requirements for:

- Having business offices located in the municipality or county;
- Filing reports and documents with the municipality or county that are not required by state or federal law and are not related to the use of the public right-of-way;
- The inspection of a certificateholder's business records; and
- The approval of a transfer of ownership or control, but the municipality or county may require a notice of transfer within a reasonable time.

The municipality or county may require a permit for a certificateholder to place and maintain facilities in or on a public right-of-way. The permit may require the permitholder, at its own expense, to be responsible for any damage resulting from the issuance of a permit, and for restoring the public right-of-way to a substantially similar condition to that before such facilities were installed. The terms of the permit shall be consistent with construction permits issued to other providers of communications services placing or maintaining facilities in a public right-of-way.

Discrimination Prohibited

Section 610.113, F.S., prohibits a certificateholder from denying access to service (redlining) to potential residential subscriber because of the income of the residents in the local area where such group resides, which conforms to federal law. Enforcement may be sought by initiating a proceeding with DACS, pursuant to its powers of processing complaints in s. 570.544, F.S. Section 577.544(3), F.S., reads in part:

> [T]he Division of Consumer Services shall serve as a clearinghouse for matters relating to consumer protection, consumer information, and consumer services generally. It shall receive complaints and grievances from consumers and promptly transmit them to that agency most directly concerned in order that the complaint or grievance may be expeditiously handled in the best interests of the complaining consumer. If no agency exists, the Division of Consumer Services shall seek a settlement of the complaint using formal or informal methods of mediation and conciliation and may seek any other resolution of the matter in accordance with its jurisdiction.

In determining whether a certificateholder has violated the above provision, cost, distance, and technological or commercial limitations shall be taken into account, and the certificate holder shall have a reasonable time to deploy service pursuant to federal law. It may not be considered a violation to use an alternative technology that provides comparable content, service, and functionality. The inability to access a building is also not considered a violation. The section is not to be construed to authorize any buildout requirements. DACS is required to adopt the procedural rules necessary to implement this section.

While the bill prohibits discrimination based on income (redlining), concern was raised that the bill does not prohibit a certificateholder from refusing to serve a certain area due to other factors such as it being uneconomical to serve a specific area ("cherry picking").

Compliance

Section 610.114, F.S., provides that if a court finds a certificateholder to be in noncompliance with any requirements of ch. 610, F.S., the certificateholder shall have a reasonable amount of time, as specified by the court, to cure such noncompliance.

Applicability of Other Laws

Section 610.115, F.S., provides that a provider of video programming that is not a cable service provider does not have its rights impaired by ch. 610, F.S.

Reports to the Legislature

Section 610.116, F.S., provides that by December 1, 2009, the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) is to submit a report to the President of the Senate, Speaker of the House of Representatives, and the majority and minority leaders of the Senate and the House of Representatives on the status of competition in the cable service industry. This report shall include, by municipality and county, the number of cable service providers, the number of cable subscribers served, and the number of areas served by fewer than two cable service providers. The report is to also include the trend in cable prices, and the identification of any patterns of service as they impact demographic and income groups.

Severability

Section 610.117, F.S., provides that if any provision of ch. 610, F.S., or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of ch. 610, F.S., that can be given effect without the invalid provision or application, and the provisions of ch. 610, F.S., are severable.

Communications Services Tax

The bill amends the CST provisions in s. 202.24 (a) and (c), F.S., to conform to the provisions of the bill. Municipalities and counties are prohibited from negotiating the terms and conditions related to franchise fees, the definition of gross revenues, or other definitions or methodologies related to the payment of franchise fees on providers of cable service.

Additionally, the provision relating to in-kind contributions only applies to cable ordinances or franchise agreements that are in effect prior to July 1, 2006.

Use of Right-of-Way

The bill amends s. 377.041(3), F.S., relating to the use of the right-of-way to conform to the provisions of the bill. Section 377.041(3)(a)2, F.S., is repealed. This section related to the awarding of cable franchises by municipalities and counties.

Section 337.4061, F.S., is amended to make conforming changes, including definitions.

Repeal of s. 166.046

The bill repeals s. 166.046, F.S., which is the current cable service franchise law that provided minimum standards for cable television franchises imposed upon municipalities and counties.

Conforming Statutes

Sections 358.81(3)(a) and 364.0361, F.S., are amended to conform to other statutory changes.

Effective Date

This act shall take effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Provides a short title.

Section 2. Amends s. 202.24(a) and (c), F.S., relating to limitations of local taxes and fees imposed on dealers of communications services.

Section 3. Amends s. 366.401(3)(a), (e), and (f), F.S, relating to use of right-of-way for utilities subject to regulation; permit; fees.

Section 4. Amends s. 337.4061, F.S., relating to definitions; unlawful use of state-maintained road right-of-way by nonfranchised cable services.

Section 5. Creating ss. 610.102, 610.103, 610.104, 610.105, 610.106, 610.107, 610.108, 610.109, 610.110, 610.112, 610.113, 610.114, 610.115, 610.116, and 610.117, F.S., creating a statewide cable franchise authority.

Section 6. Repeals s. 166.046, F.S., relating to cable television franchises.

Section 7. Amends s. 350.81(3)(a), F.S., relating to communications services offered by governmental entities.

Section 8. Amends s. 364.0361, F.S., relating to local government authority; nondiscriminatory exercise.

Section 9. Provides that this act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill allows DOS to impose an application fee of up to $150 for each application for a state-issued cable franchise. However, it is unknown how many franchise applications will be filed.

2. Expenditures:

According to DOS, its estimated first-year operating cost would be $850,116, with $83,888 of that being non-recurring costs. This estimate is based on establishing a new filing section within the Division of Corporations with 16 full-time equivalent positions. These figures apply if DOS' function is ministerial in nature. DOS may incur additional expenditures if it is required to litigate the denial of any certificate or establish rules to implement this law.

According to DACS, its section that attempts to informally resolve complaints against unregulated entities currently has five full-time equivalent positions and receives approximately 25,000 annual complaints. DACS estimates it will need one full-time equivalent position for approximately every 5,000 additional complaints received.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that, over time, this bill will have a statewide indeterminate fiscal impact in local governments of at least $30.0 million, with the potential to be significantly higher.

2. Expenditures:

According to local governments, they could potentially lose tens of millions of dollars in capital grants, facilities, and services that cable operators currently provide under franchise agreements. Federal law allows local governments to negotiate numerous benefits from cable operators, including PEG channels provided at no charge, free installation and service to government buildings, free or advantageously priced institutional networks and capital grants. While these benefits are permitted by federal law, the bill would eliminate them. While the bill would eliminate a local government's right to negotiate for these services, it does not eliminate the need for these services, and the local government will need to find the funds to pay for these services.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Instead of obtaining a cable franchise from each municipality or county where it wishes to provide service, an entity wishing to provide cable service will only need to obtain a state-issued certificate of franchise authority. This one-stop franchise process could potentially save applicants thousands of dollars.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill reduces the authority that cities and counties have to raise revenues in the aggregate by preempting the authority of cities and counties to negotiate franchise agreements. The Revenue Estimating Conference has estimated that the provisions of this bill will reduce, over time, the amount of revenues received by cities and counties by an amount in excess of $30.0 million annually. No exemptions apply. Therefore, the bill may be a mandate requiring a two-thirds vote of the membership of each house.

2. Other:

Impairment of Contracts

The bill allows cable operators to unilaterally terminate their franchise agreements with municipalities and counties if certain conditions are met. These provisions may be an unconstitutional impairment of contracts under the United States and Florida Constitutions. Staff was provided much of the following legal information by the proponents and the opponents of the bill.

Local Government Authority to Establish Franchises

Among the things to consider in determining whether or not provisions in the bill constitute an unconstitutional impairment of contracts is where municipalities and counties receive their authority from to issue cable franchises.

An argument was raised that since the state gave the local governments the authority to grant cable franchises, the state can take this authority away. The statutory definition of "franchising authority" is "any governmental entity empowered by federal, state, or local law to grant a franchise" (see ss. 166.046 and 337.4061, F.S.). While s. 166.046(2), F.S., requires a public hearing and certain things to be considered prior to municipalities and counties granting a cable television franchise, there is nothing in the statute that declares the municipalities and counties as the LFAs.

Moreover, another argument was made that municipalities and counties receive their franchising authority from federal law. Federal law generally prohibits cable operators from providing cable service without a franchise, 47 U.S.C. s. 541(b)(1).[5] However, nothing in federal or state law specifically declares that municipalities and counties are the franchising authority for the provision of cable service. Since neither the federal nor state governments have assumed the role of issuing cable franchises, it has fallen on the municipalities and counties to become the LFAs.

Local Government Standing to Challenge State Statute

Another question raised is whether or not the municipalities and counties would have standing to challenge the constitutionality of a state statute.

The argument was raised that case law well establishes that subordinates of a state do not have standing to challenge a state's action under the federal contacts clauses contained in Article I, Section 10 of the United States Constitution. See *Williams v. Mayor of Baltimore*, 289 U.S. 36, 40 (1933), and *American Association of People with Disabilities v. Shelley*, 324 F. Supp. 2d 1120, 1131 (C.D. Cal. 2004). Additional information was provided and it appears a federal appeals court was "unable to find a single federal case *holding* that a city cannot sue its parent state for impairing a contract between the city and a third party." See *City of Charleston v. Public Service Commission of West Virginia*, 57 F.3d 385, 389-390 (4th Cir. 1995) (emphasis in original).

It appears that the Florida Supreme Court has never addressed the issue of whether or not a city or county can challenge the constitutionality of a state statute.[6] Lower state courts have ruled that "[s]tate officers and agencies must presume legislation affecting their duties to be valid and *do not have standing to initiate litigation for the purpose of determining otherwise. Florida Department of Agriculture and Consumer Services v. Miami-Dade County,* 790 So.2d 555, 558 (Fla. 3d DCA 2001), quoting *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982). However, a state agency or officer may defensively raise the constitutionality of a statute if litigation is brought against it. *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982). There also appears to be an exception if the law being challenged involves the disbursement of public funds. *Fuchs v. Robbins*, 818 So.2d 460, 464 (Fla. 2002).

Contract Impairment

Concern was raised that instead of challenging the constitutionality of the bill, a municipality or county is more likely to sue a franchisee who terminates its franchise under the provisions of this statute for breach of contract. While the franchisee would argue that this new statute allows it to terminate its franchise agreement with the municipality or county, the municipality or county would argue that the statute is an unconstitutional impairment of contracts.

Concerning the impairment of contracts, the Florida Supreme Court has determined that "[a]ny conduct on the part of the legislature that detracts in any way from the value of a contract is inhibited by the Constitution." See *Dewberry v. Auto-Owners Insurance Company*, 363 So.2d 1077,

[5] There is an exception for persons lawfully providing cable service without a franchise prior to July 1, 1984, unless required to do so by the franchising authority.

[6] When the question of whether or not a county would have standing to challenge the constitutionality of a state statute was certified to the Florida Supreme Court in 1995, the case was resolved on another issue and the court did not address the certified question. *Santa Rosa County v. Administration Commission, Division of Administrative Hearings*, 661 So.2d 1190 (Fla. 1995).

1080 (Fla. 1978). Florida courts have also established that "[v]irtually no degree of contract impairment has been tolerated in this state." *Yamaha Parts Distributors, Inc. v. Ehrman*, 316 So. 2d. 557, 559 (Fla. 1975). In determining how much impairment it is willing to tolerate, the Florida Supreme Court has stated:

> [W]e must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy. Obviously, this becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree that is necessary to achieve that objective. *Pomponio v. Claridge of Pompano Condominium, Inc.* 378 So.2d 774, 780 (Fla. 1979).

While the cases above, were based on contracts between private parties, there is some case law concerning the Legislature's authority to impair the state's own contracts. The Florida Supreme Court has ruled that the Legislature once accepted and funded a collective bargaining agreement, "the state and all its organs are bound by that agreement under the principles of contract law." *Chiles v. United Faculty of Florida*, 615 So.2d 671, 673 (Fla. 1993). In this case, after ratifying the collective bargaining agreement in response to a fiscal emergency, the Legislature postponed, then terminated a scheduled pay-raise. The Supreme Court determined that while the Legislature has the authority to reduce an appropriation related to a collective bargaining agreement, it can only do so when it demonstrates a compelling state interest. However, before exercising this authority:

> [T]he legislature must demonstrate that no other reasonable alternative means of preserving its contract with public workers, either in whole or in part. The mere fact that it is politically more expedient to eliminate all or part of the contracted funds is not in itself a compelling reason. Rather, the legislature must demonstrate that funds are from no other possible reasonable source. *Chiles at 673.*

In the *Chiles* case, the state interest of the Legislature trying to remedy a $700 million budget shortfall, the Supreme Court determined that the budget shortfall was not sufficient reason for the state to impair the collective bargaining agreement.

If the courts have ruled that both a compelling state interest and no other remedy are required elements before the Legislature can impair the state's contracts, it could be argued that both elements are required before the Legislature and could impair the contract of a municipality or county.

Home Rule

Article VIII of the Florida Constitution gives municipalities and counties broad "home rule" power, which gives them the authority to enact an ordinance for any public purpose; however, state law prevails when there is a conflict between state law and local law.

Under home rule powers, municipalities and counties have established cable ordinances. These ordinances address the specific needs of the community including demographics, buildout, specific needs for PEG channels, safety and customer services issues.

With the proposed legislation, the bill would remove a municipality or county's authority over cable service, including ordinances and cable franchise provisions that address the specific needs of the community.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is granted to DOS to implement the provisions of issuing state-issued certificates of franchise authority. Rulemaking authority is also granted to DACS to adopt procedural rules relating to the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments

It is unclear whether DOS will need enforcement authority, such as the ability to revoke certificates.

DOS has raised concern that a 15 business day turnaround on approving applications may be difficult to accomplish.

DOS has also raised the concern about whether it will be able to implement to provisions of this bill by July 1, 2006, especially if it is required to apply the federal cable regulations (47 U.S.C. s. 541 et, seq.).

Concern was raised about perpetual noncompliance. Section 610.114, F.S., provides that once a court determines that a certificateholder is not in compliance with the chapter's requirements, the certificateholder has a reasonable period of time to cure the noncompliance. However, there is no additional enforcement mechanism if the certificateholder continues to be in noncompliance.

The bill does not provide an appropriation to DOS for the administration of the act; however it does allow DOS to charge an application fee. There is also no appropriation to DACS for additional staffing to handle complaints concerning cable television.

While the bill allows municipalities and counties who currently have offices or departments dedicated to cable service quality complaints to continue handling those complaints until July 1, 2009, the bill is silent as to whether DACS is to handle complaints from municipalities and counties who do not have offices or departments dedicated to that function.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Utilities & Telecommunications Committee adopted six amendments. The amendments did the following:

- Revised the threshold for when an incumbent cable service provider can obtain a state-issued franchise. The original bill required cable service provider, other than the incumbent, to obtain a state-issued cable franchise for a service area that covers at least 50 percent of the households in the franchise area. The amendment required another cable service provider, other than the incumbent, to obtain a state-issued cable franchise in area located in whole or in part of the franchise area of the incumbent cable service provider;
- Provided for a transition period from July 1, 2006 to July 1, 2009 for municipalities and counties that have offices which handle cable service complaints to transfer this function to DACS;
- Required OPPAGA to submit a report to the Legislature on the status of competition in the cable industry by December 31, 2009;
- Allowed DOS to adopt procedural rules necessary to implement the act. DOS may also establish a standard application form, and impose an application fee not to exceed $150;
- Required DACS to expeditiously address customer service complaints, and required DACS to adopt procedural rules to implement this requirement; and
- Required DACS to adopt procedural rules to implement the section related to discrimination.

CHAMBER ACTION

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1 The Utilities & Telecommunications Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to statewide cable television franchises;
8 providing a short title; amending s. 202.24, F.S.;
9 prohibiting counties and municipalities from negotiating
10 terms and conditions relating to cable services; deleting
11 authorization to negotiate; revising application to
12 existing ordinances or franchise agreements; amending s.
13 337.401, F.S.; deleting authorization for counties and
14 municipalities to award cable service franchises and a
15 restriction that cable service companies not operate
16 without such a franchise; amending s. 337.4061, F.S.;
17 revising definitions; creating ss. 610.102, 610.103,
18 610.104, 610.105, 610.106, 610.107, 610.108, 610.109,
19 610.110, 610.112, 610.113, 610.114, 610.115, 610.116, and
20 610.117, F.S.; designating the Department of State as the
21 authorizing authority; providing definitions; requiring
22 state authorization to provide cable services; providing
23 duties and responsibilities of the Department of State;

24 providing application procedures and requirements;
25 providing for issuing certificates of franchise authority;
26 providing eligibility requirements and criteria for a
27 certificate; authorizing the department to adopt rules;
28 providing for an application form and fee; prohibiting the
29 department from imposing taxes, fees, or charges on a
30 cable service provider to issue a certificate; prohibiting
31 imposing buildout requirements on a certificateholder;
32 imposing certain customer service requirements on cable
33 service providers; requiring the Department of Agriculture
34 and Consumer Services to receive customer service
35 complaints; requiring provision of public, educational,
36 and governmental access channels or capacity equivalent;
37 providing criteria, requirements, and procedures;
38 providing exceptions; providing responsibilities of
39 municipalities and counties relating to such channels;
40 providing for enforcement; providing requirements for and
41 limitations on counties and municipalities relating to
42 access to public right-of-way; prohibiting counties and
43 municipalities from imposing additional requirements on
44 certificateholders; authorizing counties and
45 municipalities to require permits of certificateholders
46 relating to public right-of-way; providing permit criteria
47 and requirements; prohibiting discrimination between cable
48 service subscribers; providing for enforcement; providing
49 for determinations of violations; providing for
50 enforcement of compliance by certificateholders; providing
51 for applicability of other laws; requiring the Office of

52 Program Policy Analysis and Government Accountability to
53 report to the Legislature on the status of competition in
54 the cable service industry; providing report requirements;
55 providing severability; repealing s. 166.046, F.S.,
56 relating to definitions and minimum standards for cable
57 television franchises imposed upon counties and
58 municipalities; amending ss. 350.81 and 364.0361, F.S.;
59 removing cross-references to conform; providing an
60 effective date.
61
62 Be It Enacted by the Legislature of the State of Florida:
63
64 Section 1. <u>This act may be cited as the "Consumer Choice</u>
65 <u>Act of 2006."</u>
66 Section 2. Paragraphs (a) and (c) of subsection (2) of
67 section 202.24, Florida Statutes, are amended to read:
68 202.24 Limitations on local taxes and fees imposed on
69 dealers of communications services.--
70 (2)(a) Except as provided in paragraph (c), each public
71 body is prohibited from:
72 1. Levying on or collecting from dealers or purchasers of
73 communications services any tax, charge, fee, or other
74 imposition on or with respect to the provision or purchase of
75 communications services.
76 2. Requiring any dealer of communications services to
77 enter into or extend the term of a franchise or other agreement
78 that requires the payment of a tax, charge, fee, or other
79 imposition.

80 3. Adopting or enforcing any provision of any ordinance or
81 agreement to the extent that such provision obligates a dealer
82 of communications services to charge, collect, or pay to the
83 public body a tax, charge, fee, or other imposition.
84
85 Municipalities and counties may not negotiate ~~Each municipality~~
86 ~~and county retains authority to negotiate all terms and~~
87 ~~conditions of a cable service franchise allowed by federal and~~
88 ~~state law except those~~ terms and conditions related to franchise
89 fees or ~~and~~ the definition of gross revenues or other
90 definitions or methodologies related to the payment or
91 assessment of franchise fees on providers of cable services.
92 (c) This subsection does not apply to:
93 1. Local communications services taxes levied under this
94 chapter.
95 2. Ad valorem taxes levied pursuant to chapter 200.
96 3. Occupational license taxes levied under chapter 205.
97 4. "911" service charges levied under chapter 365.
98 5. Amounts charged for the rental or other use of property
99 owned by a public body which is not in the public rights-of-way
100 to a dealer of communications services for any purpose,
101 including, but not limited to, the placement or attachment of
102 equipment used in the provision of communications services.
103 6. Permit fees of general applicability which are not
104 related to placing or maintaining facilities in or on public
105 roads or rights-of-way.

106 7. Permit fees related to placing or maintaining
107 facilities in or on public roads or rights-of-way pursuant to s.
108 337.401.
109 8. Any in-kind requirements, institutional networks, or
110 contributions for, or in support of, the use or construction of
111 public, educational, or governmental access facilities allowed
112 under federal law and imposed on providers of cable service
113 pursuant to any existing ordinance or an existing franchise
114 agreement granted by each municipality or county, under which
115 ordinance or franchise agreement service is provided prior to
116 July 1, 2006. Nothing in this subparagraph shall prohibit the
117 ability of providers of cable service to recover such expenses
118 as allowed under federal law.
119 9. Special assessments and impact fees.
120 10. Pole attachment fees that are charged by a local
121 government for attachments to utility poles owned by the local
122 government.
123 11. Utility service fees or other similar user fees for
124 utility services.
125 12. Any other generally applicable tax, fee, charge, or
126 imposition authorized by general law on July 1, 2000, which is
127 not specifically prohibited by this subsection or included as a
128 replaced revenue source in s. 202.20.
129 Section 3. Paragraphs (a), (e), and (f) of subsection (3)
130 of section 337.401, Florida Statutes, are amended to read:
131 337.401 Use of right-of-way for utilities subject to
132 regulation; permit; fees.--

133 (3)(a)~~1.~~ Because of the unique circumstances applicable to
134 providers of communications services, including, but not limited
135 to, the circumstances described in paragraph (e) and the fact
136 that federal and state law require the nondiscriminatory
137 treatment of providers of telecommunications services, and
138 because of the desire to promote competition among providers of
139 communications services, it is the intent of the Legislature
140 that municipalities and counties treat providers of
141 communications services in a nondiscriminatory and competitively
142 neutral manner when imposing rules or regulations governing the
143 placement or maintenance of communications facilities in the
144 public roads or rights-of-way. Rules or regulations imposed by a
145 municipality or county relating to providers of communications
146 services placing or maintaining communications facilities in its
147 roads or rights-of-way must be generally applicable to all
148 providers of communications services and, notwithstanding any
149 other law, may not require a provider of communications
150 services~~, except as otherwise provided in subparagraph 2.,~~ to
151 apply for or enter into an individual license, franchise, or
152 other agreement with the municipality or county as a condition
153 of placing or maintaining communications facilities in its roads
154 or rights-of-way. In addition to other reasonable rules or
155 regulations that a municipality or county may adopt relating to
156 the placement or maintenance of communications facilities in its
157 roads or rights-of-way under this subsection, a municipality or
158 county may require a provider of communications services that
159 places or seeks to place facilities in its roads or rights-of-
160 way to register with the municipality or county and to provide

161 the name of the registrant; the name, address, and telephone
162 number of a contact person for the registrant; the number of the
163 registrant's current certificate of authorization issued by the
164 Florida Public Service Commission, ~~or~~ the Federal Communications
165 Commission, or the Florida Department of State; and proof of
166 insurance or self-insuring status adequate to defend and cover
167 claims.
168 ~~2. Notwithstanding the provisions of subparagraph 1., a~~
169 ~~municipality or county may, as provided by 47 U.S.C. s. 541,~~
170 ~~award one or more franchises within its jurisdiction for the~~
171 ~~provision of cable service, and a provider of cable service~~
172 ~~shall not provide cable service without such franchise. Each~~
173 ~~municipality and county retains authority to negotiate all terms~~
174 ~~and conditions of a cable service franchise allowed by federal~~
175 ~~law and s. 166.046, except those terms and conditions related to~~
176 ~~franchise fees and the definition of gross revenues or other~~
177 ~~definitions or methodologies related to the payment or~~
178 ~~assessment of franchise fees and permit fees as provided in~~
179 ~~paragraph (c) on providers of cable services. A municipality or~~
180 ~~county may exercise its right to require from providers of cable~~
181 ~~service in-kind requirements, including, but not limited to,~~
182 ~~institutional networks, and contributions for, or in support of,~~
183 ~~the use or construction of public, educational, or governmental~~
184 ~~access facilities to the extent permitted by federal law. A~~
185 ~~provider of cable service may exercise its right to recover any~~
186 ~~such expenses associated with such in-kind requirements, to the~~
187 ~~extent permitted by federal law.~~

188 (e) The authority of municipalities and counties to
189 require franchise fees from providers of communications
190 services, with respect to the provision of communications
191 services, is specifically preempted by the state~~, except as~~
192 ~~otherwise provided in subparagraph (a)2.,~~ because of unique
193 circumstances applicable to providers of communications services
194 when compared to other utilities occupying municipal or county
195 roads or rights-of-way. Providers of communications services may
196 provide similar services in a manner that requires the placement
197 of facilities in municipal or county roads or rights-of-way or
198 in a manner that does not require the placement of facilities in
199 such roads or rights-of-way. Although similar communications
200 services may be provided by different means, the state desires
201 to treat providers of communications services in a
202 nondiscriminatory manner and to have the taxes, franchise fees,
203 and other fees paid by providers of communications services be
204 competitively neutral. Municipalities and counties retain all
205 existing authority, if any, to collect franchise fees from users
206 or occupants of municipal or county roads or rights-of-way other
207 than providers of communications services, and the provisions of
208 this subsection shall have no effect upon this authority. The
209 provisions of this subsection do not restrict the authority, if
210 any, of municipalities or counties or other governmental
211 entities to receive reasonable rental fees based on fair market
212 value for the use of public lands and buildings on property
213 outside the public roads or rights-of-way for the placement of
214 communications antennas and towers.

215 (f) Except as expressly allowed or authorized by general
216 law and except for the rights-of-way permit fees subject to
217 paragraph (c), a municipality or county may not levy on a
218 provider of communications services a tax, fee, or other charge
219 or imposition for operating as a provider of communications
220 services within the jurisdiction of the municipality or county
221 which is in any way related to using its roads or rights-of-way.
222 A municipality or county may not require or solicit in-kind
223 compensation, except as otherwise provided in s. 202.24(2)(c)8.
224 or s. 610.109 ~~subparagraph (a)2~~. Nothing in this paragraph shall
225 impair any ordinance or agreement in effect on May 22, 1998, or
226 any voluntary agreement entered into subsequent to that date,
227 which provides for or allows in-kind compensation by a
228 telecommunications company.
229 Section 4. Section 337.4061, Florida Statutes, is amended
230 to read:
231 337.4061 Definitions; unlawful use of state-maintained
232 road right-of-way by nonfranchised cable ~~television~~ services.--
233 (1) As used in this section, the term:
234 (a) "Cable service" means:
235 1. The one-way transmission to subscribers of video
236 programming or any other programming service; and
237 2. Subscriber interaction, if any, which is required for
238 the selection of such video programming or other programming
239 service.
240 (b) "Cable system" means a facility, consisting of a set
241 of closed transmission paths and associated signal generation,
242 reception, and control equipment that is designed to provide

243 cable service which includes video programming and which is
244 provided to multiple subscribers within a community, but such
245 term does not include:
246 1. A facility that serves only to retransmit the
247 television signals of one or more television broadcast stations;
248 2. A facility that serves only subscribers in one or more
249 multiple-unit dwellings under common ownership, control, or
250 management, unless such facility or facilities use any public
251 right-of-way;
252 3. A facility that serves subscribers without using any
253 public right-of-way;
254 4.~~3.~~ A facility of a common carrier that is subject, in
255 whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,
256 except the specific bandwidths or wavelengths used by ~~that~~ such
257 facility shall be considered a cable system only to the extent
258 such bandwidths or wavelengths are ~~facility is~~ used in the
259 transmission of video programming directly to subscribers,
260 unless the extent of such use is solely to provide interactive
261 on-demand services, in which case the use of such bandwidths or
262 wavelengths is not a cable system; or
263 5.~~4.~~ Any facilities of any electric utility used solely
264 for operating its electric utility systems.
265 (c) "Franchise" means an initial authorization or renewal
266 thereof issued by a franchising authority, whether such
267 authorization is designated as a franchise, permit, license,
268 resolution, contract, certificate, agreement, or otherwise,
269 which authorizes the construction or operation of a cable
270 system.

271 (d) "Franchising authority" means any governmental entity
272 empowered by federal, state, or local law to grant a franchise.
273 (e) "Person" means an individual, partnership,
274 association, joint stock company, trust, corporation, or
275 governmental entity.
276 (f) "Video programming" means programming provided by or
277 generally considered comparable to programming provided by a
278 television broadcast station or cable system.
279 (2) It is unlawful to use the right-of-way of any state-
280 maintained road, including appendages thereto, and also
281 including, but not limited to, rest areas, wayside parks, boat-
282 launching ramps, weigh stations, and scenic easements, to
283 provide for cable service over a cable system ~~purposes~~ within a
284 geographic area subject to a valid existing franchise for cable
285 service, unless the cable system using such right-of-way holds a
286 franchise from a franchise authority ~~the municipality or county~~
287 for the area in which the right-of-way is located.
288 (3) A violation of this section shall be deemed a
289 violation of s. 337.406.
290 Section 5. Sections 610.102, 610.103, 610.104, 610.105,
291 610.106, 610.107, 610.108, 610.109, 610.110, 610.112, 610.113,
292 610.114, 610.115, 610.116, and 610.117, Florida Statutes, are
293 created to read:
294 610.102 Department of State authority to issue statewide
295 cable franchise.--The department shall be designated as the
296 franchising authority, pursuant to 47 U.S.C. s. 522(10), for a
297 state-issued franchise for the provision of cable service. A

298 municipality or county may not grant a new franchise for the
299 provision of cable service within its jurisdiction.
300 610.103 Definitions.--As used in ss. 610.102-610.115:
301 (1) "Cable service" means:
302 (a) The one-way transmission to subscribers of video
303 programming or any other programming service.
304 (b) Subscriber interaction, if any, that is required for
305 the selection of such video programming or other programming
306 service.
307 (2) "Cable system" means a facility consisting of a set of
308 closed transmission paths and associated signal generation,
309 reception, and control equipment that is designed to provide
310 cable service that includes video programming and that is
311 provided to multiple subscribers within a community, but such
312 term does not include:
313 (a) A facility that serves only to retransmit the
314 television signals of one or more television broadcast stations;
315 (b) A facility that serves only subscribers in one or more
316 multiple-unit dwellings under common ownership, control, or
317 management, unless such facility or facilities use any public
318 right-of-way;
319 (c) A facility that serves subscribers without using any
320 public right-of-way;
321 (d) A facility of a common carrier that is subject, in
322 whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,
323 except the specific bandwidths or wavelengths over such facility
324 shall be considered a cable system only to the extent such
325 bandwidths or wavelengths are used in the transmission of video

326 programming directly to subscribers, unless the extent of such
327 use is solely to provide interactive on-demand services, in
328 which case it is not a cable system; or
329 (e) Any facilities of any electric utility used solely for
330 operating its electric utility systems.
331 (3) "Cable service provider" means a person that provides
332 cable service over a cable system.
333 (4) "Certificateholder" means a cable service provider
334 that has been issued and holds a certificate of franchise
335 authority from the department.
336 (5) "Department" means the Department of State.
337 (6) "Franchise" means an initial authorization or renewal
338 of an authorization, regardless of whether the authorization is
339 designated as a franchise, permit, license, resolution,
340 contract, certificate, agreement, or otherwise, to construct and
341 operate a cable system in the public right-of-way.
342 (7) "Franchise authority" means any governmental entity
343 empowered by federal, state, or local law to grant a franchise.
344 (8) "Incumbent cable service provider" means the cable
345 service provider serving the largest number of cable subscribers
346 in a particular municipal or county franchise area on July 1,
347 2006.
348 (9) "Public right-of-way" means the area on, below, or
349 above a public roadway, highway, street, sidewalk, alley, or
350 waterway, including, without limitation, a municipal, county,
351 state, district, or other public roadway, highway, street,
352 sidewalk, alley, or waterway.

353 (10) "Video programming" means programming provided by, or
354 generally considered comparable to programming provided by, a
355 television broadcast station as set forth in 47 U.S.C. s.
356 522(20).
357 610.104 State authorization to provide cable service.--
358 (1) An entity or person seeking to provide cable service
359 over a cable system in this state after July 1, 2006, shall file
360 an application for a state-issued certificate of franchise
361 authority with the department as required by this section. An
362 entity providing cable service under an unexpired franchise
363 agreement with a municipality or county as of July 1, 2006, is
364 not subject to this subsection with respect to such municipality
365 or county until the franchise agreement expires, except as
366 provided by subsection (2) and s. 610.105(4). An entity
367 providing cable service may seek authorization from the
368 department to provide service in areas where the entity
369 currently does not have an existing franchise agreement as of
370 July 1, 2006.
371 (2) Beginning 90 days after July 1, 2006, a cable service
372 provider that is not an incumbent cable service provider and
373 provides cable service to less than 40 percent of the total
374 cable service subscribers in a particular franchise area may
375 elect to terminate an existing municipal or county franchise and
376 seek a state-issued certificate of franchise authority by
377 providing written notice to the Secretary of State and the
378 affected municipality or county not later than 180 days after
379 July 1, 2006. The municipal or county franchise is terminated on

380 the date the department issues the state-issued certificate of
381 franchise authority.
382 (3) Before the 10th business day after an applicant
383 submits the affidavit, the department shall notify the applicant
384 for a state-issued certificate of franchise authority whether
385 the applicant's affidavit described by subsection (4) is
386 complete. If the department denies the application, the
387 department must specify with particularity the reasons for the
388 denial and permit the applicant to amend the application to cure
389 any deficiency. The department shall act upon such amended
390 application within 5 business days.
391 (4) The department shall issue a certificate of franchise
392 authority to offer cable service before the 15th business day
393 after receipt of a completed affidavit submitted by an applicant
394 and signed by an officer or general partner of the applicant
395 affirming:
396 (a) That the applicant has filed or will timely file with
397 the Federal Communications Commission all forms required by that
398 agency in advance of offering cable service in this state.
399 (b) That the applicant agrees to comply with all
400 applicable federal and state laws and regulations, to the extent
401 that such state laws and rules are not in conflict with or
402 superseded by the provisions of this chapter or other applicable
403 state law.
404 (c) That the applicant agrees to comply with all lawful
405 state laws and rules and municipal and county ordinances and
406 regulations regarding the placement and maintenance of
407 communications facilities in the public right-of-way that are

408 generally applicable to providers of communications services in
409 accordance with s. 337.401.
410 (d) A description of the service area for which the
411 applicant seeks certificate of franchise authority, which need
412 not be coextensive with municipal, county, or other political
413 boundaries.
414 (e) The location of the applicant's principal place of
415 business and the names of the applicant's principal executive
416 officers.
417 (5) If the department fails to act on the application
418 within 15 business days after receiving the application, the
419 application shall been deemed granted by the department without
420 further action.
421 (6) The certificate of franchise authority issued by the
422 department shall contain:
423 (a) A grant of authority to provide cable service over a
424 cable system as requested in the application.
425 (b) A grant of authority to construct, maintain, and
426 operate facilities through, upon, over, and under any public
427 right-of-way or waters.
428 (c) A statement that the grant of authority is subject to
429 lawful operation of the cable system to provide cable service by
430 the applicant or its successor in interest.
431 (7) A certificateholder that seeks to include additional
432 service areas in its current certificate shall file notice with
433 the department that reflects the new service area or areas to be
434 served.

435 (8) The certificate of franchise authority issued by the
436 department is fully transferable to any successor in interest to
437 the applicant to which the certificate is initially granted. A
438 notice of transfer shall be filed with the department and the
439 relevant municipality or county within 14 business days
440 following the completion of such transfer.
441 (9) The certificate of franchise authority issued by the
442 department may be terminated by the cable service provider by
443 submitting notice to the department.
444 (10) An applicant may challenge a denial of an application
445 by the department in a court of competent jurisdiction through a
446 petition for mandamus.
447 (11) The department shall adopt any procedural rules
448 pursuant to ss. 120.536(1) and 120.54 necessary to implement
449 this section.
450 (12) The department may establish a standard application
451 form, in which case the application shall be on such form and
452 must be accompanied by a fee, not to exceed $150, to be
453 established by the department.
454 610.105 Eligibility for state-issued franchise.--
455 (1) Except as provided in s. 610.104(1) and (2) and
456 subsection (4), a cable service provider that has an existing,
457 unexpired franchise to provide cable service with respect to a
458 municipality or county as of July 1, 2006, is not eligible to
459 seek a state-issued certificate of franchise authority under
460 this chapter as to that municipality or county until the
461 expiration date of the existing franchise agreement.

462 (2) For purposes of this section, a cable service provider
463 will be deemed to have or have had a franchise to provide cable
464 service in a specific municipality or county if any affiliate or
465 successor entity of the cable service provider has or had a
466 franchise agreement granted by that specific municipality or
467 county.
468 (3) The term "affiliate or successor entity" in this
469 section refers to an entity receiving, obtaining, or operating
470 under a franchise that directly or indirectly owns or controls,
471 is owned or controlled by, or is under common ownership or
472 control with the cable service provider.
473 (4) Notwithstanding subsection (1), a cable service
474 provider may elect to terminate an existing municipal or county
475 franchise and seek a state-issued certificate of franchise
476 authority with respect to such municipality or county if another
477 cable service provider is granted a state-issued certificate of
478 franchise authority located in whole or in part within the
479 service area covered by the existing municipal or county
480 franchise. The cable service provider may terminate its existing
481 franchise under this subsection by providing written notice to
482 the Secretary of State and the affected municipality or county
483 within 180 days following the issuance of the state-issued
484 certificate of franchise authority to the nonincumbent cable
485 service provider. The municipal or county franchise is
486 terminated on the date the department issues the state-issued
487 certificate of franchise authority with respect to such
488 municipality or county to the cable service provider.

489 610.106 Franchise fee prohibited.--The department may not
490 impose any taxes, fees, charges, or other impositions on a cable
491 service provider as a condition for the issuance of a state-
492 issued certificate of franchise authority. No municipality or
493 county may impose any taxes, fees, charges, or other exactions
494 on certificateholders in connection with use of public right-of-
495 way as a condition of a certificateholder doing business in the
496 municipality or county, or otherwise, except such taxes, fees,
497 charges, or other exactions permitted by chapter 202 and s.
498 337.401(6).
499 610.107 Buildout.--No franchising authority, state agency,
500 or political subdivision may impose any buildout requirements on
501 a certificateholder.
502 610.108 Customer service standards.--
503 (1) An incumbent cable service provider shall comply with
504 customer service requirements reasonably comparable to the
505 standards in 47 C.F.R. s. 76.309(c) until there are two or more
506 providers offering service, excluding direct-to-home satellite
507 service, in the relevant service area.
508 (2) Beginning not later than July 1, 2009, for all
509 providers of cable service in municipalities and counties that,
510 as of January 1, 2006, have an office or department dedicated to
511 responding to cable service quality complaints, all such
512 complaints shall be handled by the Department of Agriculture and
513 Consumer Services. Until that time, cable service quality
514 complaints shall continue to be handled by the municipality or
515 county. This provision shall not be construed to permit the

516 municipality or county to impose customer service standards in
517 conflict with this section.
518 (3) The Department of Agriculture and Consumer Services
519 shall receive service quality complaints from customers of a
520 certificateholder. The department shall address such complaints
521 in an expeditious manner by assisting in the resolution of such
522 complaint between the complainant and the certificateholder. The
523 department shall adopt any procedural rules pursuant to ss.
524 120.536(1) and 120.54 necessary to implement this section.
525 610.109 Public, educational, and governmental access
526 channels.--
527 (1) A certificateholder, not later than 180 days following
528 a request by a municipality or county within whose jurisdiction
529 the certificateholder is providing cable service, shall
530 designate a sufficient amount of capacity on its network to
531 allow the provision of public, educational, and governmental
532 access channels for noncommercial programming as set forth in
533 this section.
534 (2) A certificateholder shall designate a sufficient
535 amount of capacity on its network to allow the provision of a
536 comparable number of public, educational, and governmental
537 access channels or capacity equivalent that a municipality or
538 county has activated under the incumbent cable service
539 provider's franchise agreement as of July 1, 2006. For the
540 purposes of this section, a public, educational, or governmental
541 channel is deemed activated if the channel is being used for
542 public, educational, or governmental programming within the
543 municipality for at least 10 hours per day.

544 (3) If a municipality or county did not have public,
545 educational, or governmental access channels activated under the
546 incumbent cable service provider's franchise agreement as of
547 July 1, 2006, not later than 180 days following a request by the
548 municipality or county within whose jurisdiction a
549 certificateholder is providing cable service, the cable service
550 provider shall furnish:
551 (a) Up to three public, educational, or governmental
552 channels or capacity equivalent for a municipality or county
553 with a population of at least 50,000.
554 (b) Up to two public, educational, or governmental
555 channels or capacity equivalent for a municipality or county
556 with a population of less than 50,000.
557 (4) Any public, educational, or governmental channel
558 provided pursuant to this section that is not used by the
559 municipality or county for at least 10 hours a day shall no
560 longer be made available to the municipality or county but may
561 be programmed at the cable service provider's discretion. At
562 such time as the municipality or county can certify to the cable
563 service provider a schedule for at least 10 hours of daily
564 programming, the cable service provider shall restore the
565 previously lost channel but shall be under no obligation to
566 carry that channel on a basic or analog tier.
567 (5) If a municipality or county has not used the number of
568 access channels or capacity equivalent permitted by subsection
569 (3), access to the additional channels or capacity equivalent
570 allowed in subsection (3) shall be provided upon 180 days'
571 written notice if the municipality or county meets the following

572 standard: if a municipality or county has one active public,
573 educational, or governmental channel and wishes to activate an
574 additional public, educational, or governmental channel, the
575 initial channel shall be considered to be substantially used
576 when 12 hours are programmed on that channel each calendar day.
577 In addition, at least 40 percent of the 12 hours of programming
578 for each business day on average over each calendar quarter must
579 be nonrepeat programming. Nonrepeat programming shall include
580 the first three videocastings of a program. If a municipality or
581 county is entitled to three public, educational, or governmental
582 channels under subsection (3) and has in service two active
583 public, educational, or governmental channels, each of the two
584 active channels shall be considered to be substantially used
585 when 12 hours are programmed on each channel each calendar day
586 and at least 50 percent of the 12 hours of programming for each
587 business day on average over each calendar quarter is nonrepeat
588 programming for three consecutive calendar quarters.
589 (6) The operation of any public, educational, or
590 governmental access channel or capacity equivalent provided
591 under this section shall be the responsibility of the
592 municipality or county receiving the benefit of such channel or
593 capacity equivalent, and a certificateholder bears only the
594 responsibility for the transmission of such channel content. A
595 certificateholder shall be responsible for providing the
596 connectivity to each public, educational, or governmental access
597 channel distribution point up to the first 200 feet.
598 (7) The municipality or county shall ensure that all
599 transmissions, content, or programming to be transmitted over a

600 channel or facility by a certificateholder are provided or
601 submitted to the cable service provider in a manner or form that
602 is capable of being accepted and transmitted by a provider
603 without any requirement for additional alteration or change in
604 the content by the provider, over the particular network of the
605 cable service provider, which is compatible with the technology
606 or protocol utilized by the cable service provider to deliver
607 services. The provision of public, educational, or governmental
608 content to the provider constitutes authorization for the
609 provider to carry such content, including, at the provider's
610 option, authorization to carry the content beyond the
611 jurisdictional boundaries of the municipality or county.
612 (8) Where technically feasible, a certificateholder and an
613 incumbent cable service provider shall use reasonable efforts to
614 interconnect their cable systems for the purpose of providing
615 public, educational, and governmental programming.
616 Interconnection may be accomplished by direct cable, microwave
617 link, satellite, or other reasonable method of connection.
618 Certificateholders and incumbent cable service providers shall
619 negotiate in good faith and incumbent cable service providers
620 may not withhold interconnection of public, educational, and
621 governmental channels.
622 (9) A certificateholder is not required to interconnect
623 for, or otherwise to transmit, public, educational, and
624 governmental content that is branded with the logo, name, or
625 other identifying marks of another cable service provider, and a
626 municipality or county may require a cable service provider to
627 remove its logo, name, or other identifying marks from public,

628 educational, and governmental content that is to be made
629 available to another provider.
630 (10) A court of competent jurisdiction shall have
631 exclusive jurisdiction to enforce any requirement under this
632 section.
633 610.110 Nondiscrimination by municipality or county.--
634 (1) A municipality or county shall allow a
635 certificateholder to install, construct, and maintain a network
636 within a public right-of-way and shall provide a
637 certificateholder with open, comparable, nondiscriminatory, and
638 competitively neutral access to the public right-of-way in
639 accordance with the provisions of s. 337.401. All use of a
640 public right-of-way by a certificateholder is nonexclusive.
641 (2) A municipality or county may not discriminate against
642 a certificateholder regarding:
643 (a) The authorization or placement of a network in a
644 public right-of-way;
645 (b) Access to a building or other property; or
646 (c) Utility pole attachment terms.
647 610.112 Limitation on local authority.--
648 (1) A municipality or county may not impose additional
649 requirements on a certificateholder, including, but not limited
650 to, financial, operational, and administrative requirements,
651 except as expressly permitted by this chapter. A municipality or
652 county may not impose on activities of a certificateholder a
653 requirement:
654 (a) That particular business offices be located in the
655 municipality or county;

656 (b) Regarding the filing of reports and documents with the
657 municipality or county that are not required by state or federal
658 law and that are not related to the use of the public right-of-
659 way. Reports and documents other than schematics indicating the
660 location of facilities for a specific site that are provided in
661 the normal course of the municipality's or county's permitting
662 process, that are authorized by s. 337.401 for communications
663 services providers, or that are otherwise required in the normal
664 course of such permitting process shall not be considered
665 related to the use of the public right-of-way for communications
666 services providers. A municipality or county may not request
667 information concerning the capacity or technical configuration
668 of a certificateholder's facilities;
669 (c) For the inspection of a certificateholder's business
670 records; or
671 (d) For the approval of transfers of ownership or control
672 of a certificateholder's business, except a municipality or
673 county may require a certificateholder to provide notice of a
674 transfer within a reasonable time.
675 (2) Notwithstanding any other provision of law, a
676 municipality or county may require the issuance of a permit in
677 accordance with and subject to s. 337.401 to a certificateholder
678 that is placing and maintaining facilities in or on a public
679 right-of-way in the municipality or county. In accordance with
680 s. 337.402, the permit may require the permitholder to be
681 responsible, at the permitholder's expense, for any damage
682 resulting from the issuance of such permit and for restoring the
683 public right-of-way to a substantially similar condition to that

684 of the public right-of-way before installation of such
685 facilities. The terms of the permit shall be consistent with
686 construction permits issued to other providers of communications
687 services placing or maintaining communications facilities in a
688 public right-of-way.
689 610.113 Discrimination prohibited.--
690 (1) The purpose of this section is to prevent
691 discrimination among potential residential subscribers.
692 (2) Pursuant to 47 U.S.C. s. 541(a)(3), a
693 certificateholder may not deny access to service to any group of
694 potential residential subscribers because of the income of the
695 residents in the local area in which such group resides.
696 (3) An affected person may seek enforcement of the
697 requirements provided by subsection (2) by initiating a
698 proceeding with the Department of Agriculture and Consumer
699 Services pursuant to s. 570.544.
700 (4) For purposes of determining whether a
701 certificateholder has violated subsection (2), cost, density,
702 distance, and technological or commercial limitations shall be
703 taken into account, and the certificateholder shall have a
704 reasonable time to deploy service pursuant to 47 U.S.C. s.
705 541(a)(4)(A). Use of an alternative technology that provides
706 comparable content, service, and functionality may not be
707 considered a violation of subsection (2). The inability to serve
708 an end user because a certificateholder is prohibited from
709 placing its own facilities in a building or property is not a
710 violation of subsection (2). This section may not be construed
711 to authorize any buildout requirements on a certificateholder.

712 (5) The department shall adopt any procedural rules
713 pursuant to ss. 120.536(1) and 120.54 necessary to implement
714 this section.
715 610.114 Compliance.--If a certificateholder is found by a
716 court of competent jurisdiction to not comply with the
717 requirements of this chapter, the certificateholder shall have a
718 reasonable period of time, as specified by the court, to cure
719 such noncompliance.
720 610.115 Applicability of other laws.--Nothing in this
721 chapter impairs the right of a provider of video programming
722 that is not a cable service provider to provide video
723 programming and use public right-of-way under chapter 337
724 without a state-issued certificate of franchise authority.
725 610.116 Reports to the Legislature.--The Office of Program
726 Policy Analysis and Governmental Accountability shall submit to
727 the President of the Senate, the Speaker of the House of
728 Representatives, and the majority and minority leaders of the
729 Senate and House of Representatives, on December 1, 2009, a
730 report on the status of competition in the cable service
731 industry, including, by each municipality and county, the number
732 of cable service providers, the number of cable subscribers
733 served, the number of areas served by fewer than two cable
734 service providers, the trend in cable prices, and the
735 identification of any patterns of service as they impact
736 demographic and income groups.
737 610.117 Severability.--If any provision of ss. 610.102-
738 610.116 or the application thereof to any person or circumstance
739 is held invalid, such invalidity shall not affect other

740 provisions or application of ss. 610.102-610.116 that can be
741 given effect without the invalid provision or application, and
742 to this end the provisions of ss. 610.102-610.116 are severable.
743 Section 6. Section 166.046, Florida Statutes, is repealed.
744 Section 7. Paragraph (a) of subsection (3) of section
745 350.81, Florida Statutes, is amended to read:
746 350.81 Communications services offered by governmental
747 entities.--
748 (3)(a) A governmental entity that provides a cable service
749 shall comply with the Cable Communications Policy Act of 1984,
750 47 U.S.C. ss. 521 et seq., the regulations issued by the Federal
751 Communications Commission under the Cable Communications Policy
752 Act of 1984, 47 U.S.C. ss. 521 et seq., and all applicable state
753 and federal rules and regulations, including, but not limited
754 to, ~~s. 166.046 and~~ those provisions of chapters 202, 212, ~~and~~
755 337, and 610 which apply to a provider of the services.
756 Section 8. Section 364.0361, Florida Statutes, is amended
757 to read:
758 364.0361 Local government authority; nondiscriminatory
759 exercise.--A local government shall treat each
760 telecommunications company in a nondiscriminatory manner when
761 exercising its authority to grant franchises to a
762 telecommunications company or to otherwise establish conditions
763 or compensation for the use of rights-of-way or other public
764 property by a telecommunications company. A local government may
765 not directly or indirectly regulate the terms and conditions,
766 including, but not limited to, the operating systems,
767 qualifications, services, service quality, service territory,

768 and prices, applicable to or in connection with the provision of
769 any voice-over-Internet protocol, regardless of the platform,
770 provider, or protocol, broadband or information service. This
771 section does not relieve a provider from any obligations under
772 ~~s. 166.046 or~~ s. 337.401.
773 Section 9. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **1199 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Traviesa offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line 501 and insert:
6 a certificateholder. However, each certificateholder, if
7 requested pursuant to a bona fide order for cable service, shall
8 make cable service available at each building used for municipal
9 or county purposes, including, but not limited to, emergency
10 operations centers, fire stations, and public schools, within
11 the area described in its application under s. 610.104(4)(d)
12 within 5 years after the date of the issuance of its certificate
13 by the department using the technology of its choice.
14
15 ========== T I T L E A M E N D M E N T ==========
16 Between lines 31 and 32, insert:
17 requiring certificateholders to make cable service available at
18 certain public buildings under certain circumstances;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (2)

Bill No. **1199 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Traviesa offered the following:
3
4 **Amendment**
5 Remove line 543, and insert:
6 municipality for at least 10 hours per day. Except as provided
7 in subsections (3)-(5), the certificateholder's obligations
8 under this subsection continue regardless of whether the
9 incumbent cable service provider, subsequent to July 1, 2006,
10 becomes a certificateholder pursuant to this chapter.

000000

Bill No. **1199 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Traviesa offered the following:
3
4 **Amendment (with title amendment)**
5 Between lines 632 and 633, insert:
6 (11) In support of the capital costs incurred by the
7 municipality or county in connection with the construction or
8 operation of public, educational, or governmental access
9 facilities and content provided by a municipality or county
10 pursuant to this section, the certificateholder shall pay to the
11 municipality or county 1 percent of the certificateholder's
12 monthly revenues from the retail sale of cable services provided
13 to customers located within the respective municipal or county
14 boundaries, based upon the certificateholder's books and
15 records, for a period of 2 years after the date the department
16 issues a certificate to the certificateholder. After the
17 expiration of the 2-year period, the certificateholder shall pay
18 and the municipality or county shall continue to receive up to 1
19 percent of such revenues in support of the capital costs
20 incurred by the municipality or county in connection with the
21 construction or operation of public, educational, or

22 governmental content provided by the municipality or county only
23 if the governing body of the municipality or county
24 affirmatively approves such continued payment. Upon such
25 affirmative vote of approval, the certificateholder may recover
26 from the customer its costs of the payment through a separately
27 stated charge on the customer's bill. All payments made
28 pursuant to this subsection shall be made in the same manner as
29 the certificateholder's payment of communications services tax
30 pursuant to s. 202.27, and all definitions, exemptions, and
31 administrative provisions of chapter 202 shall apply to such
32 payments.
33
34
35 ========== T I T L E A M E N D M E N T ==========
36 Remove line 40 and insert:
37 providing for enforcement; requiring certificateholders to pay a
38 portion of certain monthly revenues to municipalities or
39 counties for a certain period of time; providing for continuing
40 such payments pursuant to local government approval; authorizing
41 continued payments to be itemized; providing criteria for such
42 payments; providing requirements for and

Amendment No. (4)

Bill No. **1199 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

---

1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Traviesa offered the following:
3
4 **Amendment**
5 Between lines 646 and 647, insert:
6 (3) Except as expressly provided in this section, nothing
7 in this chapter shall be construed to limit or abrogate a
8 municipality's or county's authority over the use of public
9 rights-of-way under its jurisdiction, as provided in s.
10 337.401(3)(a).

Bill No. **1199 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Traviesa offered the following:
3
4 **Amendment**
5 Remove line 712 and insert:
6 (5) The Department of Agriculture and Consumer Services
7 shall adopt any procedural rules

CS/HB 1375

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1375 CS Manatee County
SPONSOR(S): Reagan
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N, w/CS	DiVagno	Hamby
2) Finance & Tax Committee		Monroe	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

With limited exceptions, independent special districts, including independent special fire control districts, may only be created by the Legislature. The creation of independent fire control special districts is governed by ch. 189, F.S., the "Uniform Special District Accountability Act of 1989", and ch. 191, F.S., the "Independent Special Fire Control District Act". However, the legislature may provide an exemption from the general law requirements in chs.189 and 191, F.S., in a local bill creating an independent special district.

HB 1375 creates the Duette Fire and Rescue District, an independent special fire control district, with all powers under ch. 189 and 191, F.S., with a few exceptions. The bill requires a referendum for the District to collect impact fees, while under general law, there is no such requirement. The bill also grants the District the methodologies for tax collections, sales, and liens provided for in Chapter 197, F.S.

This bill is effective upon its approval by a majority vote of those qualified electors of the District voting in a referendum.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government and Ensure lower taxes - This bill creates an independent special fire control district with the power to levy ad valorem taxes, non-ad valorem special assessments, user charges, and impact fees.

B. EFFECT OF PROPOSED CHANGES:

With limited exceptions provided in general law, independent special districts, including independent special fire control districts, may only be created by the Legislature. The creation of independent fire control special districts is governed by ch. 189, F.S., the "Uniform Special District Accountability Act of 1989", and ch. 191, F.S., the "Independent Special Fire Control District Act". However, the legislature may provide an exemption from the general law requirements in chs.189 and 191, F.S., in a local bill creating an independent special district. If a local bill creates an exemption from general law, Rule 5.5 of the Florida House of Representatives prohibits the local bill from being placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills.

The Uniform Special District Accountability Act of 1989

Chapter 189, F.S., known as the "Uniform Special District Accountability Act of 1989", includes requirements that must be satisfied when the Legislature creates any independent special district, including independent special fire control districts created under ch. 191, F.S. Unless the Legislature has enacted a special law exempting a particular independent special district, all districts must comply with applicable provisions of ch. 189, F.S., including provisions related to issues that must be addressed in a district's charter, election of district governing board members, bond referenda, public records and meetings, and reporting requirements.

The Independent Special Fire Control District Act

Chapter 191, F.S., is known as the "Independent Special Fire Control District Act" (the Act). Section 191.002, F.S., sets forth the Act's purpose, which is to establish standards and procedures concerning the operations and governance of independent special fire control districts (districts), and to provide greater uniformity in the financing authority, operations, and procedures for electing members of the governing boards of districts.

Unless otherwise exempted by special or general law, the Act requires each district, whether created by special act, general law of local application, or county ordinance, to comply with the Act and provides that it is the intent of the Legislature that the Act supersede all special acts or general laws of local application provisions that contain the charter of a district. Provisions that address district boundaries and geographical subdistricts for the election of members of the governing board are excepted.

District Governing Board

Section 191.005, F.S., prescribes procedures for the election, composition, and general administration of a district's governing board. With the exception of districts whose governing boards are appointed collectively by the Governor, the county commission, and any cooperating city within the county, requires the business affairs of each district to be conducted and administered by a five-member board. Each member must be elected for a term of 4 years and serve until the member's successor assumes office. Each member of the board must be a qualified elector at the time he or she qualifies and continually throughout his or her term. Any board member who ceases to be a qualified elector is automatically removed pursuant to the Act. Prior to election, each candidate must qualify for election

by either paying a filing fee or obtaining the signatures of at least 25 registered electors of the district on petition forms provided by the supervisor of elections and submitted and checked in the same manner as petitions filed by nonpartisan judicial candidates. A candidate who does not collect contributions and whose only expense is the filing fee is not required to appoint a campaign treasurer or designate a primary campaign depository.

The electors of the district must elect board members at the next general election following the effective date of a special act or general act of local application creating a new district. Except as provided by the Act, all elections must be held at the time and in the manner prescribed by law for holding general elections in accordance with s. 189.405(2)(a) and (3), F.S. If a vacancy occurs on the board due to the resignation, death, or removal of a board member, or the failure of anyone to qualify for a board seat, the remaining members may appoint a qualified person to fill the seat until the next general election, at which time an election must be held to fill the vacancy for the remaining term, if any.

Members of the board may each be paid a salary or honorarium to be determined by at least a majority plus one vote of the board but which may not exceed $500 per month for each member. Separate compensation for the board member serving as treasurer may be authorized by like vote so long as total compensation for the board member does not exceed $500 per month. Members may be reimbursed for travel and per diem expenses as provided in general law.

Each member must, upon assuming office, take and subscribe to the oath of office prescribed by s. 5(b), Art. II of the State Constitution and s. 876.05, F.S. Each member, within 30 days of assuming office, must also give the Governor a good and sufficient surety bond in the sum of $5,000, the cost thereof being borne by the district, conditioned on the member's faithful performance of his or her duties of office.

The board must keep a permanent record book in which the minutes of all meetings, resolutions, proceedings, certificates, bonds given by commissioners, and corporate acts are recorded. The record book must be open to inspection in the same manner as state, county, and municipal records are open under ch. 119. F.S., and s. 24, Art. I of the State Constitution. All meetings of the board must be open to the public consistent with ch. 286, s. 189.417, and other applicable general laws.

General Powers

Section 191.006, F.S., sets forth the following general powers of a district, which may be exercised by a majority vote of the district's governing board:

- To sue and be sued in the name of the district, to adopt and use a seal and authorize the use of a facsimile thereof, and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.
- To provide for a pension or retirement plan for its employees. In accordance with general law, the board may provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years.
- To contract for the services of consultants to perform planning, engineering, legal, or other professional services.
- To borrow money and accept gifts, to apply for and use grants or loans of money or other property from the United States, the state, a unit of local government, or any person for any district purposes and enter into agreements required in connection therewith, and to hold, use, sell, and dispose of such moneys or property for any district purpose in accordance with the terms of the gift, grant, loan, or agreement relating thereto.
- To adopt resolutions and procedures prescribing the powers, duties, and functions of the officers of the district; the conduct of the business of the district; the maintenance of records; and the form of other documents and records of the district. The board may also adopt ordinances and resolutions that are necessary to conduct district business, if such ordinances do not conflict with any

ordinances of a local general purpose government within whose jurisdiction the district is located. Any resolution or ordinance adopted by the board and approved by referendum vote of district electors may only be repealed by referendum vote of district electors.

- To maintain an office at places it designates within a county or municipality in which the district is located and appoint an agent of record.
- To acquire, by purchase, lease, gift, dedication, devise, or otherwise, real and personal property or any estate therein for any purpose authorized by this act and to trade, sell, or otherwise dispose of surplus real or personal property. The board may purchase equipment by an installment sales contract if funds are available to pay the current year's installments on the equipment and to pay the amounts due that year on all other installments and indebtedness.
- To hold, control, and acquire by donation or purchase any public easement, dedication to public use, platted reservation for public purposes, or reservation for those purposes authorized by this act and to use such easement, dedication, or reservation for any purpose authorized by this act consistent with applicable adopted local government comprehensive plans and land development regulations.
- To lease as lessor or lessee to or from any person any facility or property of any nature for the use of the district when necessary to carry out the district's duties and authority under this act.
- To borrow money and issue bonds, revenue anticipation notes, or certificates payable from and secured by a pledge of funds, revenues, taxes and assessments, warrants, notes, or other evidence of indebtedness, and mortgage real and personal property when necessary to carry out the district's duties and authority under this act.
- To charge user and impact fees authorized by resolution of the board, in amounts necessary to conduct district activities and services, and to enforce their receipt and collection in the manner prescribed by resolution and authorized by law. However, the imposition of impact fees may only be authorized as provided by general law.
- To exercise the right and power of eminent domain, pursuant to general law, over any property within the district, except municipal, county, state, special district, or federal property used for a public purpose, for the uses and purposes of the district relating solely to the establishment and maintenance of fire stations and fire substations, specifically including the power to take easements that serve such facilities consistent with applicable adopted local government comprehensive plans and land development regulations.
- To cooperate or contract with other persons or entities, including other governmental agencies, as necessary, convenient, incidental, or proper in connection with providing effective mutual aid and furthering any power, duty, or purpose authorized by this act.
- To assess and impose upon real property in the district ad valorem taxes and non-ad valorem assessments as authorized by this act.
- To impose and foreclose non-ad valorem assessment liens as provided by this act or to impose, collect, and enforce non-ad valorem assessments pursuant to general law.
- To select as a depository for its funds any qualified public depository as defined by general law which meets all the requirements of ch. 280, F.S., and has been designated by the Chief Financial Officer as a qualified public depository, upon such terms and conditions as to the payment of interest upon the funds deposited as the board deems just and reasonable.
- To provide adequate insurance on all real and personal property, equipment, employees, volunteer firefighters, and other personnel.
- To organize, participate in, and contribute monetarily to organizations or associations relating to the delivery of or improvement of fire control, prevention, emergency rescue services, or district administration.

Special Powers

Section 191.008, F.S., requires districts to provide for fire suppression and prevention by establishing and maintaining fire stations and fire substations and by acquiring and maintaining firefighting and fire protection equipment deemed necessary to prevent or fight fires. All construction must be in

compliance with applicable state, regional, and local regulations, including adopted comprehensive plans and land development regulations.

This section grants districts the following special powers relating to facilities and duties authorized by the Act:

- To establish and maintain emergency medical and rescue response services and acquire and maintain rescue, medical, and other emergency equipment, pursuant to general law and any certificate of public convenience and necessity or its equivalent issued thereunder.
- To employ, train, and equip such personnel, and train, coordinate, and equip such volunteer firefighters, as are necessary to accomplish the duties of the district. The board may employ and fix the compensation of a fire chief or chief administrator. The board must prescribe the duties of such person, which include supervision and management of the operations of the district and its employees and maintenance and operation of its facilities and equipment. The fire chief or chief administrator may employ or terminate the employment of such other persons, including, without limitation, professional, supervisory, administrative, maintenance, and clerical employees, as are necessary and authorized by the board. The board must provide the compensation and other conditions of employment of the officers and employees of the district.
- To conduct public education to promote awareness of methods to prevent fires and reduce the loss of life and property from fires or other public safety concerns.
- To adopt and enforce firesafety standards and codes and enforce the rules of the State Fire Marshal consistent with the exercise of the duties authorized by chs. 553 or 633, F.S., with respect to fire suppression, prevention, and firesafety code enforcement.
- To conduct arson investigations and cause-and-origin investigations.
- To adopt hazardous material safety plans and emergency response plans in coordination with the county emergency management agency.
- To contract with general purpose local government for emergency management planning and services.

District Funding Mechanisms

Section 191.009, F.S., authorizes districts to levy ad valorem taxes, special assessments, user charges, and impact fees.

Ad Valorem Taxes -- An elected board may levy and assess ad valorem taxes on all taxable property in the district to construct, operate, and maintain district facilities and services, to pay the principal of, and interest on, general obligation bonds of the district, and to provide for any sinking or other funds established in connection with such bonds. An ad valorem tax levied by the board for operating purposes, exclusive of debt service on bonds, may not exceed 3.75 mills unless a higher amount has been previously authorized by law, subject to a referendum as required by the State Constitution and the Act. The levy of ad valorem taxes must be approved by referendum called by the board when the proposed levy of ad valorem taxes exceeds the amount authorized by prior special act, general law of local application, or county ordinance approved by referendum. The tax is assessed, levied, and collected in the same manner as county taxes.

Non-Ad Valorem Assessments -- A district may levy non-ad valorem assessments to construct, operate, and maintain district facilities and services. The rate of such assessments must be fixed by resolution of the board pursuant to statutory procedures. Non-ad valorem assessment rates set by the board may exceed the maximum rates established by special act, county ordinance, the previous year's resolution, or referendum in an amount not to exceed the average annual growth rate in Florida personal income over the previous 5 years. Non-ad valorem assessment rate increases within the personal income threshold are deemed to be within the maximum rate authorized by law at the time of initial imposition. Proposed non-ad valorem assessment increases which exceed the rate set the previous fiscal year or the rate previously set by special act or county ordinance, whichever is more recent, by more than the average annual growth rate in Florida personal income over the last 5 years,

or the first-time levy of non-ad valorem assessments in a district, must be approved by referendum of the electors of the district. The referendum on the first-time levy of an assessment must include a notice of the future non-ad valorem assessment rate increases permitted by the Act without a referendum. Non-ad valorem assessments must be imposed, collected, and enforced pursuant to general law.

User Charges -- The board may provide a reasonable schedule of user charges for the following services:

- Special emergency services, including firefighting occurring in or to structures outside the district, motor vehicles, marine vessels, aircraft, or rail cars, or as a result of the operation of such motor vehicles or marine vessels, to which the district is called to render such emergency service, and may charge a fee for the services rendered in accordance with the schedule;
- Fighting fires occurring in or at refuse dumps or as a result of an illegal burn, which fire, dump, or burn is not authorized by general or special law, rule, regulation, order, or ordinance and which the district is called upon to fight or extinguish;
- Responding to or assisting or mitigating emergencies that either threaten or could threaten the health and safety of persons, property, or the environment, to which the district has been called, including a charge for responding to false alarms; and
- Inspecting structures, plans, and equipment to determine compliance with firesafety codes and standards.

The district has a lien upon any real property, motor vehicle, marine vessel, aircraft, or rail car for any user charge assessed.

Impact Fees -- If the general purpose local government has not adopted an impact fee for fire services which is distributed to the district for construction within its jurisdictional boundaries, the board may establish a schedule of impact fees to pay for the cost of new facilities and equipment, the need for which is in whole or in part the result of new construction. The impact fees collected by the district must be kept separate from other revenues of the district and must be used exclusively to acquire, purchase, or construct new facilities or portions thereof needed to provide fire protection and emergency services to new construction. The term "new facilities" is defined as land, buildings, and capital equipment, including, but not limited to, fire and emergency vehicles, radiotelemetry equipment, and other firefighting or rescue equipment. The board must maintain adequate records to ensure that impact fees are expended only for permissible new facilities or equipment. The board may enter into agreements with general purpose local governments to share in the revenues from fire protection impact fees imposed by the governments.

District Bonds

Section 191.012, F.S., authorizes a district to issue general obligation bonds, assessment bonds, revenue bonds, notes, bond anticipation notes, or other evidences of indebtedness to finance all or a part of any proposed improvements authorized to be undertaken under the Act or other law, provided the total annual payments for the principal and interest on such indebtedness does not exceed 50 percent of the total annual budgeted revenues of the district. This section also provides detailed instructions and procedures regarding the issuance and satisfaction of district bonds.

Bonds are payable from non-ad valorem assessments or other non-ad valorem revenues, including, without limitation, user fees or charges or rental income authorized to be levied or collected or received pursuant to the Act or general law. General obligation bonds payable from ad valorem taxes may also be issued by the district, but only after compliance with s. 12, Art. VII of the State Constitution. Subject to referendum approval, a district may pledge its full faith and credit for the payment of principal and interest on general obligation bonds and for any reserve funds provided therefore and may unconditionally and irrevocably pledge itself to levy ad valorem taxes on all property in the district to the extent necessary for the payment thereof. A district is authorized, after notice and opportunity to be

heard has been afforded to those affected, to impose, charge, and collect non-ad valorem revenues in connection with any of the improvements authorized under the Act and to pledge the same for the payment of bonds.

District Boundaries and Mergers

Section 191.014, F.S., provides that boundaries of a district may be modified, extended, or enlarged only upon approval or ratification by the Legislature. The merger of a district with all or portions of other independent special districts or dependent fire control districts is effective only upon ratification by the Legislature. A district may not, solely by reason of a merger with another governmental entity, increase ad valorem taxes on property within the original limits of the district beyond the maximum established by the district's enabling legislation, unless approved by the electors of the district by referendum.

Effect of Proposed Changes

This bill creates the Duette Fire and Rescue District (District), as an independent special fire control district, in Manatee County, Florida. The bill specifies the purposes of the district as providing fire prevention services to an area of approximately 88,320 acres[1] with a current population estimate of 809 residents, experiencing a 25.6 percent increase in population from April 1, 2000 to March 21, 2005.[2] The day time working population increases almost 5 times due to migrant farm workers.

The District is granted all the powers under chs. 189 and 191, F.S., as more fully set forth above, with 1 addition to the general law as follows:

- The bill imposes on the District the requirement of a referendum for the first-time levy of impact fees, which is to include notice of the future increase of impact fees permitted by the charter. Under s. 191.009(4), F.S., no referendum is required to impose impact fees. Section 191.009(4), F.S., does require that the board establish a schedule of impact fees in compliance with the standards set by general law for the new construction to pay for the cost of new facilities and equipment. The only impact fee increases permissible would be those tied to new construction.

The bill also puts the maximum initial non-ad valorem assessments allowed to be collected by the District, if approved by the majority in referendum, in the District's charter. The maximum initial amounts are not included on the referendum, but the notice of the future non-ad valorem assessment rate increases permitted in the charter is required to be included pursuant to ch. 191.009(2), F.S. The charter is using the same permissible increases as found in ch. 191.009(2), F.S.

The bill also grants the District the methodologies for tax collections, sales, and liens provided for in Chapter 197, F.S.

The bill also conditions the creation of the District with the authority to collect non-ad valorem assessments upon majority approval in a referendum of qualified electors to be called by the Board of County Commissioners of Manatee County held on or before December 30, 2006. The referendum provision defines a "qualified elector" as a person who resides within the proposed boundaries of the District and is qualified to vote in a general election in Manatee County.

C. SECTION DIRECTORY:

Section 1: Provides short title.
Section 2: Provide definitions.
Section 3: Provides the purpose of the District, specifies it as a independent special district under ch. 191, F.S., and provides boundaries.

[1] E-mail from Chris Lyon, March 23, 3006.
[2] Letter from Leon Kotecki, Principal Planner, Manatee County Planning Department, to John O'Connor, regarding Duette Fire District Population and Trends Request # 0503558, June 7, 2005.

Section 4: Provides intent of the District.
Section 5: Provides for the Board of Commissioners; including officers, bonds, and compensation.
Section 6: Provides terms, elections, qualifications, and certification of single candidate for Board of Commissioners.
Section 7: Authorizes the District with all powers under chs. 189 and 191, F.S, and provides for the use of funds.
Section 8: Authorizes the District to levy ad valorem taxes, non-ad valorem assessment with maximum initial assessments, and impact fees with a referendum.
Section 9: Creates a 5 year plan for identifying needed facilities and for the plan to count as a facilities report.
Section 10: Provides for terms of boundaries and mergers.
Section 11: Provides amendment of charter through special act only.
Section 12: Provides for merger or dissolution of the District.
Section 13: Provides for severability of the act.
Section 14: Provides for a referendum.
Section 15: Provides that the act is effective only upon approval by a majority vote of qualified electors in a referendum held by Manatee County Supervisor of Elections and held on or before December 30, 2006.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? December 1, 2005.

WHERE? *The Herald*, Bradenton, Manatee, Florida.

B. REFERENDUM(S) REQUIRED? Yes [X] No []

IF YES, WHEN? On or before December 30, 2006.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Council on Local Government adopted one amendment on March 29, 2006. The amendment provides the district with only the powers and duties under ch. 189 and 191, F.S., and the methodologies for tax collections, sales, and liens provided for in Chapter 197, F.S. The amendment removes the exception to general law created in the original bill regarding the excusal of a referendum and provides maximum initial non-ad valorem assessments in the District's charter. The amendment also removes the annexation exception from the district's charter so that only general law applies. The amendment also ties the ability to collect non-ad valorem assessments to the creation of the District in the referendum and provides a definition for "qualified elector". The bill, as amended, was reported favorably with committee substitute.

CHAMBER ACTION

The Local Government Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to Manatee County; creating the Duette Fire and Rescue District, an independent special district; creating a district charter; providing a short title; providing definitions; providing territorial boundaries of the district; providing purposes and intent; providing for a board of commissioners of the district; providing for qualification, election, membership, terms of office, and compensation of the board; providing for the filling of vacancies; providing for meetings; providing powers and duties of the board; providing for use of district funds; authorizing the district to issue bonds and levy ad valorem taxes, non-ad valorem assessments, impact fees, and user charges; providing for a 5-year plan; providing for modification of district boundaries; providing for merger with certain other districts under certain circumstances; providing for amendment of the charter by special act of the Legislature; providing requirements for

23 merger or dissolution; providing severability; requiring a
24 referendum; providing an effective date.
25
26 Be It Enacted by the Legislature of the State of Florida:
27
28 Section 1. The Duette Fire and Rescue District, an
29 independent special district in Manatee County, is created and
30 established pursuant to chapters 189 and 191, Florida Statutes,
31 and the charter for such district is created to read:
32 Section 1. Short title.--This act may be cited as the
33 "Duette Fire and Rescue District Act."
34 Section 2. Definitions.--Unless the context otherwise
35 requires, the following terms shall have the following meanings
36 ascribed to them:
37 (1) "Board" means the Board of Commissioners of the Duette
38 Fire and Rescue District.
39 (2) "Commissioner" means a member of the Board of
40 Commissioners of the district.
41 (3) "County" means Manatee County, Florida.
42 (4) "District" means the Duette Fire and Rescue District.
43 (5) "Elector" means a person who is a resident of the
44 district and is qualified to vote in a general election in
45 Manatee County.
46 (6) "Emergency medical service" means basic life support
47 service and advanced life support service, as defined in section
48 401.23, Florida Statutes.
49 (7) "Governor" means the Governor of the State of Florida.

50 Section 3. Formation; boundaries.--For the purpose of
51 providing fire prevention services pursuant to chapter 191,
52 Florida Statutes, an independent special district is hereby
53 created and incorporated to be known as the Duette Fire and
54 Rescue District, hereinafter the "district," in Manatee County
55 and shall embrace and include the territory described as:
56
57 Sections 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35 and 36,
58 all lying in Township 33 South, Range 20 East; Sections 1
59 through 36, all lying in Township 33 South, Range 21 East;
60 Sections 1 through 36, all lying in Township 33 South,
61 Range 22 East; Sections 1, 2, 11, 12, 13, 14, 23, 24, 25,
62 26 and 27, all lying in Township 34 South, Range 20 East;
63 Sections 1 through 30, all lying in Township 34 South,
64 Range 21 East; Sections 1 through 30, all lying in Township
65 34 South, Range 22 East.
66
67 Section 4. Intent.--The purposes of this act are to:
68 (1) Provide standards, direction, and procedures
69 concerning the operation and governance of the special fire
70 control district known as the Duette Fire and Rescue District.
71 (2) Provide uniformity between the Duette Fire and Rescue
72 District and other independent special fire control districts.
73 (3) Provide financing authority of the Duette Fire and
74 Rescue District without hampering the efficiency and
75 effectiveness of current authorized and implemented methods and
76 procedures of raising revenues.

77 (4) Improve communication and coordination between the
78 Duette Fire and Rescue District and other local governments with
79 respect to short-range and long-range planning to meet the
80 demands for service delivery while maintaining fiscal
81 responsibility.
82 (5) Provide uniform procedures for electing members of the
83 governing board of the Duette Fire and Rescue District to ensure
84 greater accountability to the public.
85 Section 5. Board of Commissioners; officers; bond;
86 compensation.--
87 (1) The business affairs of the district shall be
88 conducted and administered, pursuant to chapter 191, Florida
89 Statutes, by the Board of Commissioners of the Duette Fire and
90 Rescue District, which is established as a board of five
91 commissioners. Annually, within 60 days after newly elected
92 members have taken office, the board shall organize by electing
93 from its members a chair, a vice chair, a secretary, and a
94 treasurer. The positions of secretary and treasurer may be held
95 by one member. The office of each commissioner comprising the
96 Board of Commissioners of the Duette Fire and Rescue District is
97 hereby designated as being a seat on the commission,
98 distinguished from each of the other seats by a numeral: 1, 2,
99 3, 4, or 5. The numerical seat designation does not designate a
100 geographical subdistrict of the district.
101 (2) Each commissioner shall, upon assuming office, take
102 and subscribe to the oath of office prescribed by section 5(b),
103 Article II of the State Constitution and section 876.05, Florida
104 Statutes. Each commissioner, upon taking office and in

105 accordance with chapters 189 and 191, Florida Statutes, shall
106 execute to the Governor for the benefit of the district a bond
107 conditioned upon the faithful performance of the duties of the
108 commissioner's office. The premium for such bonds shall be paid
109 from district funds.
110 (3) Members of the board may each be paid a salary or
111 honorarium to be determined by at least a majority plus one vote
112 of the board, which salary or honorarium may not exceed $500 per
113 month for each member. Special notice of any meeting at which
114 the board will consider a salary change for a board member shall
115 be published at least once, at least 14 days prior to the
116 meeting, in a newspaper of general circulation in the county.
117 Separate compensation for the board member serving as treasurer
118 may be authorized by like vote so long as total compensation for
119 the board member does not exceed $500 per month. Members may be
120 reimbursed for travel and per diem expenses, as provided in
121 section 112.061, Florida Statutes.
122 (4) Members of the board shall comply with the financial
123 disclosure, noticing, and reporting requirements of chapter 112,
124 Florida Statutes, and any other applicable law or regulation.
125 Section 6. Board of Commissioners; terms; election,
126 qualifications, certification of single candidate.--
127 (1) District elections and referenda shall be held in
128 accordance with chapter 191, Florida Statutes.
129 (2) Except as provided in this subsection, each of the
130 five commissioners shall hold his or her respective seat on the
131 Board of Commissioners of the Duette Fire and Rescue District
132 for a term of 4 years and shall be elected by majority vote of

133 the electors of the district voting at a general election. In
134 the first election following the effective date of this act,
135 seats 1, 3, and 5 shall be designated for 4-year terms, and
136 seats 2 and 4 shall be designated for 2-year terms. All
137 commissioners must be qualified electors within the district and
138 must reside within the district.
139 (3) Voting for commissioners shall be districtwide and
140 nonpartisan.
141 (4) If a vacancy occurs on the board due to the
142 resignation, death, or removal of a commissioner, or the failure
143 of anyone to qualify for a board seat, the remaining members may
144 appoint a qualified person to fill the seat until the next
145 general election, at which time an election shall be held to
146 fill the vacancy for the remaining term, if any. The board shall
147 remove any member who has three consecutive, unexcused absences
148 from regularly scheduled meetings. The board shall adopt
149 policies by resolution defining excused and unexcused absences.
150 (5) Each commissioner, whenever elected, shall assume
151 office 10 days following his or her election and shall serve
152 until his or her successor is elected.
153 (6) All candidates shall qualify with the County
154 Supervisor of Elections. All candidates may qualify by paying a
155 filing fee of $25 or by obtaining the signatures of at least 25
156 registered electors of the district on petition forms provided
157 by the Supervisor of Elections, which petitions shall be
158 submitted and checked in the same manner as petitions filed by
159 nonpartisan judicial candidates pursuant to section 105.035,
160 Florida Statutes.

161 (7) The names of all candidates qualifying for election to
162 a seat on the Board of Commissioners shall be included on the
163 ballot or voting machines provided for use in the district,
164 along with the candidates for county office at each regular
165 county election, in such a way as to clearly indicate the
166 respective seat for which each qualified candidate for district
167 commissioner is running.
168 (8) Any expense of holding elections for commission seats
169 at the regular county elections shall be paid out of the funds
170 of the district, if required by proper authority.
171 (9) The board shall keep a permanent record book entitled
172 "Record of Proceedings of Duette Fire and Rescue District" in
173 which the minutes of all meetings, resolutions, proceedings,
174 certificates, bonds given by commissioners, and corporate acts
175 shall be recorded. The record book shall be open to inspection
176 in the same manner as state, county, and municipal records are
177 open under chapter 119, Florida Statutes, and section 24,
178 Article I of the State Constitution. The record book shall be
179 kept at the office or other regular place of business maintained
180 by the board in the county or municipality in which the district
181 is located.
182 (10) All meetings of the board shall be open to the
183 public, consistent with chapter 286, Florida Statutes, section
184 189.417, Florida Statutes, and other applicable general laws.
185 Section 7. Powers; use of district funds.--
186 (1) The district shall have, and the board may exercise,
187 all the powers and duties set forth in chapters 189 and 191,
188 Florida Statutes, as they may be amended from time to time.

189 (2) No funds of the district shall be used for any
190 purposes other than the administration of the affairs and
191 business of the district; the construction, care,
192 maintenance, upkeep, operation, and purchase of
193 firefighting and rescue equipment or a fire station or
194 stations; the payment of public utilities; and the payment
195 of salaries of district personnel as the board may from
196 time to time determine to be necessary for the operations
197 and effectiveness of the district.
198 (3) The board is authorized and empowered to buy,
199 own, lease, and maintain a fire department within the
200 district and to purchase, acquire by gift, lease, own, and
201 dispose of firefighting equipment and property, real and
202 personal, that the board may from time to time deem
203 necessary or needful to prevent and extinguish fires within
204 the district.
205 Section 8. Taxes; non-ad valorem assessments; impact fees;
206 user charges; bond issuance.--
207 (1) The district shall hold all powers, functions, and
208 duties set forth in this act and chapters 189, 191, and 197,
209 Florida Statutes, as amended from time to time, including, but
210 not limited to, ad valorem taxation, bond issuance, other
211 revenue-raising capabilities, budget preparation and approval,
212 liens and foreclosure of liens, and use of tax deeds and tax
213 certificates as appropriate for non-ad valorem assessments and
214 contractual agreements. The district may be financed by any
215 method established in this act or chapter 189, chapter 191, or
216 chapter 197, Florida Statutes, as amended from time to time.

217 (2)(a) The district shall be authorized to levy non-ad
218 valorem assessments. The methods for assessing and collecting
219 non-ad valorem assessments, fees, or service charges shall be as
220 set forth in chapter 189, chapter 191, or chapter 197, Florida
221 Statutes, as amended from time to time. Upon compliance with all
222 applicable provisions of ss. 191.009, 197.3631, and 197.3632,
223 Florida Statutes, the district shall be authorized to levy non-
224 ad valorem assessments against all assessable real property
225 located within the district. Proposed non-ad valorem assessment
226 increases set by the board may not exceed the average annual
227 growth rate in Florida personal income over the previous 5
228 years. Any increase that exceeds the average annual growth rate
229 in Florida personal income over the previous 5 years must be
230 approved by referendum of the electors of the district.
231 (b) The district is authorized to levy initial non-ad
232 valorem assessments up to the following maximum amounts:
233 1. Vacant lots of 5 acres or less, $20.
234 2. Vacant acreage over 5 acres, $5 per acre, with a
235 maximum per-vacant-parcel amount of $1,000.
236 3. Vacant commercial and industrial parcels of 5 acres or
237 less, $20.
238 4. Vacant commercial and industrial parcels over 5 acres,
239 $5 per acre, with a maximum per-vacant-parcel amount of $1,000.
240 5. A single-family residential parcel up to 1,000 square
241 feet, $150.
242 6. A single-family residential parcel over 1,000 square
243 feet, $150 plus $0.10 per square foot for every square foot over
244 1,000 square feet.

245 7. A two-family residential parcel, $150 per unit.
246 8. A multifamily residential parcel, $150 per unit.
247 9. Condominiums, $150 per unit.
248 10. Miscellaneous dwelling units, $150 per unit.
249 11. Mobile homes, $150 per unit.
250 12. Commercial and industrial parcels up to 1,000 square
251 feet, $250.
252 13. Commercial and industrial parcels over 1,000 square
253 feet, $250 plus $0.20 per square foot for every square foot over
254 1,000 square feet.
255 (3) Impact fees are hereby authorized. The impact fees
256 collected by the district pursuant to this section shall be kept
257 as a separate fund from other revenues of the district and shall
258 be used exclusively for the acquisition, purchase, or
259 construction of new facilities or portions thereof required to
260 provide fire protection and emergency medical service to new
261 construction. "New facilities" means land, buildings, and
262 capital equipment, including, but not limited to, fire and
263 emergency vehicles and radio telemetry equipment. The fees shall
264 not be used for the acquisition, purchase, or construction of
265 facilities that must be obtained in any event, regardless of
266 growth within the district. The board of commissioners shall
267 maintain adequate records to ensure that impact fees are
268 expended only for permissible new facilities. The first-time
269 levy of impact fees by the district must be approved by
270 referendum of the electors of the district. The referendum on
271 the first-time levy of an impact fee shall include a notice of

272 the future impact fee rate increases permitted by this charter
273 without a referendum.
274 Section 9. Five-year plan.--The district shall adopt a 5-
275 year plan to identify the facilities, equipment, personnel, and
276 revenue needed by the district during that 5-year period. The
277 plan shall be updated in accordance with section 189.415,
278 Florida Statutes, and shall satisfy the requirement for a public
279 facilities report required by section 189.415(2), Florida
280 Statutes.
281 Section 10. Boundaries and mergers.--
282 (1) The boundaries of the district may be modified,
283 extended, or enlarged upon approval or ratification by the
284 Legislature.
285 (2) The merger of the district with all, or portions of,
286 other independent special districts or dependent fire control
287 districts is effective only upon ratification by the
288 Legislature. A district may not, solely by reason of a merger
289 with another governmental entity, increase ad valorem taxes on
290 property within the original limits of the district beyond the
291 maximum established by the district's enabling legislation,
292 unless approved by the electors of the district by referendum.
293 Section 11. Amendment of charter.--This charter may be
294 amended only by special act of the Legislature.
295 Section 12. Merger or dissolution.--Merger or dissolution
296 of the district shall occur as permitted by sections 189.4042
297 and 189.4045, Florida Statutes, as amended from time to time.
298 Section 13. Severability.--Should any provision of this
299 act be held to be unconstitutional, inoperative, or void, such

300 holding or invalidity shall not affect the remaining portions of
301 this act.
302 Section 2. Referendum.--On or before December 30, 2006,
303 the Board of County Commissioners of Manatee County shall call
304 and the county supervisor of elections shall conduct a
305 referendum of the qualified electors of the district on the
306 question of whether the district shall be created by special act
307 of the Legislature and authorized to levy non-ad valorem
308 assessments, which shall not be increased by more than the
309 average annual growth rate in Florida personal income over the
310 previous 5 years without a referendum. "Qualified elector" means
311 a person who resides within the proposed boundaries of the
312 district and is qualified to vote in a general election in
313 Manatee County.
314 Section 3. This act shall take effect only upon its
315 approval by a majority vote of those qualified electors of the
316 district voting in a referendum election to be held by the
317 Manatee County Supervisor of Elections and to be held on or
318 before December 30, 2006, in accordance with the provisions of
319 law relating to elections currently in force in the district,
320 except that this section and section 2 shall take effect upon
321 becoming a law.

CS/HB 1399

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1399 CS North Naples Fire Control and Rescue District, Collier County
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 2780

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	7 Y, 0 N, w/CS	Nelson	Hamby
2) Finance & Tax Committee		Monroe	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

The CS for HB 1399 amends the special act relating to the North Naples Fire Control and Rescue District in Collier County. The bill deletes current language in the act relating to annexation by the City of Naples, and provides that annexations within the boundaries of the district will be governed by general law. The bill also adds language to the charter which provides that the district has the authority to provide housing or housing assistance for its employees.

The bill provides an effective date of upon becoming law.

The bill has an indeterminate fiscal impact on district revenues and expenditures. Applying general law rather than current special law provisions to future annexations of district lands could positively affect the district's finances. Authorizing the district to provide housing or housing assistance for its employees could increase district expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government
This bill would allow an independent special fire control district to provide housing assistance to its employees.

Ensure lower taxes
This bill could necessitate higher taxes for district residents as a result of additional district expenditures to provide employee housing assistance.

Empower families
This bill may allow firefighters to live in closer proximity to their place of employment.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Municipal Annexation within Independent Special Districts

The purpose of s. 171.093, F.S., a provision within the "Municipal Annexation or Contraction Act, "is to provide an orderly transition of special district service responsibilities in an annexed area from an independent special district which levies ad valorem taxes to a municipality following the municipality's annexation of property located within the jurisdictional boundaries of an independent special district, if the municipality elects to assume such responsibilities."

The municipality may make such an election by adopting a resolution evidencing the election and forwarding the resolution to the office of the special district and the property appraiser and tax collector of the county in which the annexed property is located. In addition, the municipality may incorporate its election into the annexation ordinance.

Upon a municipality's election to assume the district's responsibilities, the municipality and the district may enter into an interlocal agreement addressing the orderly transfer of service responsibilities, real assets, equipment and personnel to the municipality. The agreement must address:

- allocation of responsibility for special district services;
- avoidance of double taxation of property owners for such services in the area of overlapping jurisdiction;
- prevention of loss of any district revenues which may be detrimental to the continued operations of the independent district;
- avoidance of impairment of existing district contracts;
- disposition of property and equipment of the independent district and any assumption of indebtedness for it;
- the status and employee rights of any adversely affected employees of the independent district; and
- any other matter reasonably related to the transfer of responsibilities.

If the municipality and the district are unable to enter into an interlocal agreement, the municipality is required to so advise the district and the property appraiser and tax collector of the county in which the annexed property is located. The district remains the service provider in the annexed area for a period of four years beginning October 1 of the calendar year immediately following the calendar year in which

the municipality declares its intent to assume service responsibilities in the annexed area. During the four-year period, the municipality is required to pay the district an amount equal to the ad valorem taxes or assessments that would have been collected had the property remained in the district.

By the end of the four-year period, or any mutually agreed upon extension, the municipality and the district are required to enter into an agreement that identifies the existing district property located in the municipality or primarily serving the municipality that will be assumed by the municipality, the fair market value of such property, and the manner of transfer of such property and any associated indebtedness. If the municipality and district are unable to agree to an equitable distribution of the district's property and indebtedness, the matter proceeds to circuit court. In equitably distributing the district's property and associated indebtedness, the taxes and other revenues paid the district by or on behalf of the residents of the annexed area are taken into consideration.

During the four-year period, or during any mutually agreed upon extension, district service and capital expenditures within the annexed area are required to be rationally related to the annexed area's service needs. Service and capital expenditures within the annexed area also must be rationally related to the percentage of district revenue received on behalf of the residents of the annexed area when compared to the district's total revenue. The district cannot make a capital expenditure greater than $25,000 for use primarily within the annexed area without the express consent of the municipality.

If the municipality elects not to assume the district's responsibilities, the district remains the service provider in the annexed area. The geographical boundaries of the district continue to include the annexed area, and the district may continue to levy ad valorem taxes and assessments on the real property located within the annexed area. If the municipality elects to assume the district's responsibilities, the district's boundaries contract to exclude the annexed area at the time and in the manner provided in the agreement.

If the municipality elects to assume the district's responsibilities and the municipality and the district are unable to enter into an interlocal agreement, and the district continues to remain the service provider in the annexed area, the geographical boundaries of the district contract to exclude the annexed area on the effective date of the beginning of the four-year period.

Nothing in this section precludes the contraction of the boundary of any independent special district by a special act of the Legislature. The district may not levy ad valorem taxes or assessments on the annexed property in the calendar year in which its boundaries contract and subsequent years, but it may continue to collect and use all ad valorem taxes and assessments levied in prior years. Nothing in the section prohibits the district from assessing user charges and impact fees within the annexed area while it remains the service provider.

In addition to any other authority provided by law, the municipality is authorized to levy assessments on property located in an annexed area to offset all or a portion of the costs incurred by the municipality in assuming district responsibilities. Such assessments may be collected pursuant to and in accordance with applicable law.

These provisions do not apply to districts created pursuant to chs. 190 (community development districts) or 373 (water management districts), F.S.

North Naples Fire Control and Rescue District

Chapter 99-450, L.O.F. is the special act which codified the special laws relating to the North Naples Fire Control and Rescue District in Collier County (ch. 61-2032, L.O.F.; ch. 75-359, L.O.F.; ch. 76-349, L.O.F.; ch. 77-532, L.O.F.; ch. 77-533, L.O.F.; ch. 78-493, L.O.F.; ch. 80-488, L.O.F.; ch. 80-491, L.O.F.; ch. 82-283, L.O.F.; ch. 83-390, L.O.F.; ch. 84-416, L.O.F.; s. 1 of ch. 88-519, L.O.F.; ch. 89-448, L.O.F.; ch. 89-455, L.O.F.; ss.1 and 3 of ch. 91-375, L.O.F.; ch. 96-512, L.O.F.; and all references to

the North Naples Fire Control and Rescue District contained in ch. 98-489, L.O.F. The act has not been amended since 1999.

Section 3 of Art. III of this act currently provides that if property in the North Naples Fire Control and Rescue District is annexed by the City of Naples between January 1 and July 1 of any year, the property will be regarded as removed from the district as of January 1 of that year for the purpose of the levy of general ad valorem taxes by the district. If annexation occurs after July 1, the property is assessed by the district for ad valorem taxes for that year.

On and after the effective date of annexation, the district is relieved of providing fire service to the annexed area. The city and the district may reach an agreement to determine what portion, if any, of the existing indebtedness or property of the district shall be assumed by the city, the fair value of such indebtedness or property, and the manner of transfer and financing. The annexed property is not relieved from the payment of general obligation debt service incurred by the district before annexation. This language was added by ch. 89-44, L.O.F.

Effect of Proposed Changes

The CS for HB 1399 amends section 3 of Art. III of s. 3 of ch. 99-450, L.O.F, to remove current provisions regarding annexation by the City of Naples within the district. The new language provides that the general law requirements of s.171.093, F.S., apply to annexations by a municipality within district boundaries.

The bill also adds language to the district's charter which provides that the district has the authority to provide housing or housing assistance for its employees. There are no guidelines or restrictions regarding this matter contained in the bill.[1] The bill recognizes that the "dramatically increasing housing costs in Collier County" may have a detrimental impact on the district's ability to hire and retain personnel needed for the provision of fire protection services to district residents.

As an independent special fire control district, the North Naples Fire Control and Rescue District is required to comply with ch. 191, F.S., the "Independent Special Fire Control District Act." This act supersedes all special acts which address the same subjects except as such acts address district boundaries for the election of members of the governing board.[2] At s. 191.006, F.S., the act provides certain general powers, and s. 191.008, F.S., provides several special powers, none of which appear to conflict with the proposed charter power to provide housing assistance. In fact, s. 191.008(2), F.S., provides these districts with the authority to provide the "compensation and other conditions of employment of the officers and employees of the district...."

The act provides an effective date of upon becoming law.

C. SECTION DIRECTORY:

Section 1: Amends section 3 of Art. III of s. 3 of ch. 99-450, L.O.F.

Section 2: Amends section 1 of Art. IV of s. 3 of ch. 99-450, L.O.F.

Section 3: Provides an effective date.

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[1] The District Board of Fire Commissioners of the North Naples Fire Control and Rescue District passed a resolution on March 9, 2006, which amended their General Fund Budget for 2005-2006 to reduce the Undesignated Reserve by $1,000,000 to create a Designated Reserve for Affordable Workforce Housing in the amount of $1,000,000. While the board has not outlined program specifics, they have articulated a goal of assuring that firefighters serving the district can live in the community.

[2] See, s. 191.004, F.S.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 20, 2006

WHERE? The *Naples Daily News*, a newspaper published in Collier County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its meeting on March 29, 2006, the Local Government Council adopted a strike-all amendment which:

- removed all language referring to annexation within the charter of the North Naples Fire Control and Rescue District, and added a statement affirming that s. 171.093, F.S. applies to annexations by a municipality within the boundaries of the district.
- provided that the district has the authority to provide housing or housing assistance for its employed personnel.

CHAMBER ACTION

The Local Government Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the North Naples Fire Control and Rescue District, Collier County; amending chapter 99-450, Laws of Florida; providing for the applicability of s. 171.093, F.S., in the event of annexation by a municipality within the boundaries of the district; authorizing the district to provide housing or housing assistance for district employees; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 3 of Article III and section 1 of Article IV of section 3 of chapter 99-450, Laws of Florida, are amended to read:

ARTICLE III

Boundaries of the District

Section 3. Section 171.093, Florida Statutes, applies to annexations by a municipality within the boundaries of the

24 district. ~~In the event that property in the district is annexed~~
25 ~~by the City of Naples between January 1 and July 1 of any year,~~
26 ~~the property shall be regarded as removed from the North Naples~~
27 ~~Fire Control and Rescue District as of January 1 of that year~~
28 ~~for the purpose of the levy of general ad valorem taxes by the~~
29 ~~district. If annexation occurs after July 1, the property shall~~
30 ~~be assessed by the district for ad valorem taxes for that year.~~
31 ~~On and after the effective date of annexation, the district~~
32 ~~shall be relieved of providing fire service to the annexed area.~~
33 ~~The city and the district may reach an agreement to determine~~
34 ~~what portion, if any, of the existing indebtedness or property~~
35 ~~of the district shall be assumed by the municipality of which~~
36 ~~the annexed territory will become a part, the fair value of such~~
37 ~~indebtedness or property, and the manner of transfer and~~
38 ~~financing. Nothing herein shall relieve the property annexed~~
39 ~~from the payment of general obligation debt service incurred by~~
40 ~~the district before annexation.~~
41 ARTICLE IV
42 Powers of the District
43 Section 1. The district shall have the authority to
44 establish, equip, operate, and maintain a fire department and
45 rescue squad within the district and may buy, lease, sell,
46 exchange, or otherwise acquire and dispose of firefighting and
47 rescue equipment and other property, real, personal, or mixed,
48 that it may from time to time deem necessary to prevent and
49 extinguish fires or provide rescue services. This shall include,
50 but is not limited to, the authority to hire and fire necessary
51 firefighters and other personnel; to provide water, water

52 supply, water stations, and other necessary buildings; to accept
53 gifts or donations of equipment or money for the use of the
54 district; and to do all things necessary to provide adequate
55 water supply, fire prevention, and proper fire protection for
56 the district. Recognizing that the dramatically increasing
57 housing costs in Collier County may have a detrimental impact on
58 the ability to hire and retain personnel needed for the
59 provision of fire protection services to district residents, the
60 district shall also have the authority to provide housing or
61 housing assistance for its employed personnel, with use of such
62 funds being deemed to be in the public interest. In addition,
63 the board shall have the authority to extend its services
64 outside the district when provided in cooperation with another
65 governmental entity.
66 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1445 CS West Villages Improvement District, Sarasota County
SPONSOR(S): Reagan
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N, w/CS	DiVagno	Hamby
2) Finance & Tax Committee		Monroe KDSM	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

The West Villages Improvement District (District) is an independent special district wholly within the City of North Port, Sarasota County, Florida. The District consists of approximately 8,194 acres. The District's charter grants the District the powers, functions, and duties under chs. 189 (Special District: General Provisions) and 298 (Draining and Water Control), F.S., with a few exceptions. The District has the authority to levy non-ad valorem assessments.

This bill adds approximately 3,740 acres of unincorporated land in Sarasota County into the District. The bill edits the District's charter to provide for the same requirements governing the interactions with the District and the City of North Port, to apply to Sarasota County, and where appropriate, the Englewood Water District. The bill also requires an interlocal agreement with Sarasota County prior to the District exercising any of its powers, functions, or duties relative to infrastructure planning , programming, or construction within its territory located within Sarasota County.

The bill provides residency requirements for two seats on the board, based on population goals.

The bill also calls for a referendum within 60 days after becoming law, in which a majority vote of the acreage cast of all landowners (including those within the current District and those in the purposed expanded boundaries) is required to add the new territory. The referendum is to be held on a one acre, one vote basis at the expense of the District.

The bill provides an effective date of upon becoming law, except for the annexation, which will take effect only upon approval by the land owners.

The estimated cost of administration, implementation, and enforcement are expected to be offset by the anticipated new and increased revenues in both FY 2006/07 and FY 2007/08.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government/Ensure Lower Taxes: If approved by the Board of Commissioners of Sarasota County and a majority vote of the acreage cast, this bill would add approximately 3,740 acres of unincorporated land in Sarasota County into the District, in which the District may exercise its authorities and powers, as formally set out below. The District has the authority to levy non-ad valorem assessments.

B. EFFECT OF PROPOSED CHANGES:

Current Situation:

The West Villages Improvement District (District) is an independent special district wholly within the City of North Port, Sarasota County, Florida. The District consists of approximately 8,194 acres. The District's charter grants the District the powers, functions, and duties under chs. 189 (Special District: General Provisions) and 298 (Draining and Water Control), F.S., with a few exceptions.

The powers of the District are summarized as follows:

a) To adopt bylaws for the regulation of its affairs and the conduct of its business.
b) To adopt rules for the implementation, regulation, and enforcement consistent with the purpose of the District.
c) To adopt an official seal.
d) To acquire real or personal property or an easement, license, estate or interest therein, for the purposes of the District by a variety of means, including the power of eminent domain when necessary and to sell or otherwise convey out all or any portion of those interests to or with other entities. However, the District is not authorized to obtain fee simple title to real property within the District except by dedication on an approved plat, and with the approval of the North Port Commission, or if otherwise required by another governmental entity or agency. All District property interests used for nonpublic or private commercial purposes, are subject to all taxes and assessments as if privately owned.
e) To finance and carry on specific planning functions related to the design, acquisition, modification and maintenance of components of a "modern comprehensive water management drainage; environmental; mitigation preservation; erosion, quality and control purposes." However, the District shall agree at the request of the City of North Port and subject to a developer's agreement with the City of North Port, to donate any and turn over operation of any or all of the water management system to the City.
f) To regulate, modify, control, and redirect the supply of water within the District, including division of waters between water bodies and control facilities, if consistent with City and Southwest Florida Water Management District rules and regulations. To control and restrict development and use of natural or artificial water bodies; and to prevent or alleviate erosion, flooding, or water quality problems, in accordance with applicable federal, state and local rules and regulations.
g) To finance studies to assist in implementing the District's purposes.
h) To finance, plan, generally implement, and maintain irrigation works.
i) To finance, plan, generally implement, and maintain roadways, parkways, bridges, bicycle and jogging paths, street lighting, entry features, traffic signals; including an annual non-ad valorem assessment.
j) To finance, plan, generally implement, and maintain entry features, garages, parking facilities, district offices, buildings, facilities, and structures.

k) To finance, plan, generally implement, and maintain community of public preserves, uplands, wetlands, playgrounds, parks, gymnasiums, stadiums, ballfields, greenways, waterways, and facilities for indoor and outdoor recreational, sport, cultural and educational uses.
l) To finance, plan, generally implement, and collect fees on the production, desalination, purification, sales, and distribution of water for consumption, irrigation, or other purposes.
m) To finance, plan, generally implement, maintain, and collect fees on the collection, disposal and reuse of effluent, waste, residue, or other byproducts of a ewer system; the prevention of pollution, and improvement of water quality; including the charging of connection fees and charges.
n) To finance, plan, generally implement, and maintain mosquito control.
o) To finance, plan, generally implement, and maintain preservation areas, conservation areas, environmental areas, mitigation areas, and wildlife habitat or sanctuaries, including the maintenance of any plant or animal species.
p) To finance, plan, generally implement, and maintain systems and facilities for school buildings and related structures.
q) To levy non-ad valorem assessments; establish and collect rates, fees, rentals, fares or other charges for property, facilities, and services made available by the district.
r) To discontinue service and charge reasonable penalties, including attorney's fees, related to delinquent charges.
s) To enter into agreements for facilities and services authorized and implied by this act.
t) To borrow money, issue negotiable or other bonds, and issue negotiable or other notes, in anticipation of the collection of levies, fees, penalties, charges, fares, and assessments or revenues of the district; to pledge such non-ad valorem assessments and other revenues to secure bonds, note or other obligations, and to sell, discount, negotiate or dispose of such instruments.
u) To provide for safety enhancements and contract with the appropriate local general government agencies for an increased level of such service.
v) To provide systems for fire prevention, including the construction or purchase of fire stations, water mains and plugs, fire trucks, and other vehicles and equipment.
w) To obtain permits and to enter contracts and to employ consultants and other employees and agents.
x) To require any individual or entity to obtain written authorization for use of certain district property, rights-of-way, or to connect to works of the district.
y) To include in a plan improvements the engineer's report and authorizing ch. 170, F.S., authorizing documents (Supplemental and Alternative Method of Making Local Municipal Improvements) to substitute for engineer's report..
z) To assess benefits and damages to the district's lands as regards ch. 170, F.S.
aa) To establish and create departments, committees, boards, or other agencies, including a public relations committee.
bb) Require compliance with the City of North Port comprehensive plan, unified land development code, zoning code and other city codes.
cc) To establish employee benefits.
dd) To invest surplus funds.
ee) To submit the infrastructure improvements plan to the City of North Port.
ff) To apply, obtain, and utilize grants from other entities.
gg) To be limited as to maintaining levels of service on any concurrency regulated facilities in unincorporated Sarasota County
hh) To collect fair share contributions from Sarasota County when approved.

The District's charter contains the following exemptions from general law:

- The charter excludes s. 189.4045(2), F.S., from applying to the District.[1] Section 189.4045(2), F.S., provides for the transfer of assets and debts to the local general-purpose government upon

[1] See ch. 2004-456, L.O.F., § 2(3).

the dissolution of a special district. Rather, the District relies on its non-ad valorem assessment authority as security for debts and the usage of s. 197.363 and s. 197.3632, F.S., for the collection of said non-ad valorem assessments.

- The charter provides for a maintenance assessment in lieu of the maintenance tax provided for in s. 298.54, F.S.[2]
- The charter grants exclusive authority for the issuance of bonds by the District, while s. 298.47, F.S., provides the board of supervisors of a ch. 298, F.S., district the authority for the issuance of bonds.[3]
- The charter does not require that the District validate its bonds under ch. 75, F.S., while s. 75.02, F.S., provides that any county, municipality, taxing district or other political district, may determine its authority to incur bonded debt by means of a validation proceeding. [4]
- The charter does not require the approval or consent of the bondholders when an amendment is made to the plan of improvement, the engineer's report, or ch. 170 authorizing documents, regardless of any contrary language in ch. 298, F.S., ch. 170 authorizing documents, or provisions of the charter. Section 298.77, F.S., provides that adjustments to assessments may only be made provided the owners of 25% of the acreage and the holders of not less than 95% of any outstanding indebtedness, petition for a readjustment of assessments.[5]
- The charter requires a referendum prior to the amendment of a plan of improvement for any unit which has been sold to the general public. Existing law, s. 298.329, F.S., allows the board of supervisors to amend the plan of improvement and levy an additional assessment. [6]

Effect of Bill:

This bill adds approximately 3,740 acres of unincorporated land in Sarasota County into the District.[7] Before the boundaries can be expanded by the approval of the Legislature and majority of landowners in the current District and proposed addition, the bill requires prior approval from the Board of County Commissioners of Sarasota County.

The bill contains amendments to the charter's various sections to address the addition of the new territory. The bill makes edits to provide for the same requirements governing the interactions with the District and the City of North Port, to also apply to Sarasota County, and where appropriate, the Englewood Water District. The bill requires that where authorization and prior approval from the North Port Commission was required to implement certain District powers and authorities within the territory of the City, the District must now also receive prior approval from the Board of Commissioners of Sarasota County for the District to use those powers within the County's territory, and requires the Board for the Englewood Water District to approve the District's use of power in that territory. The bill imposes the same requirements regarding compliance and consistency with the plans and studies of the local general purpose and special district governing bodies in the varied parts of the territory.

The bill requires that the District agree to donate and turn over the operation of its water management and public roadway, water, and wastewater systems within the territory being added within the County at the request of the Board of County Commissioners of Sarasota County or their designees, and subject to a developer's agreement with Sarasota County. The bill requires that the District to donate and turn over the operation of its water and wastewater systems within the territory being added within the Englewood Water District to Englewood at the request of the Board of the Englewood Water District.

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[2] See ch. 2004-456, L.O.F., § 7(1).
[3] See ch. 2004-456, L.O.F., § 10(1).
[4] See ch. 2004-456, L.O.F., § 10(12).
[5] See ch. 2004-456, L.O.F., § 14(3).
[6] See ch. 2004-456, L.O.F., § 14(4).
[7] 2006 Economic Impact Statement, HB 1445.

The bill also requires an interlocal agreement with Sarasota County prior to the District exercising any of its powers, functions, or duties relative to infrastructure planning, programming, or construction within its territory located within Sarasota County.

The bill provides that one supervisor of the board elected be a resident of the City when the population of landowners that are registered voters in the City is at least 6,000 on or before January 1 of any year. The same requirement is instituted for the unincorporated area when there are at least 3,000 landowners registered as voters.

The bill requires publication of notices to include Sarasota County. The bill also institutes two weeks advanced notice of the board's intent to establish a unit or units to either the City of North Port City Manager or the Sarasota County Administrator, depending on where the unit is being formed.

The bill also calls for a referendum within 60 days after becoming law, in which a majority vote of the acreage cast of all landowners (including those within the current District and those in the purposed expanded boundaries) is required to add the new territory. The referendum is to be held on a one acre, one vote basis at the expense of the District.

C. SECTION DIRECTORY:

Section 1: Amend ss. 2, 3, 4, 5, 11, 12, 17, and 19 of ch. 2004-456, L.O.F., to add new boundaries and make changes in the charter to apply powers and duties to the new boundaries in the same manner as required for the City of North Port.

Section 2: Provides for a referendum.

Section 3: Provides on effective date of approval by a majority vote of those qualified landowners for s. 1, and upon becoming law for ss. 2 and 3.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? October 22, 2005.

WHERE? *Sun Newspapers*, Charlotte, DeSoto, Englewood, North Port, and Venice, Florida.

B. REFERENDUM(S) REQUIRED? Yes [X] No []

IF YES, WHEN? Within 60 days of s. 2 and 3 becoming law.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

The estimated cost of administration, implementation, and enforcement is $90,000 for FY 2006/07 and $120,000 for FY 2007/08. The anticipated new and increased revenues are $90,000 for FY 2006/07 and $120,000 for FY 2007/08.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues:

Line 627, page 23, "county's" needs to be capitalized.

Other Comment:

Sarasota County will have to provide standard zoning and police enforcement services to the subject acreage, when developed, which the District does not have the authority to provide.[8]

There will be overlapping boundaries with the proposed addition and the Englewood Water District. Englewood Water District is a water, wastewater and reuse provider and their revenue source is utility fees. The West Villages Improvement District also has the authority to do similar functions within its territory and the ability to charge access, user, or connections fees in carrying out these functions. This may cause a double taxation, double service problem. However, the bill does require prior authorization from the Board of the Englewood Water District before taking any action regarding these functions within Englewood's territory and requires the District to donate and turn over water and wastewater systems to the Englewood Water District at Englewood's request.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Council on Local Government adopted one amendment on March 29, 2006. The amendment requires the District to donate and turn over water and wastewater systems to the Englewood Water District at Englewood's request. The bill also excused Sarasota County from recourse as to bonds issued by the District. The bill, as amended, was reported favorably with committee substitute.

[8] 2006 Economic Impact Statement, HB 1445.

CHAMBER ACTION

1 The Local Government Council recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to the West Villages Improvement District,
7 Sarasota County; amending chapter 2004-456, Laws of
8 Florida; expanding the territorial boundaries of the
9 district; supplementing the conditions and requirements
10 for the exercise of its powers, functions, and duties;
11 providing for a referendum; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Sections 2, 3, 4, 5, 11, 12, 17, and 19 and
16 subsection (2) of section 10 of chapter 2004-456, Laws of
17 Florida, are amended to read:
18 Section 2. District; creation, jurisdiction, and
19 purpose.--
20 (1) The West Villages Improvement District, herein
21 referred to as the "district," is hereby created and
22 incorporated as an independent special district, pursuant to
23 chapter 189, Florida Statutes, to be known as the West Villages

24 Improvement District, in the City of North Port and in
25 unincorporated~~,~~ Sarasota County, which independent special
26 district shall be a public body corporate and politic.
27 (2) The district's territorial boundary shall embrace and
28 include that real property described in following section 17.
29 (3) The district is created for all purposes as shall be
30 liberally construed from and set forth in this act, under
31 sections 189.401-189.429, Florida Statutes, provided that
32 section 189.4045(2), Florida Statutes, is specifically excluded
33 and not applicable to the district or to the City of North Port
34 as to that portion of the district located within the City of
35 North Port jurisdictional boundaries, or to Sarasota County as
36 to that portion of the district located within the
37 unincorporated area, and chapter 298, Florida Statutes, as the
38 same may be amended from time to time, and may perform such acts
39 as shall be necessary, convenient, incidental, or proper for the
40 provision, acquisition, development, operation, and maintenance
41 of those public infrastructure works and services authorized
42 herein, including all facilities necessary and incidental
43 thereto.
44 (4) The district charter created by this act may be
45 amended only by special act of the Legislature. Any expansion of
46 the powers or the boundaries of the district within the City of
47 North Port shall require prior approval of the City of North
48 Port Commission or its designee. Any expansion of the powers or
49 the boundaries of the district within the unincorporated area of
50 Sarasota County shall require prior approval of the Board of
51 County Commissioners of Sarasota County or its designee.

52 (5) The definition of terms and phrases shall be as set
53 forth in chapters 189 and 298, Florida Statutes, unless
54 otherwise herein defined.
55 Section 3. District powers, functions, and duties.--
56 (1) In addition to any powers, functions, and duties set
57 forth in this act, the district shall have the authority to
58 exercise such powers, functions, and duties as may be set forth
59 in chapter 298, Florida Statutes.
60 (2) The district is hereby authorized and empowered as
61 follows:
62 (a) To adopt by resolution bylaws for the regulation of
63 its affairs and the conduct of its business.
64 (b) To adopt by resolution rules as necessary for
65 implementation, regulation, and enforcement as are consistent
66 with the purposes of the district and this act.
67 (c) To adopt an official seal reflecting the name and
68 nature of the district.
69 (d) To acquire by grant, loan, purchase, gift, transfer,
70 exchange, dedication, lease, devise, or, when reasonably
71 necessary for the implementation of district-authorized public
72 infrastructure works, facilities, or services by means of the
73 exercise of the right of eminent domain pursuant to the laws of
74 the state and in accordance with section 12 of this act, all
75 property, real or personal, or any easement, license, estate, or
76 interest therein necessary, desirable, or convenient for the
77 purposes of this act, and to sell, convey, transfer, gift,
78 lease, rent, dedicate, forfeit, abandon, exchange, or assign all
79 or any part thereof to or with other entities, including

80 governmental entities and agencies, and to exercise all of its
81 powers and authority with respect thereto. The district shall
82 not have the right of eminent domain outside of the boundaries
83 of the district. Notwithstanding anything contained herein, the
84 district shall not obtain fee simple title to any real property
85 within the district except by dedication on an approved plat:
86 1. As to that portion of the district located within the
87 City of North Port jurisdictional boundaries, with the approval
88 of the City of North Port Commission or its designee;
89 2. As to that portion of the district located within the
90 unincorporated area, with the approval of the Board of County
91 Commissioners of Sarasota County or its designee;~~,~~ or
92 3. As ~~if~~ otherwise required by another governmental entity
93 or agency.
94
95 Any property interests owned by the district which are used for
96 nonpublic or private commercial purposes shall be subject to all
97 ad valorem taxes, intangible personal property taxes, or non-ad
98 valorem assessments, as would be applicable if said property
99 were privately owned.
100 (e) To finance, plan (as to that portion of the district
101 located within the City of North Port jurisdictional boundaries,
102 consistent with the City of North Port Comprehensive Plan and
103 implementing ordinances, studies, and plans; and, as to that
104 portion of the district located within the unincorporated area,
105 consistent with the Sarasota County Comprehensive Plan and
106 implementing ordinances, studies, and plans), design, acquire,
107 construct, install, operate, equip, upgrade, reclaim, replace,

108 extend, renovate, mitigate, and maintain canals, swales,
109 outfalls, dams, control structures, pumps and pumping systems,
110 aerators, seawalls, berms, ditches, telemetry and monitoring
111 equipment, retention areas, holding basins, marshes, wetlands,
112 uplands, drains, levees, lakes, ponds, and other works or
113 elements for modern comprehensive water management drainage,
114 environmental, mitigation preservation, erosion, quality, and
115 control purposes, and:
116 1. As to that portion of the district located within the
117 City of North Port jurisdictional boundaries, ~~further that~~ the
118 district shall agree, at the request of the City of North Port
119 Commission or its designee, subject to a developer's agreement
120 with the City of North Port (neither party's consent to said
121 developer's agreement shall be unreasonably withheld), to donate
122 and turn over operation to the City of North Port of all or any
123 portion of said water management system located within the City
124 of North Port jurisdictional boundaries; and
125 2. As to that portion of the district located within the
126 unincorporated area, the district shall agree, at the request of
127 the Board of County Commissioners of Sarasota County or its
128 designee, subject to a developer's agreement with Sarasota
129 County (neither party's consent to said developer's agreement
130 shall be unreasonably withheld), to donate and turn over
131 operation to Sarasota County of all or any portion of said water
132 management system located within the unincorporated area ~~to the~~
133 ~~City of North Port~~.

134 (f) To regulate, modify, control, and redirect the supply
135 and level of water within the district if consistent with the
136 rules and regulations of:
137 1. The City of North Port as to that portion of the
138 district located within the City of North Port's jurisdictional
139 boundaries;
140 2. Sarasota County, as to that portion of the district
141 located within the unincorporated area; and
142 3. The ~~Port and~~ Southwest Florida Water Management
143 District ~~rules and regulations~~,
144
145 including the division of waters from one area, lake, pond,
146 river, stream, basin, or water control facility to another; to
147 control and restrict the development and use of natural or
148 artificial streams or bodies of water, lakes, or ponds; and to
149 take of measures determined by the board to be necessary or
150 desirable to prevent or alleviate land erosion, flooding, or
151 water quality problems or issues, provided all such activity
152 shall be carried out in accordance with applicable federal,
153 state, and local government rules and regulations.
154 (g) To finance the implementation of appropriate studies,
155 whether by the district or in conjunction with other agencies or
156 entities, to assist in implementing the district's powers,
157 authorities, and purposes as set forth herein and to facilitate
158 the orderly management of the district and its works and
159 facilities.
160 (h) To finance, plan (as to that portion of the district
161 located within the City of North Port jurisdictional boundaries,

162 consistent with City of North Port Comprehensive Plan and
163 implementing ordinances, studies, and plans; and, as to that
164 portion of the district located within the unincorporated area,
165 consistent with the Sarasota County Comprehensive Plan and
166 implementing ordinances, studies, and plans), design, acquire,
167 construct, install, operate, equip, upgrade, replace, extend,
168 renovate, and maintain irrigation works, machinery, plants, and
169 appurtenances.
170 (i) To finance, plan (as to that portion of the district
171 located within the City of North Port jurisdictional boundaries,
172 consistent with City of North Port Comprehensive Plan and
173 implementing ordinances, studies, and plans; and, as to that
174 portion of the district located within the unincorporated area,
175 consistent with the Sarasota County Comprehensive Plan and
176 implementing ordinances, studies, and plans), design, acquire,
177 construct, install, operate, equip, upgrade, replace, extend,
178 renovate, and maintain roadways; and to include either as a
179 component of such roads or independently by themselves,
180 parkways, bridges, landscaping, irrigation, bicycle and jogging
181 paths, street lighting, entry features, traffic signals, road
182 striping, and all other customary elements or appurtenances of a
183 modern road system for the exclusive use and benefit of the
184 district, a unit of development, and/or its landowners,
185 residents, and invitees in order to control ingress and egress;
186 to finance and maintain said roads and their associated elements
187 and components as a part of a plan of improvements; to construct
188 and maintain security structures to control the use of said
189 roads; to make provision for access by fire, police, and

190 emergency vehicles and personnel for the protection of life and
191 property; to include, in the annual assessment of non-ad valorem
192 assessments as authorized, sufficient funds to finance and
193 maintain said roads as a part of a plan of improvements, and to
194 adopt, by resolution of the board, rules and regulations for the
195 control of traffic, noise levels, crime, and the use of the
196 roads by those authorized. Provided that in the event the
197 district should construct all or any portion of a major
198 thoroughfare or transportation route as identified in section
199 163.3177(6)(b), Florida Statutes, the district will not be
200 permitted to limit said thoroughfare or transportation route for
201 the exclusive use and benefit of the district, a unit of
202 development, and/or its residents without the written consent of
203 the applicable local general purpose government. Notwithstanding
204 anything to the contrary herein:
205 1. As to that portion of the district located within the
206 City of North Port jurisdictional boundaries, construction of
207 roads by the district shall not be in conflict with City of
208 North Port rules, master plans, plans, specifications, or
209 regulations; and
210 2. As to that portion of the district located within the
211 unincorporated area, construction of roads by the district shall
212 not be in conflict with rules, master plans, plans,
213 specifications, or regulations of Sarasota County.
214
215 As to that portion of the district located within the City of
216 North Port jurisdictional boundaries, the district shall agree,
217 at the request of the City of North Port Commission or its

218 designee, subject to applicable impact fee ordinances and a
219 developer's agreement with the City of North Port (neither
220 party's consent to said developer's agreement shall be
221 unreasonably withheld), to donate and turn over operation of all
222 or any portion of any public roadway system within the City of
223 North Port jurisdictional boundaries. As to that portion of the
224 district located within the unincorporated area, the district
225 shall agree, at the request of the Broad of County Commissioners
226 of Sarasota County or its designee, subject to applicable impact
227 fee ordinances and a developer's agreement with Sarasota County
228 (neither party's consent to said developer's agreement shall be
229 unreasonably withheld), to donate and turn over operation of all
230 or any portion of any public roadway system within the
231 unincorporated area to Sarasota County ~~to the City of North~~
232 ~~Port~~.
233 (j) To finance, plan (as to that portion of the district
234 located within the City of North Port jurisdictional boundaries,
235 consistent with City of North Port Comprehensive Plan and
236 implementing ordinances, studies, and plans; and, as to that
237 portion of the district located within the unincorporated area,
238 consistent with the Sarasota County Comprehensive Plan and
239 implementing ordinances, studies, and plans), design, acquire,
240 construct, install, operate, equip, upgrade, replace, extend,
241 renovate, and maintain entry features, garages, parking
242 facilities, district offices, buildings, facilities, and
243 structures.
244 (k) To finance, plan (as to that portion of the district
245 located within the City of North Port jurisdictional boundaries,

246 consistent with City of North Port Comprehensive Plan and
247 implementing ordinances, studies, and plans; and, as to that
248 portion of the district located within the unincorporated area,
249 consistent with the Sarasota County Comprehensive Plan and
250 implementing ordinances, studies, and plans), design, acquire,
251 construct, install, operate, equip, upgrade, replace, extend,
252 renovate, reclaim, mitigate, protect, remove exotics, and
253 maintain improvements, works, landscaping, systems, structures,
254 buildings, and facilities for community or public preserves,
255 uplands, wetlands, playgrounds, parks, gymnasiums, stadiums,
256 ballfields, greenways, waterways, and facilities for indoor and
257 outdoor recreational, sport, cultural, and educational uses.
258 (l)1. To finance, plan (as to that portion of the district
259 located within the City of North Port jurisdictional boundaries,
260 consistent with City of North Port Comprehensive Plan and
261 implementing ordinances, studies, and plans; as to that portion
262 of the district located within the unincorporated area,
263 consistent with the Sarasota County Comprehensive Plan and
264 implementing ordinances, studies, and plans; and as to that
265 portion of the district located within the Englewood Water
266 District service area, consistent with the Englewood Water
267 District's adopted studies and plans), design, acquire,
268 construct, install, operate, set, and charge by resolution
269 access, user, or connection fees and charges, equip, upgrade,
270 replace, store, extend, renovate, and maintain water plants and
271 systems, plus appurtenances, to produce, desalinate, purify,
272 sell, and distribute water for consumption, irrigation, or other
273 purposes; provided that the exercise of such construction,

274 operation, fee establishment, and production powers by the
275 district shall:
276 a. As to that portion of the district located within the
277 City of North Port jurisdictional boundaries, require the prior
278 approval of the City of North Port Commission or its designee;
279 b. As to that portion of the district located within the
280 unincorporated area, require the prior approval of the Board of
281 County Commissioners of Sarasota County or its designee; and
282 c. As to that portion of the district located within the
283 Englewood Water District service area, require the prior
284 approval of the Board of the Englewood Water District or its
285 designee.
286 2. As to that portion of the district located within the
287 City of North Port jurisdictional boundaries, ~~and further that~~
288 the district shall agree, at the request of the City of North
289 Port Commission or its designee, subject to a utility
290 developer's agreement with the City of North Port (neither
291 party's consent to said developer's agreement shall be
292 unreasonably withheld), to donate and turn over operation of all
293 or any portion of said water system within the City of North
294 Port jurisdictional boundaries to the City of North Port.
295 3. As to that portion of the district located within the
296 unincorporated area and outside of the Englewood Water District
297 service area, the district shall agree, at the request of the
298 Board of County Commissioners of Sarasota County or its
299 designee, subject to a utility developer's agreement with
300 Sarasota County (neither party's consent to said developer's
301 agreement shall be unreasonably withheld), to donate and turn

302 over operation of all or any portion of said water system within
303 the unincorporated area to Sarasota County.
304 4. As to that portion of the district located within the
305 Englewood Water District service area, the district shall, at
306 the request of the Board of the Englewood Water District or its
307 designee, subject to an interlocal agreement or other
308 appropriate agreement with the Englewood Water District (neither
309 party's consent to said developer's agreement shall be
310 arbitrarily or unreasonably withheld), donate and turn over
311 operation of all or any portion of said water system within the
312 Englewood Water District service area to the Englewood Water
313 District.
314 (m)1. To finance, plan (as to that portion of the district
315 located within the City of North Port jurisdictional boundaries,
316 consistent with City of North Port Comprehensive Plan and
317 implementing ordinances, studies, and plans; as to that portion
318 of the district located within the unincorporated area,
319 consistent with the Sarasota County Comprehensive Plan and
320 implementing ordinances, studies, and plans; and as to that
321 portion of the district located within the Englewood Water
322 District service area, consistent with the Englewood Water
323 District's adopted studies and plans), design, acquire,
324 construct, install, operate, set, and charge by resolution
325 access, user, or connection fees and charges, equip, upgrade,
326 replace, extend, renovate, and maintain sewer systems, plus
327 appurtenances, for the collection, disposal, and reuse of
328 effluent, waste, residue, or other byproducts of such system,
329 prevent pollution, and improve water quality; provided that the

330 exercise of such construction, operation, and fee establishment
331 powers by the district shall:
332 a. As to that portion of the district located within the
333 City of North Port jurisdictional boundaries, require the prior
334 approval of the City of North Port Commission or its designee;
335 b. As to that portion of the district located within the
336 unincorporated area, require the prior approval of the Board of
337 County Commissioners of Sarasota County or its designee; and
338 c. As to that portion of the district located within the
339 Englewood Water District service area, require the prior
340 approval of the Board of the Englewood Water District or its
341 designee.
342 2. As to that portion of the district located within the
343 City of North Port jurisdictional boundaries, and further that
344 the district shall agree, at the request of the City of North
345 Port Commission or its designee, subject to a utility
346 developer's agreement with the City of North Port (neither
347 party's consent to said developer's agreement shall be
348 unreasonably withheld), to donate and turn over operation of all
349 or any portion of said wastewater system within the City of
350 North Port jurisdictional boundaries to the City of North Port.
351 3. As to that portion of the district located within the
352 unincorporated area and outside of the Englewood Water District
353 service area, the district shall agree, at the request of the
354 Board of County Commissioners of Sarasota County or its
355 designee, subject to a utility developer's agreement with
356 Sarasota County (neither party's consent to said developer's
357 agreement shall be unreasonably withheld), to donate and turn

358 over operation of all or any portion of said wastewater system
359 within the unincorporated area to Sarasota County.
360 4. As to that portion of the district located within the
361 Englewood Water District service area, the district shall, at
362 the request of the Board of the Englewood Water District or its
363 designee, subject to an interlocal agreement or other
364 appropriate agreement with the Englewood Water District (neither
365 party's consent to said developer's agreement shall be
366 arbitrarily or unreasonably withheld), donate and turn over
367 operation of all or any portion of said wastewater system within
368 the Englewood Water District service area to the Englewood Water
369 District.
370 (n) To finance, plan (if not inconsistent with other
371 responsible agencies or authorities), design, acquire,
372 construct, install, operate, equip, upgrade, replace, extend,
373 renovate, and maintain improvements and facilities for and take
374 measures to control mosquitoes or other insects and arthropods
375 of public health importance.
376 (o) To finance, plan (as to that portion of the district
377 located within the City of North Port jurisdictional boundaries,
378 consistent with City of North Port Comprehensive Plan and
379 implementing ordinances, studies, and plans; and, as to that
380 portion of the district located within the unincorporated area,
381 consistent with the Sarasota County Comprehensive Plan and
382 implementing ordinances, studies, and plans), design, acquire,
383 construct, install, operate, equip, upgrade, replace, extend,
384 renovate, and maintain lands, works, systems, landscaping, and
385 facilities for preservation areas, conservation areas,

386 environmental areas, mitigation areas, and wildlife habitat or
387 sanctuaries, including the maintenance of any plant or animal
388 species, and any related interest in real or personal property.
389 The district shall allow the City of North Port access to all
390 such improvements within the City of North Port jurisdictional
391 boundaries and shall allow access by the public when
392 appropriate. The district shall allow Sarasota County access to
393 all such improvements within the unincorporated area of the
394 district and shall allow access by the public when appropriate.
395 (p) To finance, plan (as to that portion of the district
396 located within the City of North Port jurisdictional boundaries,
397 consistent with City of North Port Comprehensive Plan and
398 implementing ordinances, studies, and plans; and, as to that
399 portion of the district located within the unincorporated area,
400 consistent with the Sarasota County Comprehensive Plan and
401 implementing ordinances, studies, and plans), design, acquire,
402 construct, install, operate, equip, upgrade, replace, extend,
403 renovate, and maintain additional systems and facilities for
404 school buildings and related structures which may be donated to
405 a public school district, subject to a developer's agreement
406 (neither party's consent to said developer's agreement shall be
407 unreasonably withheld), for use in the educational system;
408 provided that donation of any land and the exercise of such
409 construction powers by the district shall require the prior
410 approval of the School Board of Sarasota County and either:
411 1. As to that portion of the district located within the
412 City of North Port jurisdictional boundaries, the City of North
413 Port City Commission or its designee; or

414 2. As to that portion of the district located within the
415 unincorporated area, the Board of County Commissioners of
416 Sarasota County or its designee.
417 (q) To levy non-ad valorem assessments; prescribe, fix,
418 establish, and collect rates, fees, rentals, fares, or other
419 charges, and to revise the same from time to time, for property,
420 facilities, and services made available, furnished, or to be
421 furnished by the district; and to recover the cost of making or
422 authorizing the connection to any district facility or system or
423 installing works or improvements on or within district property
424 interests. However, no rates, fares, charges, or fees shall be
425 established until after a public hearing of the board at the
426 district at which all affected persons shall be given an
427 opportunity to be heard.
428 (r) To provide for the discontinuance of service and
429 reasonable penalties, including reasonable attorney's fees,
430 against any user or property for any such rates, fees, rentals,
431 fares, or other charges that become delinquent and require
432 collection.
433 (s) To enter into agreements with any person, firm,
434 entity, partnership, or corporation (public, private, or
435 governmental) for the furnishing by such person, firm, entity,
436 partnership, or corporation of any facilities and services of
437 the type provided for, authorized, or necessarily implied as
438 being authorized in this act.
439 (t) To borrow money and issue negotiable or other bonds of
440 said district as hereinafter provided; and to borrow money, from
441 time to time, and issue negotiable or other notes of said

442 district therefore, bearing interest at not exceeding the
443 maximum interest allowable by law, in anticipation of the
444 collection of levies, fees, penalties, charges, fares, and
445 assessments or revenues of said district, and to pledge or
446 hypothecate such non-ad valorem assessments, levies,
447 assessments, and revenues to secure such bonds, notes, or
448 obligations, and to sell, discount, negotiate, and dispose of
449 the same.
450 (u) To provide for safety enhancements, including, but not
451 limited to, security, guardhouses, fences, and gates, and
452 electronic intrusion detection systems; except that the district
453 shall not be authorized or empowered to exercise any police
454 power, but may contract with the appropriate local general
455 purpose government agencies for an increased level of such
456 service. Notwithstanding anything to the contrary, nothing
457 herein shall allow the district to limit the level of law
458 enforcement provided by federal, state, or local governmental
459 agencies.
460 (v) To provide, at the request of local general purpose
461 governments consistent with the plans of the local general
462 purpose government, systems and facilities for fire prevention
463 and control and emergency medical services, including the
464 construction or purchase of fire stations, water mains and
465 plugs, fire trucks, and other vehicles and equipment consistent
466 with any adopted local general purpose government ordinances,
467 rules, or regulations. ~~and, further, that~~ The district shall
468 agree:

469 1. As to that portion of the district located within the
470 City of North Port jurisdictional boundaries, ~~at the request of~~
471 ~~the local general purpose government,~~ subject to a developer's
472 agreement with the City of North Port (neither party's consent
473 to said developer's agreement shall be unreasonably withheld),
474 to donate and turn over operation of all or any portion of said
475 facilities within the City of North Port jurisdictional
476 boundaries to the City of North Port; and
477 2. As to that portion of the district located within the
478 unincorporated area, subject to a developer's agreement with
479 Sarasota County (neither party's consent to said developer's
480 agreement shall be unreasonably withheld), to donate and turn
481 over operation of all or any portion of said facilities within
482 the unincorporated area to Sarasota County ~~local general purpose~~
483 ~~government~~.
484 (w) To submit for and obtain permits, plus make and enter
485 into contracts and agreements as are necessary or incidental to
486 the performance of the duties imposed and the execution of the
487 powers granted under this act, and to employ such consulting and
488 other engineers, superintendents, managers, administrators,
489 construction and financial experts, attorneys, and such
490 employees and agents as may, in the judgment of the district, be
491 necessary, and to fix their compensation.
492 (x) To require any individual or entity desiring to
493 construct any structure in, over, under, upon, or occupying real
494 ~~district~~ property interests or rights-of-way owned by the
495 district ~~right of way~~ or connecting to or utilizing the works of
496 the district to first obtain written authorization from the

497 district and, as appropriate, either the City of North Port as
498 to that portion of the district located within the City of North
499 Port jurisdictional boundaries or Sarasota County as to that
500 portion of the district located within the unincorporated area
501 ~~comply with all City of North Port and district plans, rules,~~
502 ~~regulations, policies, and specifications~~, provided that said
503 written authorization shall be issued upon a demonstration that
504 the applicant has complied ~~compliance~~ with such Sarasota County,
505 ~~applicable~~ City of North Port, or ~~and~~ district plans, rules,
506 regulations, policies, and specifications as may be applicable.
507 The board of supervisors shall be permitted the discretion to
508 deny or revoke any written authorization or application for same
509 if they find that the matter for which the authorization is
510 sought or granted does not comply with such Sarasota County, ~~the~~
511 City of North Port, or ~~and~~ district plans, rules, regulations,
512 ~~or~~ policies, and specifications as may be applicable. All fees
513 and costs, including construction, review, inspection, copying,
514 engineering, legal, and administrative expenses of the district,
515 shall be paid by the applicant seeking the authorization. Any
516 such district written authorization shall not be deemed or
517 construed as being an alternative to or in place of the
518 applicant's obligation to also obtain all other governmental
519 building and construction permits and approvals. With regard to
520 that portion of the district located within the City of North
521 Port jurisdictional boundaries, any conflict between City of
522 North Port and district plans, rules, regulations, policies, and
523 specifications shall be resolved in favor of the City of North
524 Port. With regard to that portion of the district located within

525 the unincorporated area, any conflict between Sarasota County
526 and district plans, rules, regulations, policies, and
527 specifications shall be resolved in favor of Sarasota County.
528 (y) To include in a plan of improvements, the engineer's
529 report, or the authorizing and implementing documents under
530 chapter 170, Florida Statutes, which shall include, but are not
531 limited to, all applicable resolutions, assessment maps, and/or
532 assessment rolls (the "chapter 170 authorizing documents"), all
533 or one or more of the various powers and functions, including
534 individual parts or components thereof, of the district or any
535 combination of same and to construct and finance said individual
536 or combination of such powers and functions, including
537 individual parts or components thereof. It is the intent of this
538 section that a plan of improvements, the engineer's report, or
539 chapter 170 authorizing documents may provide for a single
540 benefit to the land authorized by the laws pertaining to the
541 district or one or more of all of said benefits or combination
542 thereof as long as there are benefits accruing to the land.
543 (z) To provide in a plan of improvements, the engineer's
544 report, or chapter 170 authorizing documents that in assessing
545 the benefits and damages to be incurred by lands of the district
546 from the implementation, provision, or construction of a plan of
547 improvements or improvements or services pursuant to chapter 170
548 authorizing documents, the varying types of existing or proposed
549 land uses of the land within the unit or affected by such
550 construction or implementation, as the case may be, may be
551 considered and be entitled to so assess the benefits and
552 damages. The district may levy non-ad valorem assessments based

553 upon the benefits assessed in such manner, taking into account
554 the varying existing or proposed land uses of the land affected
555 by such construction as shall provide for the equitable
556 apportionment of such assessments. Such assessments may be
557 levied on the basis of lots, units, acreage, parcels, equivalent
558 connection, or uses or as otherwise set forth in the engineer's
559 report or in the chapter 170 authorizing documents.
560 (aa) To establish and create such departments, committees,
561 boards, or other agencies, including a public relations
562 committee, as from time to time the board of supervisors may
563 deem necessary or desirable in the performance of the acts or
564 other things necessary to the exercise of the powers provided in
565 this act, and to delegate to such departments, committees,
566 boards, or other agencies such administrative duties and other
567 powers as the board of supervisors may deem necessary and to
568 exercise all other powers necessary convenient or proper in
569 connection with any of the powers or duties of said district
570 stated in this act by and through the board of supervisors.
571 Notwithstanding anything contained herein:
572 1. As to that portion of the district located within the
573 City of North Port jurisdictional boundaries, no such
574 departments, committees, boards, or other agencies shall have
575 the power or authority to supersede any powers or authorities of
576 the City of North Port; and
577 2. As to that portion of the district located within the
578 unincorporated area, no such departments, committees, boards, or
579 other agencies shall have the power or authority to supersede
580 any powers or authorities of Sarasota County.

581 (bb) Notwithstanding any authority contained within this
582 section:
583 1. As to that portion of the district located within the
584 City of North Port jurisdictional boundaries, the development,
585 operation, or maintenance of any district facilities or services
586 shall comply with the adopted comprehensive plan, unified land
587 development code, zoning code, and any other city codes and
588 ordinances of the City of North Port; and
589 2. As to that portion of the district located within the
590 unincorporated area, the development, operation, or maintenance
591 of any district facilities or services shall comply with the
592 adopted comprehensive plan, land development regulations, zoning
593 code, and any other codes and ordinances of Sarasota County.
594 (cc) To establish, or otherwise make available, a plan for
595 retirement, disability, dental, death, hospitalization, and
596 other appropriate benefits for employees of the district.
597 (dd) To invest surplus funds of the district consistent
598 with the Investment of Local Government Surplus Funds Act, part
599 IV, chapter 218, Florida Statutes.
600 (ee) As to that portion of the district located within the
601 City of North Port jurisdictional boundaries, to submit to the
602 City of North Port the plan of improvement for major government
603 infrastructure capital elements that may eventually be dedicated
604 or donated to the City of North Port so that the city can rely
605 on and incorporate said plan of improvement into the city's
606 Capital Improvement Plan; and, as to that portion of the
607 district located within the unincorporated area, to submit to
608 Sarasota County the plan of improvement for major government

609 infrastructure capital elements that may eventually be dedicated
610 or donated to Sarasota County so that the county can rely on and
611 incorporate said plan of improvement into the county's Capital
612 Improvement Plan.
613 (ff) To apply for, obtain, and utilize any grants from
614 other entities consistent with the powers of the district;
615 provided, however, that:
616 1. As to that portion of the district located within the
617 City of North Port jurisdictional boundaries, the district shall
618 coordinate with and obtain timely authorization from the City of
619 North Port Commission or its designee prior to the submittal of
620 any grant application; and
621 2. As to that portion of the district located within the
622 unincorporated area, the district shall coordinate with and
623 obtain timely authorization from the Board of County
624 Commissioners of Sarasota County or its designee prior to the
625 submittal of any grant application.
626 (gg) Following methodology consistent with Sarasota ~~the~~
627 county's concurrency management regulations, and notwithstanding
628 any authority contained within this section, the district shall
629 not construct any improvements within that portion of the
630 district located within the City of North Port jurisdictional
631 boundaries, pursuant to any municipal development order, where
632 that development would cause the level of service on any
633 concurrency regulated facility in unincorporated Sarasota County
634 to drop below the level of service adopted as of the effective
635 date of this act, or subsequently reduced level of service, in
636 the Sarasota County Comprehensive Plan pursuant to chapter 163,

637 Florida Statutes, without paying its fair share contribution to
638 improving that facility, and Sarasota County shall have the
639 right under section 163.3215, Florida Statutes, to contest any
640 such municipal development order on the basis that it fails to
641 require the district to pay its fair share contribution. The
642 fair share contribution shall include both the contribution to
643 the county from the fair share collected by the City of North
644 Port pursuant to the county's impact fee ordinance and
645 interlocal agreements between Sarasota County and the City of
646 North Port, as well as direct contributions made to the county
647 by the district. Nothing contained herein shall be construed as
648 limiting the obligations of the district or property owners
649 therein as set forth in Florida Statutes and applicable rules.
650 Any fair share contribution required to address the impact of
651 development within that portion of the district located in
652 unincorporated Sarasota County shall be governed by the laws and
653 ordinances of Sarasota County.
654 (hh) The district shall have the power to collect fair
655 share contributions from Sarasota County should Sarasota County
656 approve any development order in unincorporated Sarasota County
657 that creates impacts to concurrency regulated facilities within
658 the district, which would cause the level of service on any
659 concurrency regulated facility in the district within the City
660 of North Port jurisdictional boundaries to drop below the level
661 of service adopted by the City of North Port for such facility
662 as of the effective date of this act, or subsequently reduced
663 level of service.

664 (3) To include in a plan of improvements, the engineer's
665 report, chapter 170 authorizing documents, or otherwise provide,
666 for the exercise of the district's powers, services, facilities,
667 and improvements beyond the territorial boundaries of the
668 district, when necessary and appropriate in order to provide a
669 benefit on behalf of lands located within the district and
670 pursuant to an approved plan of improvements or chapter 170
671 authorizing documents. Any such construction must be in
672 accordance with the city's master plans and requirements. Any
673 such construction within unincorporated Sarasota County must be
674 in accordance with the county's comprehensive plan, master
675 plans, and thoroughfare plan. The ~~West Villages Improvement~~
676 district shall cooperate and coordinate its activities with the
677 units of general-purpose local government in which it is
678 located, including the City of North Port and Sarasota County.
679 Prior to exercising any of the district powers, functions, or
680 duties relative to infrastructure planning, programming, or
681 construction within that portion of the district located in
682 unincorporated Sarasota County, the district shall enter into an
683 interlocal agreement with Sarasota County, which agreement shall
684 specify the process for the district to coordinate its
685 infrastructure planning, programming, and construction
686 activities with Sarasota County and include a means to
687 coordinate infrastructure planning and programming between the
688 parties. Neither the district nor Sarasota County shall
689 arbitrarily or unreasonably withhold or delay its approval and
690 execution of such interlocal agreement. The district is
691 authorized to enter into interlocal agreements with the City of

692 North Port, Sarasota County, the Englewood Water District, or
693 any other units of government. Whenever the district intends to
694 utilize its powers to construct or cause to be constructed
695 infrastructure projects or programs within the district, the
696 district shall provide copies of all plans and infrastructure
697 permit applications to the Sarasota County Planning Director and
698 Development Services Business Center at such time as the
699 district submits such plans or permit applications to the City
700 of North Port or other permitting authority but in any event no
701 less than 30 days before the City of North Port or other
702 permitting authority issues permits for those projects. The
703 district shall allow the county 20 days from submittal to the
704 county to comment on those plans and permit applications, but as
705 to construction or improvements that are not within
706 unincorporated Sarasota County, the county's approval is not
707 required for the district to proceed with the project. Sarasota
708 County shall not unduly interfere with the district's exercise
709 of its powers conferred by this act.
710 Section 4. Board of supervisors; election, organization,
711 powers, duties, and terms of office.--
712 (1) There is hereby created a Board of Supervisors of the
713 West Villages Improvement District, which shall be the governing
714 body of said district.
715 (2) Said board of supervisors shall consist of five
716 persons who, except as herein otherwise provided, shall each
717 hold office for terms of 4 years each and until their successors
718 shall be duly elected and qualified.

719 (3) The first board of supervisors of the district shall
720 be composed of five persons, two of whom shall hold office for 4
721 years, one of whom shall hold office for 3 years, one of whom
722 shall hold office for 2 years, and one of whom shall hold office
723 for 1 year, which terms shall terminate in June of their
724 applicable final year. Within 120 days after this act becomes a
725 law, a special meeting of landowners of the West Villages
726 Improvement District shall be held for the purpose of electing
727 the first board of supervisors for the West Villages Improvement
728 District as herein provided. Notice of such special meeting of
729 landowners shall be given by causing publication thereof to be
730 made once a week for 2 consecutive weeks prior to such meeting
731 in the newspaper of general paid circulation in which ~~that~~ the
732 City of North Port publishes notices of city meetings, and prior
733 to the meeting, ~~provision of~~ 2 weeks' ~~weeks~~ advance written
734 notice shall be provided to the City of North Port City Manager,
735 including the agenda and any backup material. Such special
736 meeting of landowners shall be held in a public place in the
737 City of North Port, and the place, date, and hour of holding
738 such meeting and the purpose thereof shall be stated in the
739 notice. The landowners when assembled shall organize by electing
740 a chair who shall preside at the meeting and a vice chair,
741 secretary, and treasurer. At such meeting, each and every acre,
742 or any fraction thereof, of land in the district shall represent
743 one vote and each owner shall be entitled to one vote in person
744 or by written proxy for every acre of land, or any fraction
745 thereof, owned by such owner in the district. Candidates must be
746 citizens of the United States and shall be nominated prior to

747 commencement of the initial election. The landowners shall first
748 vote for the 2 supervisors who are to hold office for the 2
749 seats with an initial term of 4 years as herein provided, and
750 the persons receiving the highest and next highest number of
751 votes for such supervisor offices shall be declared and elected
752 as the supervisors for said 2 seats. The landowners shall next
753 vote for the supervisor who is to hold office for that seat with
754 a term of 3 years as provided herein, and the person receiving
755 the highest number of votes for such supervisor shall be
756 declared and elected as such supervisor for said seat. Said
757 landowners shall continue to so vote for each remaining seat
758 until the supervisor who is to hold office for the term of 1
759 year as herein provided is elected for said seat. The landowners
760 present or voting by proxy at the meeting shall constitute a
761 quorum.
762 (4) Each year during the month of June, beginning with
763 June of the second year following the first election, a
764 supervisor shall be elected, as hereinafter provided, by the
765 landowners of said district to take the place of the retiring
766 supervisor. All vacancies or expirations on said board shall be
767 filled as provided by this act. All supervisors of the district
768 shall be citizens of the United States. Following the initial
769 election of supervisors in order to be eligible for election, a
770 candidate for an office of supervisor shall be required to file
771 a written notice of intention to be a candidate in said office
772 of the district at least 30 calendar days but not earlier than
773 90 calendar days before but not including the day of the annual
774 meeting of the landowners. In case of a vacancy in the office of

775 any supervisor, the remaining supervisors within 90 calendar
776 days of the vacancy shall fill such vacancy until the expiration
777 of that seat's outstanding term when a successor shall be
778 elected by the landowners. If, on or before January 1 of any
779 calendar year, there are 6,000 owners of real property in that
780 portion of the district located within the City of North Port
781 that are registered voters in the City of North Port, at least
782 one supervisor elected at the next regularly scheduled election
783 shall be a resident of and owner of real property in that
784 portion of the district located within the City of North Port.
785 If, on or before January 1 of any calendar year, there are 3,000
786 owners of real property in that portion of the district located
787 within the unincorporated area of Sarasota County that are
788 registered voters of Sarasota County, at least one supervisor
789 elected at the next regularly scheduled election shall be a
790 resident of and owner of real property in that portion of the
791 district located within unincorporated Sarasota County.
792 (5) As soon as practicable after their election and the
793 taking of oaths of office, the board of supervisors of the
794 district shall organize by choosing a chair and vice chair of
795 the board of supervisors and by electing some suitable persons
796 secretary and treasurer, who may or may not be members of the
797 board. The board of supervisors shall adopt a seal which shall
798 be the seal of the district.
799 (6) Each supervisor shall hold office until his or her
800 successor shall be elected and qualified. Whenever any election
801 shall be authorized or required by this act to be held by the
802 landowners at any particular or stated time or day, and if for

803 any reason such election shall not or cannot be held at such
804 time or on such day, then in such event and in all and every
805 such event, the power or duty to hold such election shall not
806 cease or lapse, but such election shall be held thereafter as
807 soon as practicable and consistent with this act.
808 (7) The supervisors shall not receive any compensation for
809 their services.
810 Section 5. Meetings of landowners.--
811 (1) Each year during the month of June, a meeting of the
812 landowners of the district shall be held, when necessary, for
813 the purpose of electing a supervisor and hearing reports of the
814 board of supervisors and considering any matters upon which the
815 board of supervisors may request the advice and views of the
816 landowners. The board of supervisors shall have the power to
817 call special meetings of the landowners at any time to consider
818 and act upon any matter upon which the board of supervisors may
819 request action, direction, or advice. Notice of all meetings of
820 the landowners shall be given by the board of supervisors by
821 causing publication thereof to be made for 2 consecutive weeks
822 prior to such meeting in the newspaper of general paid
823 circulation in which ~~that~~ the City of North Port publishes
824 notices of city meetings and in a newspaper of general paid
825 circulation in which Sarasota County publishes notices of its
826 board meetings, and prior to the meeting, ~~provision of~~ 2 weeks'
827 ~~weeks~~ advance written notice shall be provided to the City of
828 North Port City Manager and the Sarasota County Administrator,
829 or their designees, regarding any matters affecting that portion
830 of the district located within the City of North Port

831 jurisdictional boundaries or the unincorporated area,
832 respectively, including the agenda and any backup material. The
833 meetings of the landowners shall be held in a public place in
834 the City of North Port, and the place, day, and hour of holding
835 such meetings shall be stated in the notice. The landowners when
836 assembled shall organize by electing a chair who shall preside
837 at the meeting. The secretary of the board of supervisors shall
838 be the secretary of such meeting. At all such meetings each and
839 every acre, or any fraction thereof, of land in the district
840 shall represent one vote, and each owner shall be entitled to
841 one vote in person or by written proxy for every acre, or any
842 fraction thereof, of land owned by such owner in the district.
843 The eligible person receiving the highest number of votes for a
844 supervisor position shall be declared and elected as such
845 supervisor. Those landowners present or voting by proxy at the
846 meeting, including the initial meeting, shall constitute a
847 quorum at any meeting of the landowners.
848 (2) Guardians may represent their wards, and personal
849 representatives may represent the estates of deceased persons.
850 Trustees may represent lands by them in trust, and private and
851 municipal corporations may be represented by their officers or
852 duly authorized agents. Guardians, personal representatives,
853 trustees, and corporations may vote by proxy.
854 Section 10. Bonds may be issued, sale and disposition of
855 proceeds; interest; levy to pay bonds; bonds and duties of
856 treasurer.--
857 (2) Provided that any and all loans or bonds of the
858 district are non-recourse as to the City of North Port and

859 Sarasota County, the board of supervisors may issue bonds not to
860 exceed 90 percent of the total amount of the non-ad valorem
861 assessments levied under the provisions of section 298.305,
862 Florida Statutes, or equal to the total amount levied under
863 chapter 170, Florida Statutes, bearing interest from date at a
864 rate not to exceed the statutory lawful maximum per annum,
865 payable annually or semiannually, to mature at annual intervals
866 within 40 years commencing after a period of not later than 10
867 years, to be determined by the board of supervisors, with both
868 principal and interest payable at some convenient place
869 designated by the board of supervisors to be named in said
870 bonds, which bonds shall be signed by the chair of the board of
871 supervisors, attested with the seal of the district and by the
872 signature of the secretary of the board. All of said bonds shall
873 be executed and delivered to the district or its agent, which
874 shall sell the same in such quantities and at such dates as the
875 board of supervisors may deem necessary to meet the payments for
876 the works, services, and improvements in and of the district. A
877 sufficient amount of the non-ad valorem assessment shall be
878 appropriated by the board of supervisors for the purpose of
879 paying the principal, premium, if any, and interest of said
880 bonds, and the same shall, when collected, be preserved in a
881 separate fund for that purpose and no other. All bonds not paid
882 at maturity shall bear interest at a rate of not to exceed the
883 statutory lawful maximum per annum from maturity until paid, or
884 until sufficient funds have been deposited at the place of
885 payment, and said interest shall be appropriated by the board of
886 supervisors out of the penalties and interest collected on

887 delinquent assessments or other available funds of the district.
888 Provided, however, that it may, in the discretion of said board,
889 be provided that at any time, after such date as shall be fixed
890 by the said board, said bonds may be redeemed before maturity at
891 the option of said board, or their successors in office, by
892 being made callable prior to maturity at such times and upon
893 such prices and terms and other conditions as said board shall
894 determine. If any bond so issued subject to redemption before
895 maturity shall not be presented when called for redemption, it
896 shall cease to bear interest from and after the date so fixed
897 for redemption.
898 Section 11. Unit development; powers of supervisors to
899 designate units of development and adopt systems of progressive
900 development by units; plan of improvements and financing
901 assessments, for each unit.--
902 (1) Upon written petition signed by the owners of 51
903 percent of the acreage in any area, the board of supervisors of
904 the district shall have the power and is hereby authorized in
905 its discretion to exercise such powers authorized in this act,
906 the lands in said designated area or part of the district to be
907 called a "unit." The units into which said district may be so
908 divided shall be given appropriate numbers or names by said
909 board of supervisors, so that said units may be readily
910 identified and distinguished. The board of supervisors shall
911 have the power to fix and determine the location, area, and
912 boundaries of and lands to be included in each and all such
913 units with the consent of the owners of 51 percent of the
914 acreage in any area, and the method of carrying on the work in

915 each unit. If the board of supervisors shall determine that it
916 is advisable to conduct the work of the district by units, as
917 authorized by this section, said board shall, by resolution duly
918 adopted and entered upon its minutes, declare its purpose to
919 conduct such work accordingly and, upon petition of the owners
920 of 51 percent of the acreage in any area, shall at the same time
921 and manner fix the number, location, and boundaries of and
922 description of lands within such unit or units and give
923 appropriate numbers or names, which unit or units may overlay or
924 overlap one or more other units. As soon as practicable after
925 the adoption and recording of a resolution as to any unit, said
926 board of supervisors shall publish a notice once a week for 2
927 consecutive weeks in the newspaper of general paid circulation
928 in which ~~that~~ the City of North Port publishes notices of city
929 meetings and in a newspaper of general paid circulation in which
930 Sarasota County publishes notices of its board meetings~~, and by~~
931 ~~provision of 2 weeks advance written notice to the City of North~~
932 ~~Port City Manager,~~ briefly describing the unit or units into
933 which the district has been divided and the lands embraced in
934 each unit, giving the name, number, or other designation of such
935 units, requiring all owners of lands in the district to show
936 cause in writing before said board of supervisors at a time and
937 place to be stated in such notice why such division of said
938 district into such unit or units should not be approved, and why
939 the proceedings and powers authorized by this section of this
940 act should not be had, taken, and exercised. Two weeks' advance
941 written notice of the board's intent to establish said unit or
942 units shall also be provided:

943 (a) To the City of North Port City Manager or his or her
944 designee as to that portion of the district located within the
945 City of North Port jurisdictional boundaries; or
946 (b) To the Sarasota County Administrator or his or her
947 designee as to that portion of the district located within the
948 unincorporated area.
949
950 At the time and place stated in said notice, said board of
951 supervisors shall hear all objections or causes of objection,
952 all of which shall be in writing, of any landowner in the
953 district to the matters mentioned and referred to in such
954 notice, and if no objections are made, or if said objections, if
955 made, shall be overruled by said board, then said board shall
956 enter in its minutes its finding and order confirming said
957 resolution and may thereafter proceed with the development of
958 the district by unit or units pursuant to such resolution and to
959 the provisions of this act. If, however, said board of
960 supervisors shall find as a result of such objections, or any of
961 them, or the hearing thereon, that the division of the district
962 into such unit or units as aforesaid should not be approved, or
963 that the proceedings and powers authorized by this section of
964 this act should not be had, taken, or exercised, or that any
965 other matter or thing embraced in said resolution would not be
966 in the best interest of the landowners of said unit or units or
967 would be unjust or unfair to any landowner therein or otherwise
968 inconsistent with fair and equal protection and enforcement of
969 the rights of every landowner in said unit or units, then the
970 board of supervisors shall not proceed further under such

971 resolution, but said board of supervisors may, as a result of
972 such hearing, modify or amend said resolution so as to meet such
973 objections so made, and thereupon said board may confirm said
974 resolution as so modified or amended and may thereafter proceed
975 accordingly. If said board of supervisors shall overrule or
976 refuse to sustain any such objections in whole or in part made
977 by any landowner in the district, or if any such landowner shall
978 deem himself or herself aggrieved by any action of the board of
979 supervisors in respect to any objections so filed, such
980 landowner may, within 10 days after the ruling of said board,
981 file his or her complaint in the Circuit Court for Sarasota
982 County, against said district, praying an injunction or other
983 appropriate relief against the action or any part of such action
984 proposed by such resolution or resolutions of said board, and
985 such suits shall be conducted like other suits, except that said
986 suits shall have preference over all other pending actions
987 except criminal actions and writs of habeas corpus. Upon the
988 hearing of said cause, the circuit court shall have the power to
989 hear the objections and receive the evidence thereon of all
990 parties to such cause and approve or disapprove said resolutions
991 and action of the board in whole or in part, and to render such
992 decree in such cause as right and justice require.
993 (2) When said resolutions creating said unit or units
994 shall be confirmed by the board of supervisors (or by the
995 Circuit Court for Sarasota County, if such proposed action shall
996 be challenged by a landowner by the judicial proceedings
997 hereinabove authorized), the board of supervisors may adopt a
998 plan of improvements or chapter 170 authorizing documents for

999 and in respect to any or all such units, and to have the
1000 benefits and damages resulting therefrom assessed and
1001 apportioned as is provided by law in regard to a plan of
1002 improvements or chapter 170 authorizing documents for and
1003 assessments for benefits and damages of the entire district.
1004 With respect to the plan of improvements, notices, appointment
1005 of engineer to prepare a report assessing the benefits and
1006 damages, the engineer's report and notice and confirmation
1007 thereof, the levy of assessments, including maintenance
1008 assessments, the issuance of bonds, the exercise or use of
1009 chapter 170, Florida Statutes, proceedings and all other
1010 proceedings as to each and all of such units, said board shall
1011 follow and comply with the same procedure as is provided by law
1012 with respect to the entire district; and said board of
1013 supervisors shall have the same powers in respect to each and
1014 all of such units as is vested in them with respect to the
1015 entire district. All the provisions of this act shall apply to
1016 the improvement of each, any, and all of such units, and the
1017 enumeration of or reference to specific powers or duties of the
1018 supervisors or any other officers or other matters in this act
1019 as hereinabove set forth, shall not limit or restrict the
1020 application of any and all of the proceedings and powers herein
1021 for such units as fully and completely as if such unit or units
1022 were specifically and expressly named in every section and
1023 clause of this act where the entire district is mentioned or
1024 referred to. All assessments, levies, bonds, and other
1025 obligations made, levied, assessed, or issued for or in respect
1026 to any such unit or units shall be a lien and charge solely and

1027 only upon the lands in such unit or units, respectively, for the
1028 benefit of which the same shall be levied, made, or issued, and
1029 not upon the remaining units or lands in the district. The board
1030 of supervisors, upon an affirmative vote of a simple majority of
1031 qualified electors, as defined in chapter 189, Florida Statutes,
1032 within said unit voting in a referendum, or upon approval of the
1033 landowners of 51 percent of the acreage in said unit if there
1034 are no residents in said unit, may at any time amend its
1035 resolutions by changing the location and description of lands in
1036 any such unit or units and provided, further, that if the
1037 location or description of lands located in any such unit or
1038 units is so changed, notice of such change shall be published as
1039 hereinabove required in this section for notice of the formation
1040 or organization of such unit or units; provided, however, that
1041 no lands against which benefits shall have been assessed may be
1042 detached from any such unit after the final adoption of the
1043 engineer's report of benefits or chapter 170 authorizing
1044 document, in such unit or units or the issuance of bonds or
1045 other obligations which are payable from assessments for
1046 benefits levied upon the lands within such unit or units.
1047 (3) Provided, however, that if, after adoption of the
1048 engineer's report of benefits chapter 170, authorizing document,
1049 in such unit or units, or the issuance of bonds or other
1050 obligations which are payable from assessments for benefits
1051 levied upon lands within such unit or units, the board of
1052 supervisors finds the plan of improvements, the engineer's
1053 report, or chapter 170 authorizing documents for any such unit
1054 or units insufficient or inadequate for efficient development,

1055 same may be amended or changed as provided in this act, chapter
1056 170 or chapter 298, Florida Statutes, and the unit or units may
1057 be amended or changed as provided in this section, by changing
1058 the location and description of lands in any such unit or units,
1059 by detaching lands therefrom or by adding land thereto, upon the
1060 approval of at least 51 percent of the landowners according to
1061 acreage, in any such unit, and provided that in such event all
1062 assessments, levies, fees, bonds, and other obligations made,
1063 levied, assessed, incurred, or issued for or in respect to any
1064 such unit or units may be allocated and apportioned to the
1065 amended unit or units in proportion to the benefits assessed by
1066 the engineer's report, for the amended plan of improvements and
1067 said report shall specifically provide for such allocation and
1068 apportionment. The landowners shall file their approval of or
1069 objections to such amended plan of improvements within the time
1070 provided in section 298.301, Florida Statutes, or, when used
1071 such applicable deadline provision, if any, of chapter 170,
1072 Florida Statutes, and shall file their approval of or objections
1073 to the amendment of such unit as provided in this section.
1074 (4) No assessable lands shall be detached from any unit
1075 after the issuance of bonds or other obligations for such unit
1076 except upon the consent of a majority the holders, based on face
1077 value of the outstanding bonds, of such bonds or other
1078 obligations. In the event of the change of the boundaries of any
1079 unit as provided herein and the allocation and apportionment to
1080 the amended unit or units of assessments, levies, fees, bonds,
1081 and other obligations in proportion to the benefits assessed,
1082 the holder of the bonds or other obligations heretofore issued

1083 for the original unit who consents to such allocation and
1084 apportionment shall be entitled to all rights and remedies
1085 against any lands added to the amended unit or units as fully
1086 and to the same extent as if such added lands had formed and
1087 constituted a part of the original unit or units at the time of
1088 the original issuance of such bonds or other obligations, and
1089 regardless of whether the holders of such bonds or other
1090 obligations are the original holders thereof or the holders from
1091 time to time hereafter, and the rights and remedies of such
1092 holders against the lands in the amended unit or units,
1093 including any lands added thereto, under such allocation and
1094 apportionment, shall constitute vested and irrevocable rights
1095 and remedies to the holders from time to time of such bonds or
1096 other obligations as fully and to the same extent as if such
1097 bonds or other obligations had been originally issued to finance
1098 the improvements in such amended unit or units.
1099 (5) Upon the formation of a unit, the board is authorized
1100 to levy a one-time organizational special assessment tax per
1101 acre on the lands in a unit sufficient to prepare a plan of
1102 improvements or chapter 170 authorizing documents and have the
1103 benefits assessed as provided herein.
1104 (6) The territorial limits of a unit may be expanded to
1105 include additional land by agreement between the district and
1106 all of the landowners of the land to be included in the unit,
1107 provided that at the time of the execution of the agreement, the
1108 additional land is contained within the jurisdictional
1109 boundaries of the district. Land included in the unit by
1110 agreement shall thereafter be subject to the payment of all

1111 assessments or fees levied by the district in the unit and shall
1112 be subject to the provisions of all laws under which the
1113 district operates. The agreement shall be in recordable form and
1114 filed in the official records.
1115 (7) The district shall not amend any plan of improvement
1116 for any unit in which any real property has been sold to the
1117 general public at large for residential and non-commercial
1118 purposes, in such a way that said amendment results in any
1119 increase in the principal amount of debt then authorized for
1120 that unit, without an affirmative vote of a simple majority of
1121 qualified electors, as so defined in chapter 189, Florida
1122 Statutes, within said unit voting in a referendum.
1123 Section 12. Eminent domain.--The said board of supervisors
1124 is hereby authorized and empowered, when reasonably necessary
1125 for the implementation of district authorized public
1126 infrastructure works, facilities, or services, to exercise
1127 within the district, with prior approval by resolution of the
1128 governing body of the district, ~~and the municipality or outside~~
1129 ~~the district's territorial boundaries and within the City of~~
1130 ~~North Port with prior approval, by resolution, of the City of~~
1131 ~~North Port City Commission, (which approval shall not be~~
1132 ~~unreasonably withheld),~~ the right and power of eminent domain,
1133 pursuant to the provisions of chapters 73 and 74, Florida
1134 Statutes, over any property within the district and the City of
1135 North Port or unincorporated Sarasota County, except municipal,
1136 county, state, and federal property, for the uses and purposes
1137 of the district relating solely to water, sewer, district roads,
1138 and water management, specifically including, without

1139 limitation, the power for the taking of easements for the
1140 drainage of the land of one person over and through the land of
1141 another; however, the exercise of any such power of eminent
1142 domain:
1143 (1) Within the territorial boundaries of the City of North
1144 Port, whether or not within the district boundaries, shall
1145 require the prior approval, by resolution, of the City of North
1146 Port City Commission (which approval shall not be unreasonably
1147 withheld); or
1148 (2) Within the unincorporated area, whether or not within
1149 the district boundaries, shall require the prior approval, by
1150 resolution, of the Board of County Commissioners of Sarasota
1151 County (which approval shall not be unreasonably withheld).
1152 Section 17. Territorial boundaries.--
1153 (1) The territorial boundaries of the district shall be as
1154 follows, to wit:
1155
1156 LANDS LOCATED IN TOWNSHIP 39 SOUTH, RANGE 20 EAST,
1157 SARASOTA COUNTY, FLORIDA:
1158
1159 That part of Section 21, lying Southwesterly of County
1160 Road No. 777 (West River Road). All that part of
1161 Section 28, lying West of County Road No. 777 (West
1162 River Road). All of Section 29, less and except the
1163 following:
1164
1165 Right-of-way for U. S. Highway No. 41 (State Road No.
1166 45). All of Section 30, less and except the following:

1167 Right-of-way for U. S. Highway No. 41 (State Road No.
1168 45); That portion conveyed to Florida Power and Light
1169 Company consisting of approximately 4.66 acres in the
1170 SW1/4 as described in Official Record Book 1036, Page
1171 802, Public Records of Sarasota County, Florida; That
1172 portion lying West of lands described in Official
1173 Record Book 1036, Page 802, South of the westerly
1174 extension of the North line of said lands described in
1175 Official Records Book 1036, Page 802, and North of the
1176 northerly Right of Way line of U.S. Highway No. 41.
1177 All of Section 31, less and except the following:
1178 Right-of-way of U. S. Highway No. 41 (State Road No.
1179 45). All of Section 32, less and except the following:
1180 Right-of-way of U. S. Highway No. 41 (State Road No.
1181 45); That portion conveyed in Official Record Book
1182 2785, Page 634 of the Public Records of Sarasota
1183 County, Florida, (Sarasota County Hospital Board);
1184 That portion conveyed in Official Record Book 1571,
1185 Page 2172 of the Public Records of Sarasota County,
1186 Florida, (Manatee Community College); Right-of-way for
1187 Pine Street Extension as recorded in Official Record
1188 Book 2536, pages 811-974 of The Public Records of
1189 Sarasota County, Florida; That portion conveyed in
1190 Official Record Book 2785, Page 641 of the Public
1191 Records of Sarasota County, Florida, (120 wide
1192 perpetual Non-Exclusive easement); That portion lying
1193 South of lands conveyed in Official Record Book 1571,
1194 Page 2172 and East of lands described in Official

1195 Record Book 2785, Page 641, Public Records of Sarasota
1196 County, Florida. That portion of Section 33, lying
1197 North of U.S. Highway No. 41 (State Road No. 45) and
1198 West of County Road #777 (West River Road); also that
1199 portion of Section 33, lying South of U.S. Highway No.
1200 41 (State Road No. 45), West of a 200 ft. wide access
1201 easement described in Official Records Book 2389, Page
1202 528, Public Records of Sarasota County, Florida, and
1203 North of lands conveyed in Official Records Book 1571,
1204 Page 2172, Public Records of Sarasota County, Florida;
1205 also that portion of Section 33, lying South of U.S.
1206 Highway No. 41 (State Road No. 45), described as
1207 follows:
1208
1209 COMMENCE at the East Quarter Corner of Section 33,
1210 Township 39 South, Range 20 East, Sarasota County
1211 Florida; thence S. 00°16'02"W., along the East line of
1212 said Section 33, a distance of 289.08 feet to a point
1213 on the Southerly Right of Way Line of U.S. Highway No.
1214 41, (State Road No. 45) per Florida Department of
1215 Transportation Right of Way Map Section 17010-2508,
1216 same being a point on a curve to the right having a
1217 radius of 3011.73 feet, a central angle of 24°58'49",
1218 a chord bearing of N. 66°51'56"W., and a chord length
1219 of 1032.71 feet; thence along the arc of said curve
1220 and said Southerly Right of Way of U.S. No. 41, an arc
1221 length of 1313.08 feet to the point of tangency of
1222 said curve; thence N. 54°22'31"W., along said

1223 southerly Right of Way, a distance of 66.57 feet to
1224 the POINT OF BEGINNING, same being the Northwest
1225 corner of Lands described in Official Records
1226 Instrument No. 1998166153, per Public Records of
1227 Sarasota County, Florida; thence along the Westerly
1228 line of said Lands described in Official Records
1229 Instrument No. 1998166153 the following three (3)
1230 courses and distances; (1) S. 35°37'26"W., a distance
1231 of 161.93 feet to the point of curvature of a curve to
1232 the right having a radius of 559.97 feet, a central
1233 angle of 29°49'56", a chord bearing of S. 50°32'24"W.,
1234 and a chord length of 288.28 feet; (2) thence along
1235 the arc of said curve an arc length of 291.56 feet to
1236 the end of said curve; (3) thence S. 00°01'27"W., a
1237 distance of 1074.23 feet; thence N. 48°24'50"W.,
1238 leaving said Westerly Line, a distance of 2914.38 feet
1239 to the Northeast corner of Lands described as Manatee
1240 Community College per Official Records Book 1571, Page
1241 2172, same being the point of curvature of a curve to
1242 the left having a radius of 4577.37 feet, a central
1243 angle of 06°20'23", a chord bearing of N. 60°40'02"W.,
1244 and a chord length of 506.22 feet; thence along the
1245 arc of said curve and Northerly Line of Lands
1246 described as Manatee Community College, an arc length
1247 of 506.48 feet to the end of said curve, same being
1248 the Southeast corner of lands described in Official
1249 Records Book 2389, Page 529, Public Records of
1250 Sarasota County, Florida; thence N. 65°18'18"E., along

1251 the Easterly Line of said lands, a distance of 188.09
1252 feet; thence continue N. 00°00'19"W., along said
1253 Easterly Line, a distance of 144.96 feet to the
1254 Northeast corner of said Lands; thence N. 65°21'46"W
1255 along the Northerly Line of said Lands, a distance of
1256 400.68 feet to the Northwest corner of said Lands,
1257 same being a point on the Easterly Line of a 200 foot
1258 wide access Easement per Official Records Book 1571,
1259 Pages 2172 through 2175 and Official Records Book
1260 2389, Pages 528 through 530, Public Records of
1261 Sarasota County, Florida; thence N. 00°30'25"E., along
1262 the Easterly Line of said 200 foot wide access
1263 Easement, a distance of 786.89 feet to the Southerly
1264 Right of Way of U.S. No. 41, same being a point on a
1265 curve to the right having a radius of 5597.58 feet, a
1266 central angle of 03°08'33", a chord bearing of S.
1267 69°13'16"E., and a chord length of 306.97 feet; thence
1268 along the arc of said curve an arc length of 307.01
1269 feet to the end of said curve; thence continue along
1270 said Southerly Right of Way Line the following
1271 fourteen (14) courses and distances; (1) S.
1272 22°19'13"W., a distance of 10.00 feet to the point of
1273 curvature of a curve to the right having a radius of
1274 5587.58 feet, a central angle of 00°45'15", a chord
1275 bearing of S. 67°16'21"E., and a chord length of 73.55
1276 feet; (2) thence along the arc of said curve an arc
1277 length of 73.55 feet; (3) thence N. 23°06'16"E., a
1278 distance of 10.00 feet to the point of curvature of a

1279 curve to the right having a radius of 5597.58 feet, a
1280 central angle of 08°17'44", a chord bearing of S.
1281 62°44'52"E., and a chord length of 809.74 feet; (4)
1282 thence along the arc of said curve an arc length of
1283 810.45 feet; (5) thence S. 31°08'57"W., a distance of
1284 10.00 feet to the point of curvature of a curve to the
1285 right having a radius of 5587.58 feet, a central angle
1286 of 00°45'12", a chord bearing of S. 58°13'22"E., and a
1287 chord length of 73.47 feet; (6) thence along the arc
1288 of said curve an arc length of 73.47 feet; (7) thence
1289 N. 32°24'25"E., a distance of 10.00 feet to the point
1290 of curvature of a curve to the right having a radius
1291 of 5597.58 feet, a central angle of 03°28'13",a chord
1292 bearing of S. 56°06'38"E., and a chord length of
1293 338.98 feet; (8) thence along the arc of said curve an
1294 arc length of 339.03 feet to the end of said curve;
1295 thence (9) S. 56°35'34"E.; a distance of 155.08 feet;
1296 (10) thence S. 54°22'31"E., a distance of 1102.52
1297 feet; (11) thence S. 51°00'40"E., a distance of 101.66
1298 feet; (12) thence S. 54°20'43"E., a distance of 199.02
1299 feet; (13) thence S. 48°43'03"E., a distance of 100.71
1300 feet; (14) thence S. 54°22'31"E., a distance of 447.75
1301 feet to the POINT OF BEGINNING.
1302
1303 That portion of the North Half of the Southwest
1304 Quarter of the Northwest Quarter of Section 34, lying
1305 West of River Road (County Road No. 777); also that
1306 portion of the Southeast Quarter of Section 34, lying

1307 West of the Myakka River, South of the South line of
1308 lands described in Official Record Instrument No.
1309 2000002794, Public Records of Sarasota County, Florida
1310 (River Road Office Park, Inc.), and easterly of the
1311 maintained right of way line of a paved road running
1312 from River Road to the South line of the Northeast
1313 Quarter of said Section 34, (Old River Road), less and
1314 except the following: That portion described in
1315 Official Record Instrument No. 1999111833, Public
1316 Records of Sarasota County, Florida, (Right of Way for
1317 County Road No. 777). All of Section 35 lying West of
1318 the Myakka River. Also, a portion of Sections 32, 33
1319 and 34, Township 39 South, Range 20 East, Sarasota
1320 County, Florida, being more particularly described as
1321 follows: BEGIN at the Southeast corner of Section 32,
1322 Township 39 South, Range 20 East; thence N.
1323 89°04'43"W., along the South line of said Section 32,
1324 a distance of 410.14 feet to the Southeast corner of
1325 the lands described in Official Records Book 2785 at
1326 Page 634, of the Public Records of Sarasota County,
1327 Florida; thence N. 00°30'25"E., along the East line of
1328 said lands described in Official Records Book and
1329 Page, same being the West line of a 120.00 foot wide
1330 Perpetual Non-exclusive Easement per Official Records
1331 Book 2785 at Page 641, a distance of 1400.76 feet to a
1332 point on the westerly extension of the southerly
1333 boundary line of lands described in Official Records
1334 Book 1571 at Page 2172, of the Public Records of

1335 Sarasota County, Florida; thence along the westerly
1336 extension and boundary of said lands described in
1337 Official Records Book 1571, at Page 2172 the following
1338 two (2) courses: (1) S. 89°29'35"E., a distance of
1339 1960.21 feet; (2) thence N. 00°30'25"E., a distance of
1340 2062.70 feet to the Northeast corner of said lands;
1341 thence S. 48°24'50"E., a distance of 2914.38 feet to
1342 the Southwest corner of lands described in Official
1343 Records Instrument 1998166154, of the Public Records
1344 Sarasota County, Florida; thence along the boundary of
1345 said lands described in Official Records Instrument
1346 1998166154 the following three (3) courses: (1) S.
1347 89°58'33"E., a distance 676.50 feet; (2) thence N.
1348 00°01'27"E., a distance of 752.33 feet; (3) thence N.
1349 28°06'22"E., a distance of 362.06 feet to a point on
1350 the southerly right of way line of U.S. Highway No.
1351 41, as per Florida Department of Transportation Right
1352 of Way Map, Section 17010-2508, said point being on a
1353 curve concave to the northeast and having a radius of
1354 3011.73 feet, a central angle of 14°28'18", a chord
1355 bearing of S. 72°07'12"E. and a chord distance of
1356 758.67 feet; thence in an easterly direction, along
1357 the arc of said curve, an arc distance of 760.69 feet
1358 to a point on the West line of Section 34, Township 39
1359 South, Range 20 East, Sarasota County, Florida; thence
1360 S. 00°16'02"W., along the West line of said Section
1361 34, and leaving said southerly right of way line, a
1362 distance of 379.82 feet; thence S. 89°37'27"E., a

1363 distance of 1329.90 feet to a point on the westerly
1364 right of way line of County Road #777 (South River
1365 Road) as per Florida Department of Transportation
1366 Right of Way Map, Section 17550-2601; thence along
1367 said westerly right of way line, the following six (6)
1368 courses; (1) S. 00°07'30"W., a distance of 5.48 feet;
1369 (2) thence S. 89°23'52"E., a distance of 9.74 feet;
1370 (3) thence S. 36°39'07"E., a distance of 64.18 feet to
1371 the point of curvature of a circular curve to the
1372 right, having a radius of 5599.32 feet, a central
1373 angle of 02°00'54", a chord bearing of S. 35°38'40"E.
1374 and a chord distance of 196.90 feet; (4) thence
1375 southeasterly, along the arc of said curve, an arc
1376 distance of 196.91 feet to the end of said curve; (5)
1377 thence N. 55°21'47"E., radial to the last described
1378 curve, a distance of 20.00 feet to a point on a curve
1379 concentric with the last described curve and having a
1380 radius of 5619.32 feet, a central angle of 15°31'30",
1381 a chord bearing of S. 26°52'28"E. and a chord distance
1382 of 1517.98 feet; (6) thence in a southerly direction
1383 along the arc of said curve, an arc distance of
1384 1522.64 feet to the Northeast corner of lands
1385 described in Official Records Instrument 2000002794,
1386 of the Public Records Sarasota County, Florida; thence
1387 S. 78°41'04"W., along the northerly line of said lands
1388 described in Official Records Instrument 2000002794, a
1389 distance of 2240.20 feet to the Southeast corner of
1390 Section 33, Township 39 South, Range 20 East, Sarasota

1391 County, Florida; thence N. 89°39'52"W., along the
1392 South line of said Section 33, a distance of 5318.90
1393 feet to the POINT OF BEGINNING.
1394
1395 LANDS LOCATED IN TOWNSHIP 40 SOUTH, RANGE 20 EAST,
1396 SARASOTA COUNTY, FLORIDA:
1397
1398 All of Section 3, less and except the following: That
1399 portion conveyed in Order of Taking recorded in
1400 Official Record Book 2679, Page 2750-2754, of the
1401 Public Records of Sarasota County, Florida (County
1402 Road No 777); That portion conveyed in Official Record
1403 Instrument No. 2000002794 of the Public Records of
1404 Sarasota County, Florida, (River Road Office Park,
1405 Inc.); The maintained right-of-way of County Road No.
1406 777 (South River Road). All of Section 4, Less and
1407 except the following: That portion described in
1408 Official Record Instrument No. 2000002794, of the
1409 Public Records of Sarasota County, Florida, (River
1410 Road Office Park, Inc.). All of Section 5, less and
1411 except the following: Right-of-way conveyed for Pine
1412 Street Extension recorded in Official Record Book
1413 2536, Page 811-974, of the Public Records of Sarasota
1414 County, Florida. All of Section 6, less and except the
1415 following: Right-of-way conveyed for Pine Street
1416 Extension recorded in Official Record Book 2536, Page
1417 811-974, of the Public Records of Sarasota County,
1418 Florida. All of Section 7, less and except the

1419 following: Right-of-way conveyed for Pine Street
1420 Extension recorded in Official Record Book 2536, Page
1421 811-974, of the Public Records of Sarasota County,
1422 Florida. All of Section 8. All of Section 9. All of
1423 Section 10, less and except the following: The
1424 maintained right-of-way for County Road No. 777 (South
1425 River Road) ALL OF THE ABOVE ARE SUBJECT TO EASEMENTS
1426 OF RECORD, OR OTHERWISE, USED FOR DRAINAGE, UTILITIES
1427 AND/OR INGRESS AND EGRESS.
1428
1429 The above described property contains a total of
1430 8193.7478 acres more or less.
1431
1432 (2) The territorial limits of West Villages Improvement
1433 District shall also embrace and include those parcels of land
1434 described as follows:
1435
1436 LANDS LOCATED IN TOWNSHIP 39 SOUTH, RANGE 20 EAST,
1437 SARASOTA COUNTY, FLORIDA:
1438
1439 All that part of Section 21, as lies Southwesterly of
1440 County Road # 777 (West River Road). All that part of
1441 Section 28 lying West of County Road # 777 (West River
1442 Road). All that part of Section 32, described as
1443 follows:
1444
1445 Commence at the Northeast corner of said Section 32;
1446 thence S.00E30'23"W., along the easterly line of the

1447 Northeast 1/4 of said Section 32, a distance of
1448 2658.68 feet to the southeast corner of said Northeast
1449 1/4; thence N.89E23'27"W. a distance of 290.00 feet to
1450 the POINT OF BEGINNING; thence N.00E30'23"E., parallel
1451 with the easterly line of said Section 32, a distance
1452 of 2497.34 feet to the southerly right-of-way of U.S.
1453 Highway 41, being a point on a curve to the left the
1454 center of which lies S.06E30'20"W., a radial distance
1455 of 5603.58 feet; thence along the arc in a westerly
1456 direction, passing through a central angle of
1457 01E13'57", a distance of 120.53 feet; thence
1458 S.00E30'23"W., a distance of 5165.77 feet; thence
1459 S.89E05'08"E., a distance of 120.00 feet; thence
1460 N.00E30'23"E., a distance of 2657.98 feet to the POINT
1461 OF BEGINNING.
1462
1463 All that part of Section 33, described as follows:
1464 Commence at the NW corner of Section 33, Township 39
1465 South, Range 20 East, Sarasota Florida; run thence S.0
1466 degrees 30'44"W. along the westerly line of said
1467 Section 33, 105.39' to the centerline of U.S. 41;
1468 thence continue S.0 degrees 30'44"W. along said
1469 westerly line 1372.36'; thence S.89 degrees 29'16"E.
1470 along the northerly line of Tract, 810' to the POINT
1471 OF BEGINNING of said centerline of said 200 foot wide
1472 Tract; thence N.0 degrees 30'44"E., parallel to the
1473 said westerly line of Section 33, 1078.74' to the
1474 southerly right-of-way line of U.S. 41 (right-of-way

1475 being 100 feet from centerline at this point) for a
1476 POINT OF TERMINATION.
1477
1478 All that part of Section 34 described as follows: The
1479 North Half of the Northwest Quarter of the Southwest
1480 Quarter lying South of U.S. Highway #41 (State Road
1481 #45) and West of the right of way of County Road #777
1482 (as realigned) in Official Records Book 2679 at Pages
1483 2750-2574, LESS the following described lands: East
1484 200' (as measured along the South Right-of-Way of
1485 Tamiami Trail, or arc distance) of the West 392.7 feet
1486 measured along the South Right-of-Way of said Tamiami
1487 Trail, arc distance; on the following described
1488 property: That portion of the Northwest 1/4 of the
1489 Northwest 1/4 of the Southwest 1/4 of Section 34,
1490 Township 39 South, Range 20 East, Sarasota County,
1491 Florida, lying South of Tamiami Trail and being more
1492 particularly described as follows: Begin at the West
1493 1/4 of section corner of Section 34, Township 39
1494 South, Range 20 East and run South on the section line
1495 196.71 feet to the South Right-of-Way line of the
1496 Tamiami Trail for a Point of Beginning: thence
1497 continue S.89E58'00"E 659 feet; thence N.00E00'20"W
1498 424.57 feet to the South Right-of-Way of the said
1499 Tamiami Trail; thence in a Northwesterly direction
1500 along the curve of said Tamiami Trail a distance of
1501 662.5 feet to the Point of Beginning. Said above
1502 described lands being more particularly described and

1503 surveyed as follows: Commence at the West quarter
1504 corner of said Section 34, thence South along the
1505 Westerly section line of said Section 34, a distance
1506 of 668.85 feet; thence S.89E58'00"E. a distance of
1507 190.40 feet to the Point of Beginning of this
1508 description. Thence N.00E00'00"E. a distance of 350.24
1509 feet to a point on the Southerly Right-of-Way line of
1510 Tamiami Trail also known as STATE ROAD No. 45. and
1511 U.S. 41 as per Florida Department of Transportation
1512 Right-of-Way maps Section No. 17010-2508 (204' Right-
1513 of-Way) said point also being on the arc of a circular
1514 curve to the left whose radius point bears
1515 N.06E36'51"E., thence along the arc of said curve in
1516 an easterly direction through a central angle of
1517 03E48'13", having a radius distance of 3011.73 feet,
1518 an arc distance of 199.93 feet; thence South leaving
1519 said Right-of-Way line a distance of 333.93 feet;
1520 thence N.89E58'00"W. a distance of 199.22 feet to the
1521 Point of Beginning; The NE 1/4 of the SW 1/4, lying
1522 easterly of right of way for County Road #777 (as
1523 realigned) as per Official Records Book 2679, at Pages
1524 2750-2754, Less the NW 1/4 of the NE 1/4 of the SW
1525 1/4, Also Less lands described in Official Records
1526 Instrument Number 1999111833; That part of the West
1527 Half of the SE 1/4, lying westerly of maintained right
1528 of way for South River Road (Old River Road), and
1529 northerly of lands described in Official Records
1530 Instrument Number 1999111833.

1531
1532 IN TOWNSHIP 40 SOUTH, RANGE 20 EAST, SARASOTA COUNTY,
1533 FLORIDA:
1534
1535 All of Section 15, less and except the following: The
1536 maintained right-of-way for County Road #777 (South
1537 River Road); Right-of-way conveyed in Official Records
1538 Instrument Number 2000163556.
1539
1540 All of Section 17, less and except the following:
1541 Right-of-way conveyed for Pine Street Extension
1542 recorded in Official Record Book 2536, Page 811-974,
1543 of the Public Records of Sarasota County, Florida.
1544
1545 All of Section 18, less and except the following:
1546 Right-of-way conveyed for Pine Street Extension
1547 recorded in Official Record Book 2536, Page 811-974,
1548 of the Public Records of Sarasota County, Florida.
1549
1550 All of Section 19, less and except the following:
1551 Right-of-way conveyed for Pine Street Extension
1552 recorded in Official Record Book 2536, Pages 811-974,
1553 of the Public Records of Sarasota County, Florida.
1554
1555 All of Section 20, less and except the following:
1556 Right-of-way conveyed for Pine Street Extension
1557 recorded in Official Record Book 2536, Pages 811-974,
1558 of the Public Records of Sarasota County, Florida;

1559 Maintained right-of-way for County Road #777 (South
1560 River Road).
1561
1562 All of Section 21, less and except the following:
1563 Maintained right-of-way for County Road #777 (South
1564 River Road); The SW 1/4 of the SE 1/4; The North 50
1565 feet of the South 380 feet of the SW 1/4 lying East of
1566 County Road #777 (South River Road); Right-of-way
1567 conveyed in Official Record Book 2097, Page 396, of
1568 the Public Records of Sarasota County, Florida; Right-
1569 of-way conveyed in Official Records Instrument Number
1570 2000163556.
1571
1572 Parcel Contains 3739.9714 Acres more or less.
1573 Section 19. Limitations of powers.--All governmental
1574 planning, environmental, and land development laws, regulations,
1575 and ordinances apply to all development of the land within the
1576 district. The district does not have the power of a local
1577 government to adopt a comprehensive plan, building code, zoning
1578 code, or land development code, as those terms are defined in
1579 the Local Government Comprehensive Planning and Land Development
1580 Regulation Act. The district shall take no action which is
1581 inconsistent with applicable comprehensive plans, ordinances, or
1582 regulations of the applicable local general-purpose government.
1583 Nothing in this act shall create any delegation of any
1584 responsibilities or authorities from Sarasota County or the City
1585 of North Port to the district. Notwithstanding anything to the
1586 contrary, as to any lands located within the City of North Port

1587 jurisdictional boundaries or the unincorporated area, the
1588 district shall be required to obtain any and all permits for
1589 infrastructure planning and construction from the City of North
1590 Port or Sarasota County, respectively, that would otherwise be
1591 required of a private entity performing the same work. The
1592 district shall not have the power to supersede ~~supercede~~,
1593 contravene, or overrule any development or annexation agreements
1594 entered into by landowners within or outside of the district or
1595 any City of North Port joint planning agreements or interlocal
1596 agreements with Sarasota County or any other governmental
1597 entities.
1598 Section 2. Referendum.--No expansion of the territorial
1599 boundaries of the district shall be effective until a landowner
1600 referendum is conducted by the board of supervisors within 60
1601 days after the effective date of this act on the question of
1602 expanding the territorial boundaries of the district. All
1603 landowners (which include the landowners within the current
1604 district and expanded district boundaries) are entitled to vote
1605 in the referendum held pursuant to this section. The referendum
1606 shall be held on a one-acre, one-vote basis at the expense of
1607 the district. If the landowners approve the referendum described
1608 in this section by a majority vote of the acreage cast, then
1609 this act shall take effect immediately.
1610 Section 3. This act shall take effect only upon its
1611 approval by a majority vote of those qualified landowners of the
1612 area described in section 17, as amended, voting in a referendum
1613 to be held by the Board of Supervisors of the West Villages
1614 Improvement District voting in a special election, except that

1615 this section and section 2 shall take effect upon becoming a
1616 law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1445**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Reagan offered the following:
3
4 **Amendment**
5 On line 627 delete "county's" and insert:
6 County's ~~county's~~
7

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1445 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax

2 Representative(s) Reagan offered the following:

3

4 **Amendment**

5 Remove line(s) 309 and insert:

6

7 party's consent to said agreement shall be

8

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1445 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax

2 Representative(s) Reagan offered the following:

3

4 **Amendment**

5 Remove line(s) 365 and insert:

6

7 party's consent to said agreement shall be

8

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7099 CS PCB JU 06-04 Land Trusts
SPONSOR(S): Judiciary Committee and Simmons
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1956

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee	11 Y, 0 N, w/CS	Thomas	Hogge
1) Civil Justice Committee	5 Y, 0 N	Shaddock	Bond
2) Finance & Tax Committee		Monroe	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

The essential purpose of a land trust is to provide a flexible method for the acquisition, financing, and disposition of real property. The land trust is a modified form of conventional trust agreement that is limited to an arrangement where the trustee holds title to the real property; however, all the active managerial and administrative powers are reserved to the beneficiaries.

The bill codifies existing practice and case law in the area of land trusts. It revises the current statute relating to land trusts by providing definitions of the terms "beneficial interest," "beneficiary," "land trust," "holders of the power of direction," and "trustee." It removes an obsolete provision referring to claims arising out of dower or curtesy. It creates provisions relating to land trust beneficiaries, successor trustees, and land trustees as creditors. Finally, it provides that the provisions of the bill are intended to clarify the existing law relating to land trusts and that the bill applies to all land trusts, whether the land trust was created before, on, or after the effective date of the bill.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Land Trusts in General

The essential purpose of a land trust is to provide a flexible and practical method for the acquisition, financing, and disposition of real estate. Illinois appears to have been the first state to recognize the land trust, and for that reason, the land trust is often referred to as the "Illinois Land Trust."[1] The land trust is a modified form of a conventional trust agreement; however, it is limited to an arrangement where the trustee holds title to the real property but all the active managerial and administrative powers are reserved to the beneficiaries. In a land trust, the trustee receives the legal title to the real property, but the usual attributes of real estate fee ownership are retained by the beneficiary. The beneficiary retains only a personal property interest.

The land trust has been equated to the Massachusetts business trust from which the land trust undoubtedly evolved.[2] However, unlike a Massachusetts business trust, a land trust is generally viewed as a vehicle for holding title to real property rather than as an operating business entity. The land trust is created through the use of two instruments: 1) a deed in trust, where the real property is conveyed to the trustee, and 2) a trust agreement under which the trustee acts. Land trusts have been found to have several advantages:

- Interests in land trusts cannot be partitioned, and transferring beneficial interests is relatively easy.
- Interests of beneficiaries cannot be disclosed without a court order.
- Judgments against the beneficiaries do not affect legal title of the real property.
- The beneficial interest in the land trust is personal property. Since it is personal property, non-residents of Florida can avoid ancillary administration.
- The death of a beneficiary does not terminate the trust, and testamentary dispositions can be made in the trust agreement.

The trustee to a land trust is the party designated in the trust agreement to hold legal and equitable title to the land trust property. The beneficiary is the party designated in the trust agreement as having the power to direct the trustee with regard to the trust property, as well as, the control of the management, operation, rental and sale of the trust property and the right to the earnings and proceeds of the trust property. The power of direction is the right to control the trustee's disposition of title to the real property and the execution of trust documents.

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[1] *Hart v. Seymour*, 147 Ill. 598 (Ill. 1893).
[2] *Schumann-Henk v. Folson*, 159 N.E. 250 (Ill. 1927).

Situations Where a Land Trust May Be Beneficial

A land trust may be useful in situations where multiple owners hold title to real property. In such cases, the potential exists for judgments, divorce, death, bankruptcy or incompetency of a single beneficiary to cloud the title to all or a part of the real property. The use of the land trust prevents the possibility of clouds on the title in these situations.

Where real estate projects are spread across multiple investors, the use of a land trust can reduce delays where signatures must be obtained from remote locations and can facilitate the many conveyances necessary in subdivisions and condominiums.

A key feature of the land trust is that interests of beneficiaries may not be disclosed without a court order. There are situations where purchasers of real estate may wish not to publicize their ownership of that real property. The land trust permits such individuals to keep their names from the public record.

Judgments against the beneficiaries do not affect the legal title to the real property held in a land trust. The title to the real property held in a land trust can be conveyed free and clear of any judgment liens against a beneficiary. Judgments can, however, be enforced against an individual's beneficial interest in a land trust.

The beneficial interest in the land trust is personal property. Non-residents of Florida, by placing title to their real estate in a land trust, may be able to avoid ancillary probate administration in the event of death.

Use of the land trust as a vehicle for holding title to real property permits the preservation of tax benefits under the Internal Revenue Code. All of the tax advantages of individual ownership may be retained when a land trust is properly used to hold title to real property. The deduction for expenses flows directly through the beneficial owners, assuming that all of the criteria to prevent the land trust from becoming an entity taxable as a corporation are met.

Land Trusts in Florida

In Florida, land trusts are presently a creature of statute rather than case law. In 1963, the Florida Legislature created s. 689.071, F.S., which statutorily recognized the Florida Land Trust. Section 689.071(1), F.S., provides that the land trustee receives legal and equitable title to the real property. The deed must be recorded and must give to the trustee full power and authority either to protect, conserve and to sell or to lease, or to encumber or otherwise to manage and dispose of the real property described in the deed. The trustee can only deal with the property within the power and authority granted in the recorded deed.

Section 689.071(2), F.S., states that any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfactions or releases from a trustee holding title to real property in trust under a recorded trust deed that meets the requirements of s. 689.071, F.S., does not have to inquire into the identification or status of any named or unnamed beneficiary, their heirs or assigns or to the authority of the trustee to act within the powers granted in the recorded deed, nor is there any requirement to inquire into the provisions of an unrecorded trust document whether such document is referenced in the deed or not.

Section 689.071(3), F.S., provides that all persons dealing with the trustee under any recorded instrument that has been prepared in accordance with the section takes free and clear of the claims of all named or unnamed beneficiaries of the trust and of any unrecorded declarations or agreements collateral to the trust, whether they are referred to in the agreement or not. This subsection further

provides that anyone claiming under the beneficiaries, including claims arising out of any dower[3] or curtesy[4] interest of the spouse of a beneficiary, does not have a claim against the grantee if all of the provisions of this section have been met.[5]

Section 689.071(4), F.S., states that in all cases where the recorded instrument contains a provision declaring the interest of the beneficiary to be personal property only, that provision shall be controlling for all purposes where such determination becomes an issue under the laws or in the courts of Florida. This provision makes it possible for a beneficiary to convey his or her interest in the real property by assignment of beneficial interest rather than by the execution and recording of a deed.

Courts have held that the statutory land trust is not an ordinary inter vivos trust that is administered under Florida's trust administration laws in ch. 737, F.S.[6] Florida courts have held that a grantee from a land trustee need not look beyond the trustee's deed in trust to determine his or her powers.[7] Courts have held that s. 689.071, F.S., is a codification of land trust case law and is an adoption of the Illinois land trust.[8]

Statute of Uses

In the Middle Ages, the features of feudal tenure, primogeniture and forfeiture often resulted in transfers of land to others for the benefit of the grantor. The Statute of Uses, adopted at the time of Henry VIII, was created in order to have these transfers become complete transfers in fee. The result of the execution of a trust under the Statute of Uses was to vest the holder of the "use" with the actual legal estate. However, in spite of the enactment of the Statute of Uses, English courts found that it was inapplicable to active trusts and the concept of trusts remains part of present day law. The Statute of Uses continues as part of the common law of the United States. Florida's Statute of Uses is codified in s, 689.09, F.S.

Homestead Exemption

Article VII, s. 6 of the State Constitution authorizes a $25,000 ad valorem property tax exemption for homestead property. In 1992, Florida voters approved the so-called "Save Our Homes" amendment to the State Constitution. This amendment limits the annual growth in the assessed value of homestead property to 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less. It also provides for a reassessment of homestead property at just value after any change of ownership.[9]

The beneficiary of a passive trust or active trust has equitable title to real property if he is entitled to the use and occupancy of the property under the terms of the trust, and thus is eligible for the homestead exemption.[10] However, the homestead tax exemption may not be based upon residence of a beneficiary under a trust instrument which vests no present possessory right in such beneficiary.[11]

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[3] "Dower" is a common law concept that entitles a widow to a life-estate in a third of any real property of her deceased husband for her support and the support of her children, if any. BLACK'S LAW DICTIONARY (8th ed. 1999).
[4] "Curtesy" is a common law concept that entitles a widower to a life-estate in any real property of his deceased wife for his support, assuming that a child was born alive to the couple. BLACK'S LAW DICTIONARY (8th ed. 1999).
[5] Section 732.111, F.S., created in 1974 by s. 1 of ch. 74-106, L.O.F., abolished dower and curtesy in Florida.
[6] *Taylor v. Richmond's New Approach Association, Inc.*, 351 So.2d 1094 (Fla. 2d DCA 1977).
[7] *Gramer v. Roman*, 174 So.2d 443 (Fla. 1965).
[8] *Ferraro v. Parker*, 229 So.2d 621 (Fla. 2d DCA 1969).
[9] Fla. Const. art. VII, s. 4(c)(3).
[10] Fla Admin Code Rule 12D-7.011.
[11] Id.

Effect of Proposed Changes

The bill amends s. 689.071, F.S., to codify existing practice and case law in the area of land trusts as follows:

SHORT TITLE - renames the section the "Florida Land Trust Act."

DEFINITIONS - provides definitions of the terms "beneficial interest," "beneficiary," "land trust," "holders of the power of direction," and "trustee."

BENEFICIARY CLAIMS - removes a provision that refers to claims arising out of dower or curtesy.

LAND TRUST BENEFICIARIES - creates provisions relating to land trust beneficiaries to provide that:

- Beneficiaries are not liable, solely by reason of being a beneficiary, for a debt, obligation, or liability of the land trust.
- Beneficiaries acting under a land trust agreement are not liable to the trustee or to any other beneficiary for good-faith reliance on the provisions of the trust agreement.
- Chapter 679, F.S., relating to secured transactions under the Uniform Commercial Code applies to the perfection of any security interest in a beneficial interest in a land trust and that the perfection of a security interest in a beneficial interest in a land trust does not impair or diminish the authority of the trustee under the recorded instrument, and parties dealing with the trustee are not required to inquire into the terms of the unrecorded trust agreement.
- A beneficiary's duties and liabilities may be expanded or restricted in a trust agreement or a beneficiary agreement.
- Any subsequent document appearing of record in which a beneficiary transfers or encumbers the beneficial interest in the trust does not diminish or impair the authority of the trustee under the terms of the recorded instrument and that parties dealing with the trustee are not required to inquire into the terms of the unrecorded trust agreement.
- An unrecorded trust agreement underlying a recorded instrument may provide that one or more persons or entities have the power to direct the trustee to convey, execute a mortgage, distribute proceeds of sale or financing, and execute documents incidental to the land trust.
- The power of direction, unless provided otherwise in the land trust agreement, is conferred upon the holders of the power of direction for the use and benefit of all of the beneficiaries.
- In the absence of a provision in the land trust agreement to the contrary, the power of direction must be in accordance with the percentage of individual ownership.
- In exercising the power of direction, the holders of the power of direction are presumed to act in a fiduciary capacity for the benefit of all beneficiaries, unless it is otherwise provided in the land trust agreement.
- The beneficial interest is indefeasible[12] and the power of direction may not be exercised so as to alter, amend, revoke, terminate, defeat, or otherwise affect or change the enjoyment of any beneficial interest.

[12] "That which cannot be defeated, revoked, or made void." BLACK'S LAW DICTIONARY (8th ed. 1999).

- A trust relating to real estate does not fail, and any use relating to real estate may not be defeated, because beneficiaries are not specified by name in the recorded deed of conveyance to the trustee or because duties are not imposed upon the trustee.

- The power conferred by any recorded deed of conveyance on a trustee to sell, lease, encumber, or otherwise dispose of property is effective and a person dealing with the trustee is not required to inquire any further into the right of the trustee to act or as to the disposition of any proceeds.

- The principal residence of a beneficiary may be entitled to the homestead tax exemption even if the homestead is held by a trustee in a land trust.

SUCCESSOR TRUSTEE - creates provisions relating to a successor trustee to provide that:

- The provisions of s. 737.309, F.S., regarding the resignation of a trustee, do not apply to the appointment of a successor trustee of a land trust.

- If both the recorded instrument and the unrecorded land trust agreement are silent as to the appointment of a successor trustee, then one or more persons or entities having the power of direction of the land trust may appoint a successor or successors by filing a declaration of appointment of a successor trustee. Such a declaration must be signed, acknowledged, and must contain the legal description of the trust property; the name and address of the former trustee; the name and address of the successor trustee; and a statement that the successor trustee has been appointed by one or more persons or entities having the power of direction of the land trust, together with an acceptance of appointment by the successor trustee.

- If the recorded instrument is silent as to the appointment of a successor trustee but an unrecorded land trust agreement provides for the appointment of a successor trustee, then upon the appointment of a successor trustee pursuant to the terms of the unrecorded land trust agreement, the successor trustee shall file a declaration of appointment of a successor trustee.

- If the appointment of the successor trustee is due to the death or incapacity of the former trustee, the declaration need not be signed by the former trustee and a copy of the death certificate or a statement that the former trustee is incapacitated or unable to serve must be attached to or included in the declaration, as applicable.

- If the recorded instrument provides for the appointment of a successor trustee and a successor trustee is appointed in accordance with the recorded instrument, no additional declarations of appointment of a successor trustee are required under this section.

- Each successor land trustee appointed is fully vested with all the estate, properties, rights, powers, trusts, duties, and obligations of the predecessor land trustee, except that the successor land trustee is not under any duty to inquire into the acts or omissions of a predecessor trustee and is not liable for any act or failure to act of a predecessor trustee. A person dealing with the successor trustee pursuant to a declaration is not obligated to inquire into or ascertain the authority of the successor trustee to act within and exercise the powers granted under the recorded instruments or any unrecorded declarations or agreements.

- A land trust agreement may provide that the trustee, when directed to do so by the beneficiaries of the land trust or their legal representatives, may convey the trust property directly to another trustee on behalf of the beneficiaries or others named by the beneficiaries.

TRUSTEE AS CREDITOR - creates provisions relating to a land trustee as a creditor to provide that:

- If a debt is secured by a security interest in a beneficial interest in a land trust or by a mortgage on land trust property, the validity or enforceability of the debt, security interest, or mortgage and the rights, remedies, powers, and duties of the creditor with respect to the debt or the security are not affected by the fact that the creditor and the trustee are the same person or entity, and the creditor may extend credit, obtain such security interest or mortgage, and acquire and deal with the property comprising the security as though the creditor were not the trustee.

- A trustee of a land trust does not breach a fiduciary duty to the beneficiaries, and it may not be deemed evidence of a breach of any fiduciary duty owed by the trustee to the beneficiaries, for a trustee to be or become a secured or unsecured creditor of the land trust, the beneficiary of the land trust, or a third party whose debt to such creditor is guaranteed by a beneficiary of the land trust.

RETROACTIVTY – section 3 of the bill provides that it is intended to clarify the existing law relating to land trusts and that the bill applies to all land trusts, whether the land trust was created before, on, or after the effective date of the bill, which is October 1, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 689.071, F.S., relating to land trusts.

Section 2 amends s. 201.02, F.S., relating to tax on deeds to correct a cross-reference.

Section 3 provides that the act is intended to clarify existing law and applies to all land trusts, whether created before, on, or after October 1, 2006.

Section 4 provides that the bill becomes effective on October 1, 2006.

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:

The bill does not appear to have any significant economic impact on the private sector. It is intended to clarify and codify existing law relating to land trusts. In that vein, it may provide consistency and predictability to this area of law and benefit those who use and administer land trusts.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Retroactivity

Unless the Legislature states otherwise, legislation is presumed to operate prospectively only, especially when retrospective operation would impair existing rights.[13] Common law provides that the government, through rule or legislation, cannot adversely affect substantive rights once such rights have vested.[14] Courts have used a weighing process to decide whether to sustain the retroactive application of a statute that has three considerations: the strength of the public interest served by the statute, the extent to which the right affected is abrogated, and the nature of the right affected.[15] It does not appear that the provisions of this bill will affect any vested substantive rights since it is intended to clarify and codify existing law relating to land trusts and is remedial in nature.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As written the bill includes language stating that "The principal residence of a beneficiary may be entitled to the homestead exemption even if the homestead is held by a trustee in a land trust." This language appears to be a clarification of current law which provides that homestead property may be held in a trust, if the conditions in Chapter 196, F.S., are met. However, since the language could cause confusion as to the conditions under which land held in a land trust would be eligible for the homestead exemption, it is recommended that this provision be removed from the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

An amendment was adopted to this PCB in the Judiciary Committee on March 8, 2006. The amendment added the word "written" in the definition of "land trust." This analysis is drawn to the amended PCB.

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[13] *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55 (Fla. 1995); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994).

[14] *Bitterman v. Bitterman*, 714 So.2d 356 (Fla. 1998); *Dept. of Transportation v. Knowles*, 402 So. 2d 1155, 1157 (Fla. 1981); and *Village of El Portal v. City of Miami Shores*, 362 So. 2d 275, 277 (Fla. 1978), citing *McCord v. Smith*, 43 So. 2d 704, 708-709 (Fla. 1949).

[15] Supra *Knowles* at 1158.

1 A bill to be entitled
2 An act relating to land trusts; amending s. 689.071, F.S.;
3 providing a short title; providing definitions; revising
4 provisions relating to land trust transfers of real
5 property and vesting of ownership in a trustee; deleting a
6 requirement that a trustee be qualified to act as a
7 fiduciary; deleting obsolete references to "dower" and
8 "curtesy"; specifying rights, liabilities, and duties of
9 land trust beneficiaries; providing that the principal
10 residence of a beneficiary which is held in a land trust
11 may be entitled to the homestead tax exemption; providing
12 for the appointment of successor trustees; providing
13 requirements for declarations of appointment; providing
14 that a trustee of a land trust may be a creditor of the
15 trust or of a trust beneficiary; amending s. 201.02, F.S.;
16 conforming a cross-reference; providing application;
17 providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Section 689.071, Florida Statutes, is amended
22 to read:
23 689.071 Florida Land Trust Act ~~trusts transferring~~
24 ~~interests in real estate; ownership vests in trustee~~.--
25 (1) SHORT TITLE.--This section may be cited as the
26 "Florida Land Trust Act."
27 (2) DEFINITIONS.--As used in this section, the term:
28 (a) "Beneficial interest" means any interest, vested or

29 contingent and regardless of how small or minimal such interest
30 may be, in a land trust which is held by a beneficiary.
31 (b) "Beneficiary" means any person or entity having a
32 beneficial interest in a land trust. A trustee may be a
33 beneficiary of the land trust for which such trustee serves as
34 trustee.
35 (c) "Holder of the power of direction" means any person or
36 entity having the authority to direct the trustee to convey
37 property or interests, execute a mortgage, distribute proceeds
38 of a sale or financing, and execute documents incidental to the
39 administration of a land trust.
40 (d) "Land trust" is not the creation of an entity, but
41 means any express written agreement or arrangement by which a
42 use, confidence, or trust is declared of any land, or of any
43 charge upon land, for the use or benefit of any beneficiary,
44 under which the title to real property, both legal and
45 equitable, is held by a trustee, subject only to the execution
46 of the trust, which may be enforced by the beneficiaries.
47 (e) "Trustee" means the person or entity designated in a
48 trust instrument to hold legal and equitable title to property
49 of a land trust.
50 (3) ~~(1)~~ OWNERSHIP VESTS IN TRUSTEE.--Every conveyance,
51 deed, mortgage, lease assignment, or other instrument heretofore
52 or hereafter made, hereinafter referred to as "the recorded
53 instrument," transferring any interest in real property in this
54 state, including, but not limited to, a leasehold or mortgagee
55 interest, to any person or any~~,~~ corporation, bank, trust
56 company, or other entity duly formed under the laws of its state

57 of qualification ~~qualified to act as a fiduciary in this state~~,
58 in which recorded instrument the person, corporation, bank,
59 trust company, or other entity is designated "trustee," or "as
60 trustee," without therein naming the beneficiaries of such
61 trust, whether or not reference is made in the recorded
62 instrument to any separate collateral unrecorded declarations or
63 agreements, is effective to vest, and is hereby declared to have
64 vested, in such trustee full rights of ownership over the real
65 property or interest therein, with full power and authority as
66 granted and provided in the recorded instrument to deal in and
67 with the property or interest therein or any part thereof;
68 provided, the recorded instrument confers on the trustee the
69 power and authority either to protect, conserve and to sell, or
70 to lease, or to encumber, or otherwise to manage and dispose of
71 the real property described in the recorded instrument.
72 (4) ~~(2)~~ NO DUTY TO INQUIRE.--Any grantee, mortgagee,
73 lessee, transferee, assignee, or person obtaining satisfactions
74 or releases or otherwise in any way dealing with the trustee
75 with respect to the real property or any interest in such
76 property ~~properties~~ held in trust under the recorded instrument,
77 as hereinabove provided for, is not obligated to inquire into
78 the identification or status of any named or unnamed
79 beneficiaries, or their heirs or assigns to whom a trustee may
80 be accountable under the terms of the recorded instrument, or
81 under any unrecorded separate declarations or agreements
82 collateral to the recorded instrument, whether or not such
83 declarations or agreements are referred to therein; or to
84 inquire into or ascertain the authority of such trustee to act

85 within and exercise the powers granted under the recorded
86 instrument; or to inquire into the adequacy or disposition of
87 any consideration, if any is paid or delivered to such trustee
88 in connection with any interest so acquired from such trustee;
89 or to inquire into any of the provisions of any such unrecorded
90 declarations or agreements.
91 (5) ~~(3)~~ BENEFICIARY CLAIMS.--All persons dealing with the
92 trustee under the recorded instrument as hereinabove provided
93 take any interest transferred by the trustee thereunder, within
94 the power and authority as granted and provided therein, free
95 and clear of the claims of all the named or unnamed
96 beneficiaries of such trust, and of any unrecorded declarations
97 or agreements collateral thereto whether referred to in the
98 recorded instrument or not, and of anyone claiming by, through,
99 or under such beneficiaries. However, this section does not
100 prevent ~~including, and without limiting the foregoing to, any~~
101 ~~claim arising out of any dower or curtesy interest of the spouse~~
102 ~~of any beneficiary thereof; provided, nothing herein contained~~
103 ~~prevents~~ a beneficiary of any such unrecorded collateral
104 declarations or agreements from enforcing the terms thereof
105 against the trustee.
106 (6) ~~(4)~~ PERSONAL PROPERTY.--In all cases in which the
107 recorded instrument, as hereinabove provided, contains a
108 provision defining and declaring the interests of beneficiaries
109 thereunder to be personal property only, such provision shall be
110 controlling for all purposes when such determination becomes an
111 issue under the laws or in the courts of this state.

112 (7) ~~(5)~~ TRUSTEE LIABILITY.--In addition to any other
113 limitation on personal liability existing pursuant to statute or
114 otherwise, the provisions of s. 737.306 apply to the trustee of
115 a land trust created pursuant to this section.
116 (8) LAND TRUST BENEFICIARIES.--
117 (a) Except as provided in this section, the beneficiaries
118 of a land trust are not liable, solely by being a beneficiary,
119 under a judgment, decree, or order of court or in any other
120 manner for a debt, obligation, or liability of the land trust.
121 (b) Any beneficiary acting under the trust agreement of a
122 land trust is not liable to the land trust's trustee or to any
123 other beneficiary for the beneficiary's good faith reliance on
124 the provisions of the trust agreement.
125 (c) Chapter 679 applies to the perfection of any security
126 interest in a beneficial interest in a land trust. The
127 perfection of a security interest in a beneficial interest in a
128 land trust does not impair or diminish the authority of the
129 trustee under the recorded instrument, and parties dealing with
130 the trustee are not required to inquire into the terms of the
131 unrecorded trust agreement.
132 (d) A beneficiary's duties and liabilities may be expanded
133 or restricted in a trust agreement or beneficiary agreement.
134 (e) Any subsequent document appearing of record in which a
135 beneficiary of a trust transfers or encumbers the beneficial
136 interest in the trust does not diminish or impair the authority
137 of the trustee under the terms of the recorded instrument.
138 Parties dealing with the trustee are not required to inquire
139 into the terms of the unrecorded trust agreement.

140 (f) An unrecorded trust agreement giving rise to a
141 recorded instrument for a land trust may provide that one or
142 more persons or entities have the power to direct the trustee to
143 convey property or interests, execute a mortgage, distribute
144 proceeds of a sale or financing, and execute documents
145 incidental to administration of the land trust. The power of
146 direction, unless provided otherwise in the land trust
147 agreement, is conferred upon the holders of the power for the
148 use and benefit of all holders of any beneficial interest in the
149 land trust. In the absence of a provision in the land trust
150 agreement to the contrary, the power of direction shall be in
151 accordance with the percentage of individual ownership. In
152 exercising the power of direction, the holders of the power of
153 direction are presumed to act in a fiduciary capacity for the
154 benefit of all holders of any beneficial interest in the trust,
155 unless otherwise provided in the land trust agreement. A
156 beneficial interest is indefeasible, and the power of direction
157 may not be exercised so as to alter, amend, revoke, terminate,
158 defeat, or otherwise affect or change the enjoyment of any
159 beneficial interest.
160 (g) A trust relating to real estate does not fail, and any
161 use relating to real estate may not be defeated, because
162 beneficiaries are not specified by name in the recorded deed of
163 conveyance to the trustee or because duties are not imposed upon
164 the trustee. The power conferred by any recorded deed of
165 conveyance on a trustee to sell, lease, encumber, or otherwise
166 dispose of property described in the deed is effective, and a
167 person dealing with the trustee is not required to inquire any

168 further into the right of the trustee to act or the disposition
169 of any proceeds.
170 (h) The principal residence of a beneficiary may be
171 entitled to the homestead tax exemption even if the homestead is
172 held by a trustee in a land trust.
173 (9) SUCCESSOR TRUSTEE.--
174 (a) The provisions of s. 737.309 relating to the
175 resignation of a trustee do not apply to the appointment of a
176 successor trustee under this section.
177 (b) If the recorded instrument and the unrecorded land
178 trust agreement are silent as to the appointment of a successor
179 trustee in the event of the death, incapacity, resignation, or
180 termination due to dissolution of a land trustee or if a land
181 trustee is unable to serve as trustee, one or more persons or
182 entities having the power of direction of the land trust
183 agreement may appoint a successor trustee or trustees of the
184 land trust by filing a declaration of appointment of a successor
185 trustee or trustees in the office of the recorder of deeds in
186 the county in which the trust property is located. The
187 declaration must be signed by a beneficiary or beneficiaries of
188 the trust and by each successor trustee, must be acknowledged in
189 the manner provided for acknowledgment of deeds, and must
190 contain:
191 1. The legal description of the trust property.
192 2. The name and address of the former trustee.
193 3. The name and address of each successor trustee.
194 4. A statement that each successor trustee has been
195 appointed by one or more persons or entities having the power of

196 direction of the land trust, together with an acceptance of
197 appointment by each successor trustee.
198 (c) If the recorded instrument is silent as to the
199 appointment of a successor trustee or trustees but an unrecorded
200 land trust agreement provides for the appointment of a successor
201 trustee or trustees in the event of the death, incapacity,
202 resignation, or termination due to dissolution of the land
203 trustee, upon the appointment of any successor trustee pursuant
204 to the terms of the unrecorded land trust agreement, each
205 successor trustee shall file a declaration of appointment of a
206 successor trustee in the office of the recorder of deeds in the
207 county in which the trust property is located. The declaration
208 must be signed by both the former trustee and each successor
209 trustee, must be acknowledged in the manner provided for
210 acknowledgment of deeds, and must contain:
211 1. The legal description of the trust property.
212 2. The name and address of the former trustee.
213 3. The name and address of the successor trustee.
214 4. A statement of resignation by the former trustee and a
215 statement of acceptance of appointment by each successor
216 trustee.
217 5. A statement that each successor trustee was duly
218 appointed under the terms of the unrecorded land trust
219 agreement.
220
221 If the appointment of any successor trustee is due to the death
222 or incapacity of the former trustee, the declaration need not be
223 signed by the former trustee and a copy of the death certificate

224 or a statement that the former trustee is incapacitated or
225 unable to serve must be attached to or included in the
226 declaration, as applicable.
227 (d) If the recorded instrument provides for the
228 appointment of any successor trustee and any successor trustee
229 is appointed in accordance with the recorded instrument, no
230 additional declarations of appointment of any successor trustee
231 are required under this section.
232 (e) Each successor land trustee appointed is fully vested
233 with all the estate, properties, rights, powers, trusts, duties,
234 and obligations of the predecessor land trustee, except that any
235 successor land trustee is not under any duty to inquire into the
236 acts or omissions of a predecessor trustee and is not liable for
237 any act or failure to act of a predecessor trustee. A person
238 dealing with any successor trustee pursuant to a declaration
239 filed under this section is not obligated to inquire into or
240 ascertain the authority of the successor trustee to act within
241 or exercise the powers granted under the recorded instruments or
242 any unrecorded declarations or agreements.
243 (f) A land trust agreement may provide that the trustee,
244 when directed to do so by the beneficiaries of the land trust or
245 legal representatives of the beneficiaries, may convey the trust
246 property directly to another trustee on behalf of the
247 beneficiaries or others named by the beneficiaries.
248 (10) TRUSTEE AS CREDITOR.--
249 (a) If a debt is secured by a security interest in a
250 beneficial interest in a land trust or by a mortgage on land
251 trust property, the validity or enforceability of the debt,

252 security interest, or mortgage and the rights, remedies, powers,
253 and duties of the creditor with respect to the debt or the
254 security are not affected by the fact that the creditor and the
255 trustee are the same person or entity, and the creditor may
256 extend credit, obtain any necessary security interest or
257 mortgage, and acquire and deal with the property comprising the
258 security as though the creditor were not the trustee.
259 (b) A trustee of a land trust does not breach a fiduciary
260 duty to the beneficiaries, and it is not evidence of a breach of
261 any fiduciary duty owed by the trustee to the beneficiaries for
262 a trustee to be or become a secured or unsecured creditor of the
263 land trust, the beneficiary of the land trust, or a third party
264 whose debt to such creditor is guaranteed by a beneficiary of
265 the land trust.
266 (11) ~~(6)~~ REMEDIAL ACT.--This act is remedial in nature and
267 shall be given a liberal interpretation to effectuate the intent
268 and purposes hereinabove expressed.
269 (12) ~~(7)~~ EXCLUSION.--This act does not apply to any deed,
270 mortgage, or other instrument to which s. 689.07 applies.
271 Section 2. Subsection (4) of section 201.02, Florida
272 Statutes, is amended to read:
273 201.02 Tax on deeds and other instruments relating to real
274 property or interests in real property.--
275 (4) The tax imposed by subsection (1) shall also be
276 payable upon documents which convey or transfer, pursuant to s.
277 689.071, any beneficial interest in lands, tenements, or other
278 real property, or any interest therein, even though such
279 interest may be designated as personal property, notwithstanding

280 the provisions of s. 689.071(6) ~~(4)~~. The tax shall be paid upon
281 execution of any such document.
282 Section 3. This act is intended to clarify existing law
283 and applies to all land trusts whether created before, on, or
284 after October 1, 2006.
285 Section 4. This act shall take effect October 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 7099**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representatives Simmons offered the following:
3
4 **Amendment**
5 Remove lines 170-172 and insert:
6
7 (h) The principal residence of a beneficiary shall be
8 entitled to the homestead tax exemption even if the homestead is
9 held by a trustee in a land trust, provided the beneficiary
10 qualifies for the homestead exemption under ch. 196.
11
12

000000

HB 7233

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7233 PCB GO 06-07 OGSR Communications Services Tax Simplification Law
SPONSOR(S): Governmental Operations Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 792

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	4 Y, 0 N	Williamson	Williamson
1) Finance & Tax Committee		Levin	Diez-Arguelles
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for information received by The Department of Revenue pursuant to the Communications Services Tax Simplification Law. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill will not have a significant fiscal impact on state or local government.

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:

Background

In 2000, the Legislature enacted the "Communications Services Tax Simplification Law."[1] The act combined seven different state and local taxes and fees and replaced those revenues with a two-tiered tax composed of a state tax and a local option tax on communications services. The new tax structure took effect October 1, 2001.

In 2001, the Legislature created a public records exemption for information received by the Department of Revenue pursuant to the Communications Services Tax Simplification Law. All information contained in returns, reports, accounts, and declarations received by the department, in addition to investigative reports and information and letters of technical advice, are exempt from public records requirements. The exemption authorizes release of the information for limited purposes. Any person who willfully and knowingly releases the exempt information for purposes not authorized by law commits a misdemeanor of the first degree.[2] Pursuant to the Open Government Sunset Review Act,[3] the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes grammatical changes and removes superfluous language.

C. SECTION DIRECTORY:

Section 1 amends s. 213.053, F.S., to remove the repeal date.

Section 2 amends s. 202.37, F.S., to make a cross-reference change.

Section 3 amends s. 206.27, F.S., to make a cross-reference change.

Section 4 amends s. 409.2577, F.S., to make a cross-reference change.

Section 5 amends s. 607.0130, F.S., to make a cross-reference change.

Section 6 amends s. 608.703, F.S., to make a cross-reference change.

Section 7 amends s. 617.01301, F.S., to make a cross-reference change.

Section 8 amends s. 896.102, F.S., to make a cross-reference change.

Section 9 provides an effective date of October 3, 2006.

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[1] Chapter 2000-260, Laws of Florida, codified in chapter 202, F.S.

[2] A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year (s. 775.082(4)(a), F.S.) and a fine not to exceed $1,000 (s. 775.083(1)(d), F.S.).

[3] Section 119.15, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   The bill does not create, modify, amend, or eliminate state governmental expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

<u>Drafting Issues: Effective Date</u>
The bill provides an October 3, 2006, effective date. The bill should take effect October 1, 2006.

Other Comments: Open Government Sunset Review Act

The Open Government Sunset Review Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

The Act also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required, because of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act regarding the Communications Services
4 Tax Simplification Law; amending s. 213.053, F.S., which
5 provides an exemption from public records requirements for
6 all information contained in returns, reports, accounts,
7 or declarations received by the Department of Revenue,
8 including investigative reports and information and
9 letters of technical advice, under enumerated sections and
10 chapters of the Florida Statutes; removing the scheduled
11 repeal of the exemption from public records requirements
12 for such information received by the department under the
13 Communications Services Tax Simplification Law;
14 reorganizing the section; making editorial changes;
15 amending ss. 202.37, 206.27, 409.2577, 607.0130, 608.703,
16 617.01301, and 896.102, F.S.; correcting cross-references;
17 providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Section 213.053, Florida Statutes, is amended
22 to read:
23 213.053 Confidentiality and information sharing.--
24 (1)~~(a)~~ ~~The provisions of~~ This section applies ~~apply~~ to:
25 (a) Section ~~s.~~ 125.0104, county government.~~;~~
26 (b) Section ~~s.~~ 125.0108, tourist impact tax.~~;~~
27 (c) Chapter 175, municipal firefighters' pension trust
28 funds.~~;~~

29 (d) Chapter 185, municipal police officers' retirement
30 trust funds.~~;~~
31 (e) Chapter 198, estate taxes.~~;~~
32 (f) Chapter 199, intangible personal property taxes.~~;~~
33 (g) Chapter 201, excise tax on documents.~~;~~
34 (h) Chapter 202, the Communications Services Tax
35 Simplification Law.
36 (i) Chapter 203, gross receipts taxes.~~;~~
37 (j) Chapter 211, tax on severance and production of
38 minerals.~~;~~
39 (k) Chapter 212, tax on sales, use, and other
40 transactions.~~;~~
41 (l) Chapter 220, income tax code.;
42 (m) Chapter 221, emergency excise tax.~~;~~
43 (n) Section ~~s.~~ 252.372, emergency management,
44 preparedness, and assistance surcharge.~~;~~
45 (o) Section ~~s.~~ 370.07(3), Apalachicola Bay oyster
46 surcharge.~~;~~
47 (p) Chapter 376, pollutant spill prevention and control.~~;~~
48 (q) Section ~~s.~~ 403.718, waste tire fees.~~;~~
49 (r) Section ~~s.~~ 403.7185, lead-acid battery fees.~~;~~
50 (s) Section ~~s.~~ 538.09, registration of secondhand
51 dealers.~~;~~
52 (t) Section ~~s.~~ 538.25, registration of secondary metals
53 recyclers.~~;~~
54 (u) Sections ~~ss.~~ 624.501 and 624.509-624.515, insurance
55 code.~~;~~

56 (v) Section ~~s.~~ 681.117, motor vehicle warranty
57 enforcement.~~; and~~
58 (w) Section ~~s.~~ 896.102, reports of financial transactions
59 in trade or business.
60 ~~(b) The provisions of this section also apply to chapter~~
61 ~~202, the Communications Services Tax Simplification Law. This~~
62 ~~paragraph is subject to the Open Government Sunset Review Act of~~
63 ~~1995 in accordance with s. 119.15, and shall stand repealed on~~
64 ~~October 2, 2006, unless reviewed and saved from repeal through~~
65 ~~reenactment by the Legislature.~~
66 (2)(a) ~~Except as provided in subsections (3), (4), (5),~~
67 ~~(6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16),~~
68 ~~and (17),~~ All information contained in returns, reports,
69 accounts, or declarations received by the department, including
70 investigative reports and information and including letters of
71 technical advice, is confidential except for official purposes
72 and is exempt from ~~the provisions of~~ s. 119.07(1).
73 (b) Any officer or employee, or former officer or
74 employee, of the department who divulges any such information in
75 any manner, except for such official purposes, commits a
76 misdemeanor of the first degree, punishable as provided in s.
77 775.082 or s. 775.083.
78 (3) The department shall permit a taxpayer, his or her
79 authorized representative, or the personal representative of an
80 estate to inspect the taxpayer's return and may furnish him or
81 her an abstract of such return. A taxpayer may authorize the
82 department in writing to divulge specific information concerning
83 the taxpayer's account.

84 (4) The department, while providing unemployment tax
85 collection services under contract with the Agency for Workforce
86 Innovation through an interagency agreement pursuant to s.
87 443.1316, may release unemployment tax rate information to the
88 agent of an employer, which agent provides payroll services for
89 more than 500 employers, pursuant to the terms of a memorandum
90 of understanding. The memorandum of understanding must state
91 that the agent affirms, subject to the criminal penalties
92 contained in ss. 443.171 and 443.1715, that the agent will
93 retain the confidentiality of the information, that the agent
94 has in effect a power of attorney from the employer which
95 permits the agent to obtain unemployment tax rate information,
96 and that the agent shall provide the department with a copy of
97 the employer's power of attorney upon request.
98 (5) ~~(4)~~ Nothing contained in this section shall prevent the
99 department from:
100 (a) Publishing statistics so classified as to prevent the
101 identification of particular accounts, reports, declarations, or
102 returns; or ~~prevent the department from~~
103 (b) Disclosing to the Chief Financial Officer the names
104 and addresses of those taxpayers who have claimed an exemption
105 pursuant to s. 199.185(1)(i) or a deduction pursuant to s.
106 220.63(5).
107 (6) ~~(5)~~ The department may make available to the Secretary
108 of the Treasury of the United States or his or her delegate, the
109 Commissioner of Internal Revenue of the United States or his or
110 her delegate, the Secretary of the Department of the Interior of
111 the United States or his or her delegate, or the proper officer

112 of any state or his or her delegate, exclusively for official
113 purposes, information to comply with any formal agreement for
114 the mutual exchange of state information with the Internal
115 Revenue Service of the United States, the Department of the
116 Interior of the United States, or any state.
117 (7)(a) ~~(6)~~ Any information received by the Department of
118 Revenue in connection with the administration of taxes,
119 including, but not limited to, information contained in returns,
120 reports, accounts, or declarations filed by persons subject to
121 tax, shall be made available ~~by the department~~ to the following
122 in the performance of their official duties:
123 1. The Auditor General or his or her authorized agent;~~,~~
124 2. The director of the Office of Program Policy Analysis
125 and Government Accountability or his or her authorized agent;~~,~~
126 3. The Chief Financial Officer or his or her authorized
127 agent;~~,~~
128 4. The Director of the Office of Insurance Regulation of
129 the Financial Services Commission or his or her authorized
130 agent;~~, or~~
131 5. A property appraiser or tax collector or their
132 authorized agents pursuant to s. 195.084(1);~~, in the performance~~
133 ~~of their official duties,~~ or ~~to~~
134 6. Designated employees of the Department of Education
135 solely for determination of each school district's price level
136 index pursuant to s. 1011.62(2).~~,~~
137 (b) ~~However,~~ No information shall be disclosed as provided
138 in paragraph (a) ~~to the Auditor General or his or her authorized~~
139 ~~agent, the director of the Office of Program Policy Analysis and~~

140 ~~Government Accountability or his or her authorized agent, the~~
141 ~~Chief Financial Officer or his or her authorized agent, the~~
142 ~~Director of the Office of Insurance Regulation or his or her~~
143 ~~authorized agent, or to a property appraiser or tax collector or~~
144 ~~their authorized agents, or to designated employees of the~~
145 ~~Department of Education~~ if such disclosure is prohibited by
146 federal law.
147 (c) Any person designated in paragraph (a) ~~The Auditor~~
148 ~~General or his or her authorized agent, the director of the~~
149 ~~Office of Program Policy Analysis and Government Accountability~~
150 ~~or his or her authorized agent, the Chief Financial Officer or~~
151 ~~his or her authorized agent, the Director of the Office of~~
152 ~~Insurance Regulation or his or her authorized agent, and the~~
153 ~~property appraiser or tax collector and their authorized agents,~~
154 ~~or designated employees of the Department of Education~~ shall be
155 subject to the same requirements of confidentiality and the same
156 penalties for violation of the requirements as the department.
157 (d) For the purpose of this subsection, "designated
158 employees of the Department of Education" means only those
159 employees directly responsible for calculation of price level
160 indices pursuant to s. 1011.62(2). It does not include the
161 supervisors of such employees or any other employees or elected
162 officials within the Department of Education.
163 (8) ~~(7)~~ Notwithstanding any other provision of this
164 section, the department may provide:
165 (a) Information relative to chapter 211, chapter 376, or
166 chapter 377 to the proper state agency in the conduct of its
167 official duties.

168 (b) Names, addresses, and dates of commencement of
169 business activities of corporations to the Division of
170 Corporations of the Department of State in the conduct of its
171 official duties.
172 (c) Information relative to chapter 212 and chapters 561
173 through 568 to the Division of Alcoholic Beverages and Tobacco
174 of the Department of Business and Professional Regulation in the
175 conduct of its official duties.
176 (d) Names, addresses, and sales tax registration
177 information to the Division of Hotels and Restaurants of the
178 Department of Business and Professional Regulation in the
179 conduct of its official duties.
180 (e) Names, addresses, taxpayer identification numbers, and
181 outstanding tax liabilities to the Department of the Lottery and
182 the Office of Financial Regulation of the Financial Services
183 Commission in the conduct of their official duties.
184 (f) State tax information to the Nexus Program of the
185 Multistate Tax Commission pursuant to any formal agreement for
186 the exchange of mutual information between the department and
187 the commission.
188 (g) Tax information to principals, and their designees, of
189 the Revenue Estimating Conference for the purpose of developing
190 official revenue estimates.
191 (h) Names and addresses of persons paying taxes pursuant
192 to part IV of chapter 206 to the Department of Environmental
193 Protection in the conduct of its official duties.
194 (i) Information relative to chapters 212 and 326 to the
195 Division of Florida Land Sales, Condominiums, and Mobile Homes

196 of the Department of Business and Professional Regulation in the
197 conduct of its official duties.
198 (j) Information authorized pursuant to s. 213.0535 to
199 eligible participants and certified public accountants for such
200 participants in the Registration Information Sharing and
201 Exchange Program.
202 (k)1. Payment information relative to chapters 199, 201,
203 212, 220, 221, and 624 to the Office of Tourism, Trade, and
204 Economic Development, or its employees or agents that are
205 identified in writing by the office to the department, in the
206 administration of the tax refund program for qualified defense
207 contractors authorized by s. 288.1045 and the tax refund program
208 for qualified target industry businesses authorized by s.
209 288.106.
210 2. Information relative to tax credits taken by a business
211 under s. 220.191 and exemptions or tax refunds received by a
212 business under s. 212.08(5)(j) to the Office of Tourism, Trade,
213 and Economic Development, or its employees or agents that are
214 identified in writing by the office to the department, in the
215 administration and evaluation of the capital investment tax
216 credit program authorized in s. 220.191 and the semiconductor,
217 defense, and space tax exemption program authorized in s.
218 212.08(5)(j).
219 (l) Information relative to chapter 212 and the Bill of
220 Lading Program to the Office of Agriculture Law Enforcement of
221 the Department of Agriculture and Consumer Services in the
222 conduct of its official duties.

223 (m) Information relative to chapter 198 to the Agency for
224 Health Care Administration in the conduct of its official
225 business relating to ss. 409.901-409.9101.
226 (n) Information contained in returns, reports, accounts,
227 or declarations to the Board of Accountancy in connection with a
228 disciplinary proceeding conducted pursuant to chapter 473 when
229 related to a certified public accountant participating in the
230 certified audits project, or to the court in connection with a
231 civil proceeding brought by the department relating to a claim
232 for recovery of taxes due to negligence on the part of a
233 certified public accountant participating in the certified
234 audits project. In any judicial proceeding brought by the
235 department, upon motion for protective order, the court shall
236 limit disclosure of tax information when necessary to effectuate
237 the purposes of this section.
238 (o) Information relative to ss. 376.70 and 376.75 to the
239 Department of Environmental Protection in the conduct of its
240 official business and to the facility owner, facility operator,
241 and real property owners as defined in s. 376.301.
242 (p) Information relative to ss. 199.1055, 220.1845, and
243 376.30781 to the Department of Environmental Protection in the
244 conduct of its official business.
245 (q) Names, addresses, and sales tax registration
246 information to the Division of Consumer Services of the
247 Department of Agriculture and Consumer Services in the conduct
248 of its official duties.
249 (r) Information relative to the returns required by ss.
250 175.111 and 185.09 to the Department of Management Services in

251 the conduct of its official duties. The Department of Management
252 Services is, in turn, authorized to disclose payment information
253 to a governmental agency or the agency's agent for purposes
254 related to budget preparation, auditing, revenue or financial
255 administration, or administration of chapters 175 and 185.
256 (s) Names, addresses, and federal employer identification
257 numbers, or similar identifiers, to the Department of Highway
258 Safety and Motor Vehicles for use in the conduct of its official
259 duties.
260 (t) Information relative to the tax exemptions under ss.
261 212.031, 212.06, and 212.08 for those persons qualified under s.
262 288.1258 to the Office of Film and Entertainment. The Department
263 of Revenue shall provide the Office of Film and Entertainment
264 with information in the aggregate.
265 (u) Information relative to s. 220.187 to the Department
266 of Education in the conduct of its official business.
267 (v) Information relative to chapter 202 to each local
268 government that imposes a tax pursuant to s. 202.19 in the
269 conduct of its official duties as specified in chapter 202.
270 Information provided under this paragraph may include, but is
271 not limited to, any reports required pursuant to s. 202.231,
272 audit files, notices of intent to audit, tax returns, and other
273 confidential tax information in the department's possession
274 relating to chapter 202. A person or an entity designated by the
275 local government in writing to the department as requiring
276 access to confidential taxpayer information shall have
277 reasonable access to information provided pursuant to this
278 paragraph. Such person or entity may disclose such information

279 to other persons or entities with direct responsibility for
280 budget preparation, auditing, revenue or financial
281 administration, or legal counsel. Such information shall only be
282 used for purposes related to budget preparation, auditing, and
283 revenue and financial administration. Any confidential and
284 exempt information furnished to a local government, or to any
285 person or entity designated by the local government as
286 authorized by this paragraph~~, that is exempt from the provisions~~
287 ~~of s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~
288 ~~pursuant to this section shall continue to be exempt when so~~
289 ~~provided, and~~ may not be further disclosed by the recipient
290 except as provided by this paragraph.
291 (w) Tax registration information to the Agency for
292 Workforce Innovation for use in the conduct of its official
293 duties, which information may not be redisclosed by the Agency
294 for Workforce Innovation.
295 (x) Rental car surcharge revenues authorized by s.
296 212.0606, reported according to the county to which the
297 surcharge was attributed to the Department of Transportation.
298
299 Disclosure of information under this subsection shall be
300 pursuant to a written agreement between the executive director
301 and the agency. Such agencies, governmental or nongovernmental,
302 shall be bound by the same requirements of confidentiality as
303 the Department of Revenue. Breach of confidentiality is a
304 misdemeanor of the first degree, punishable as provided by s.
305 775.082 or s. 775.083.

306 (9) ~~(8)~~ The Department of Revenue shall provide returns,
307 reports, accounts, or declarations received by the department,
308 including investigative reports and information, or information
309 contained in such documents, pursuant to an order of a judge of
310 a court of competent jurisdiction or pursuant to a subpoena
311 duces tecum only when the subpoena is:
312 (a) Issued by a state attorney, a United States attorney,
313 or a court in a criminal investigation or a criminal judicial
314 proceeding;
315 (b) Issued by a state or federal grand jury; or
316 (c) Issued by a state attorney, the Department of Legal
317 Affairs, the State Fire Marshal, a United States attorney, or a
318 court in the course of a civil investigation or a civil judicial
319 proceeding under the state or federal racketeer influenced and
320 corrupt organization act or under chapter 896.
321 (10) ~~(9)~~ (a) Notwithstanding other provisions of this
322 section, the department shall, subject to paragraph (c) and to
323 the safeguards and limitations of paragraphs (b) and (d),
324 disclose to the governing body of a municipality, a county, or a
325 subcounty district levying a local option tax, or any state tax
326 that ~~which~~ is distributed to units of local government based
327 upon place of collection, which the department is responsible
328 for administering, names and addresses only of the taxpayers
329 granted a certificate of registration pursuant to s. 212.18(3)
330 who reside within or adjacent to the taxing boundaries of such
331 municipality, county, or subcounty district when sufficient
332 information is supplied by the municipality, the county, or
333 subcounty district as the department by rule may prescribe,

334 provided such governing bodies are following s. 212.18(3)
335 relative to the denial of an occupational license after the
336 department cancels a dealer's sales tax certificate of
337 registration.
338 (b) Such information shall be disclosed only if the
339 department receives an authenticated copy of a resolution
340 adopted by the governing body requesting it.
341 (c) After receipt of such information, the governing body
342 and its officers and employees are subject to the same
343 requirements of confidentiality and the same penalties for
344 violating confidentiality as the department and its employees.
345 (d) The resolution requesting such information shall
346 provide assurance that the governing body and its officers and
347 employees are aware of the confidentiality ~~those~~ requirements
348 and of the penalties for their violation of such requirements.~~,~~
349 ~~and~~ The resolution shall describe the measures that will be put
350 into effect to ensure such confidentiality. The officer of the
351 department who is authorized to receive, consider, and act upon
352 such requests shall, if satisfied that the assurances in the
353 resolution are adequate to assure confidentiality, grant the
354 request.
355 (e) ~~(d)~~ Nothing in this subsection authorizes disclosure of
356 any information prohibited by federal law from being disclosed.
357 (11) ~~(10)~~ Notwithstanding any other provision of this
358 section, with respect to a request for verification of a
359 certificate of registration issued pursuant to s. 212.18 to a
360 specified dealer or taxpayer or with respect to a request by a
361 law enforcement officer for verification of a certificate of

362 registration issued pursuant to s. 538.09 to a specified
363 secondhand dealer or pursuant to s. 538.25 to a specified
364 secondary metals recycler, the department may disclose whether
365 the specified person holds a valid certificate or whether a
366 specified certificate number is valid or whether a specified
367 certificate number has been canceled or is inactive or invalid
368 and the name of the holder of the certificate. This subsection
369 shall not be construed to create a duty to request verification
370 of any certificate of registration.
371 (12) ~~(11)~~ The department may provide to a United States
372 Trustee, or his or her designee, for any United States
373 Bankruptcy Court, exclusively for official purposes in
374 connection with administering a bankruptcy estate, information
375 relating to payment or nonpayment of taxes imposed by any
376 revenue law of this state by a trustee, debtor, or debtor in
377 possession, including any amount paid or due.
378 (13) ~~(12)~~ The department may disclose certain state sales
379 tax information relating to the cancellation or revocation of
380 sales and use tax certificates of registration for the failure
381 to collect and remit sales tax. This information is limited to
382 the sales tax certificate number, trade name, owner's name,
383 business location address, and the reason for the cancellation
384 or revocation.
385 (14) ~~(13)~~ Notwithstanding the provisions of s. 896.102(2),
386 the department may allow full access to the information and
387 documents required to be filed with it under s. 896.102(1) to
388 federal, state, and local law enforcement and prosecutorial
389 agencies, and to the Office of Financial Regulation of the

390 Financial Services Commission, and any of those agencies may use
391 the information and documents in any civil or criminal
392 investigation and in any court proceedings.
393 (15) ~~(14)~~ (a) Notwithstanding any other provision of this
394 section, the department shall, subject to the safeguards
395 specified in paragraph (c), disclose to the Division of
396 Corporations of the Department of State the name, address,
397 federal employer identification number, and duration of tax
398 filings with this state of all corporate or partnership entities
399 which are not on file or have a dissolved status with the
400 Division of Corporations and which have filed tax returns
401 pursuant to either chapter 199 or chapter 220.
402 (b) The Division of Corporations shall use such
403 information only in the pursuit of its official duties relative
404 to nonqualified foreign or dissolved corporations in the
405 recovery of fees and penalties due and owing the state.
406 (c) All information exchanged between the Division of
407 Corporations and the department shall be subject to the same
408 requirements of confidentiality as the Department of Revenue.
409 (16)(a) ~~(15)~~ The department may disclose confidential
410 taxpayer information contained in returns, reports, accounts, or
411 declarations filed with the department by persons subject to any
412 state or local tax to the child support enforcement program, to
413 assist in the location of parents who owe or potentially owe a
414 duty of support, as defined in s. 409.2554, pursuant to Title
415 IV-D of the Social Security Act, their assets, their income, and
416 their employer, and to the Department of Children and Family

417 Services for the purpose of diligent search activities pursuant
418 to chapter 39.
419 (b) Nothing in this subsection authorizes the disclosure
420 of information if such disclosure is prohibited by federal law.
421 Employees of the child support enforcement program and of the
422 Department of Children and Family Services are bound by the same
423 requirements of confidentiality and the same penalties for
424 violation of the requirements as the department.
425 (17) ~~(16)~~ The department may provide to the person against
426 whom transferee liability is being asserted pursuant to s.
427 212.10(1) information relating to the basis of the claim.
428 (18) ~~(17)~~ The department may disclose to a person entitled
429 to compensation pursuant to s. 213.30 the amount of any tax,
430 penalty, or interest collected as a result of information
431 furnished by such person.
432 Section 2. Paragraph (a) of subsection (1) of section
433 202.37, Florida Statutes, is amended to read:
434 202.37 Special rules for administration of local
435 communications services tax.--
436 (1)(a) Except as otherwise provided in this section, all
437 statutory provisions and administrative rules applicable to the
438 communications services tax imposed by s. 202.12 apply to any
439 local communications services tax imposed under s. 202.19, and
440 the department shall administer, collect, and enforce all taxes
441 imposed under s. 202.19, including interest and penalties
442 attributable thereto, in accordance with the same procedures
443 used in the administration, collection, and enforcement of the
444 communications services tax imposed by s. 202.12. Audits

445 performed by the department shall include a determination of the
446 dealer's compliance with the jurisdictional situsing of its
447 customers' service addresses and a determination of whether the
448 rate collected for the local tax pursuant to ss. 202.19 and
449 202.20 is correct. The person or entity designated by a local
450 government pursuant to s. 213.053(8) ~~(7)~~(v) may provide evidence
451 to the department demonstrating a specific person's failure to
452 fully or correctly report taxable communications services sales
453 within the jurisdiction. The department may request additional
454 information from the designee to assist in any review. The
455 department shall inform the designee of what action, if any, the
456 department intends to take regarding the person.
457 Section 3. Subsection (2) of section 206.27, Florida
458 Statutes, is amended to read:
459 206.27 Records and files as public records.--
460 (2) Nothing herein shall be construed as requiring the
461 department to provide as a public record any information
462 concerning audits in progress or those records and files of the
463 department described in this section which are currently the
464 subject of pending investigation by the Department of Revenue or
465 the Florida Department of Law Enforcement. It is specifically
466 provided that the foregoing information shall be exempt from the
467 provisions of s. 119.07(1) and shall be considered confidential
468 pursuant to s. 213.053; however, the department may make
469 available to the executive director of the Department of Highway
470 Safety and Motor Vehicles or his or her designee, exclusively
471 for official purposes in administering chapter 207, any
472 information concerning any audit in progress, and the provisions

473 of s. 213.053(8) ~~(7)~~ requiring a written agreement and
474 maintenance of confidentiality by the recipient, and the penalty
475 for breach of confidentiality, shall apply if the department
476 makes such information available. Any officer, employee, or
477 former officer or employee of the department who divulges any
478 such information in any manner except for such official purposes
479 or under s. 213.053 is guilty of a misdemeanor of the first
480 degree, punishable as provided in s. 775.082 or s. 775.083.
481 Section 4. Section 409.2577, Florida Statutes, is amended
482 to read:
483 409.2577 Parent locator service.--The department shall
484 establish a parent locator service to assist in locating parents
485 who have deserted their children and other persons liable for
486 support of dependent children. The department shall use all
487 sources of information available, including the Federal Parent
488 Locator Service, and may request and shall receive information
489 from the records of any person or the state or any of its
490 political subdivisions or any officer thereof. Any agency as
491 defined in s. 120.52, any political subdivision, and any other
492 person shall, upon request, provide the department any
493 information relating to location, salary, insurance, social
494 security, income tax, and employment history necessary to locate
495 parents who owe or potentially owe a duty of support pursuant to
496 Title IV-D of the Social Security Act. This provision shall
497 expressly take precedence over any other statutory nondisclosure
498 provision which limits the ability of an agency to disclose such
499 information, except that law enforcement information as provided
500 in s. 119.071(4)(d) is not required to be disclosed, and except

501 that confidential taxpayer information possessed by the
502 Department of Revenue shall be disclosed only to the extent
503 authorized in s. 213.053(16)~~(15)~~. Nothing in this section
504 requires the disclosure of information if such disclosure is
505 prohibited by federal law. Information gathered or used by the
506 parent locator service is confidential and exempt from the
507 provisions of s. 119.07(1). Additionally, the department is
508 authorized to collect any additional information directly
509 bearing on the identity and whereabouts of a person owing or
510 asserted to be owing an obligation of support for a dependent
511 child. The department shall, upon request, make information
512 available only to public officials and agencies of this state;
513 political subdivisions of this state, including any agency
514 thereof providing child support enforcement services to non-
515 Title IV-D clients; the custodial parent, legal guardian,
516 attorney, or agent of the child; and other states seeking to
517 locate parents who have deserted their children and other
518 persons liable for support of dependents, for the sole purpose
519 of establishing, modifying, or enforcing their liability for
520 support, and shall make such information available to the
521 Department of Children and Family Services for the purpose of
522 diligent search activities pursuant to chapter 39. If the
523 department has reasonable evidence of domestic violence or child
524 abuse and the disclosure of information could be harmful to the
525 custodial parent or the child of such parent, the child support
526 program director or designee shall notify the Department of
527 Children and Family Services and the Secretary of the United
528 States Department of Health and Human Services of this evidence.

529 Such evidence is sufficient grounds for the department to
530 disapprove an application for location services.
531 Section 5. Subsection (3) of section 607.0130, Florida
532 Statutes, is amended to read:
533 607.0130 Powers of Department of State.--
534 (3) The Department of State may, based upon its findings
535 hereunder or as provided in s. 213.053(15)~~(14)~~, bring an action
536 in circuit court to collect any penalties, fees, or taxes
537 determined to be due and owing the state and to compel any
538 filing, qualification, or registration required by law. In
539 connection with such proceeding the department may, without
540 prior approval by the court, file a lis pendens against any
541 property owned by the corporation and may further certify any
542 findings to the Department of Legal Affairs for the initiation
543 of any action permitted pursuant to s. 607.0505 which the
544 Department of Legal Affairs may deem appropriate.
545 Section 6. Subsection (3) of section 608.703, Florida
546 Statutes, is amended to read:
547 608.703 Interrogatories by Department of State.--
548 (3) The Department of State may, based upon its findings
549 hereunder or as provided in s. 213.053(15)~~(14)~~, bring an action
550 in circuit court to collect any penalties, fees, or taxes
551 determined to be due and owing the state and to compel any
552 filing, qualification, or registration required by law. In
553 connection with such proceeding, the department may, without
554 prior approval by the court, file a lis pendens against any
555 property owned by the corporation and may further certify any
556 findings to the Department of Legal Affairs for the initiation

557 of any action permitted pursuant to this chapter which the
558 Department of Legal Affairs may deem appropriate.
559 Section 7. Subsection (3) of section 617.01301, Florida
560 Statutes, is amended to read:
561 617.01301 Powers of Department of State.--
562 (3) The Department of State may, based upon its findings
563 hereunder or as provided in s. 213.053(13) ~~(12)~~, bring an action
564 in circuit court to collect any penalties, fees, or taxes
565 determined to be due and owing the state and to compel any
566 filing, qualification, or registration required by law. In
567 connection with such proceeding the department may, without
568 prior approval by the court, file a lis pendens against any
569 property owned by the corporation and may further certify any
570 findings to the Department of Legal Affairs for the initiation
571 of any action permitted pursuant to s. 617.0503 which the
572 Department of Legal Affairs may deem appropriate.
573 Section 8. Subsection (2) of section 896.102, Florida
574 Statutes, is amended to read:
575 896.102 Currency more than $10,000 received in trade or
576 business; report required; noncompliance penalties.--
577 (2) The Department of Revenue shall enforce compliance
578 with the provisions of subsection (1) and is to be the custodian
579 of all information and documents filed pursuant to subsection
580 (1). Such information and documents are confidential and exempt
581 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
582 State Constitution; however, the department must provide any
583 report filed under this section, or information contained
584 therein, to federal, state, and local law enforcement and

585 prosecutorial agencies, to the Department of Financial Services,
586 and to the Office of Financial Regulation, and the information
587 is subject to disclosure pursuant to subpoena as provided in s.
588 213.053(9) ~~(8)~~.
589 Section 9. This act shall take effect October 3, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **7233**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Finance & Tax Committee
2 Representative(s) Kottkamp offered the following:
3
4 **Amendment**
5 Remove line(s) 589 and insert:
6
7 Section 9. This act shall take effect October 1, 2006.
8
9
10

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HB 7237

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7237 PCB UT 06-01 Public Service Commission
SPONSOR(S): Utilities & Telecommunications Committee and Littlefield
TIED BILLS: **IDEN./SIM. BILLS:** SB 1872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Utilities & Telecommunications Committee	12 Y, 0 N	Cater	Holt
1) Finance & Tax Committee		Noriega	Diez-Arguelles
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

In a recent operational audit of the Florida Public Service Commission (PSC or Commission), the Auditor General reported that there were several obsolete provisions in Chapter 350, F.S., which governs the PSC. The Auditor General also reported that the regulatory assessment fee rates in s. 350.113(3), F.S., are inconsistent with the rates used in industry-specific statutes.

The bill deletes obsolete language contained in Chapter 350, F.S., relating to: 1) the regulation of railroads, 2) the position of Chief Auditor, 3) maximum regulatory assessment fees, 4) other obsolete administrative language, and 5) coal slurry pipelines.

The bill clarifies the beginning and ending dates of the term for newly appointed Commissioners.

The bill does not appear to have a fiscal impact and has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill removes obsolete statutory language relating to the PSC, and repeals its authority over coal slurry pipelines. The bill also deletes regulatory assessment fee rates in Chapter 350, F.S., which are inconsistent with industry-specific statutes.

B. EFFECT OF PROPOSED CHANGES:

Background

In September 2005, the Auditor General issued an operational audit report on the PSC, report Number 2006-021, entitled Public Service Commission Regulatory Audits and Personnel Administration. One of the findings in this report was that some of the sections of Chapter 350, F.S., relating to the railroad industry, the position of Chief Internal Auditor, and maximum regulatory assessment fee rates, were no longer reflective of current Commission practices. Despite the fact that the Commission's jurisdiction over the railroad industry ended with the industry's deregulation in 1985, ss. 350.011, 350.113(3)(a), and 350.117(2), F.S., continue to include references or requirements applicable to the railroad industry. Additionally, s. 350.051, F.S., specifies the qualifications of the Chief Auditor and designates that the Chief Auditor is the director of the Commission's accounting department. However, the PSC's current organizational structure does not include an accounting department. The functions formerly performed by the Director of the Accounting Department are now performed by the Chief of the Bureau of Auditing and do not need statutory reference.

Finally, s. 350.113(3), F.S., sets out regulatory assessment fee maximums for the telecommunications, gas, and water and wastewater industries that are inconsistent with the assessment fee maximums specified in the industry-specific statutes (ss. 364.336, 366.14(2) and (3), and 367.145(1), F.S., respectively). The Auditor General's report recommended that these statutes be amended to eliminate outdated or inappropriate requirements and eliminate regulatory assessment fee maximums that are inconsistent with the more recent industry-specific statutes.

Proposed Changes

The bill makes the statutory changes recommended in the Auditor General's report, and corrects cross-references related to the appointment of Commissioners in s. 350.031, F.S.

Section 1
The bill amends provisions in s. 350.01, F.S., relating to appointment of Commissioners and hearing examiners. The bill clarifies that the term for a Public Service Commissioner begins on January 2nd of the year of appointment and ends on January 1st four years later. The bill deletes a reference to "the commission's office of hearing examiners" as the PSC no longer has such an office, but instead has staff attorneys who serve as hearing examiners.

Section 2
The bill amends s. 350.011, F.S., deleting references to the transition from the "Florida Railroad and Public Utilities Commission" to the "Florida Public Service Commission." The original title dates to the creation of the Chapter in 1897.

Section 3

The bill repeals s. 350.051, F.S., which designates the Commission's Chief Auditor as the director of the accounting department. The PSC no longer has this department.

Section 4
The bill amends s. 350.06, F.S., deleting obsolete provisions relating to the Commission's official reporters. These provisions contain an obsolete salary cap, conflicting provisions on fees for copies of transcripts, and requires a report that is not needed for internal fiscal controls. The bill also changes the Commission's fees for copying, certifying, or providing orders, transcripts and similar documents to the same fees that are allowed to be charged by the clerks of the circuit courts. These fees are to be no more than those of the court clerks.

Section 5
The bill amends s. 350.113(3), F.S., to delete provisions for maximum regulatory assessment fees that conflict with the maximum set forth in the industry-specific statutes, and to delete a reference to railroads. These changes were recommended as part of the Auditor General's Report.

Section 6
The bill amends s. 350.117(2), F.S., to delete a reference to the regulation of railroads.

Section 7
The bill repeals s. 350.80, F.S., which provides for the Commission's regulation of coal slurry pipelines. No coal slurry pipeline has ever been proposed in Florida. According to PSC staff, instead of using such pipelines to bring coal into Florida from coal-producing states to generate electricity, two 500 KV electric transmission lines were constructed to bring in coal-based electricity from the state of Georgia under long-term contracts. Additionally, a footnote to this statute states that "Section 5, ch. 79-236, provides that '[t]his act shall take effect when every state in which the coal slurry pipeline will pass en route to Florida has enacted laws granting eminent domain authority to coal slurry pipeline companies or other entities operating or proposing to operate a coal slurry pipeline, and when the appropriate governmental authority has guaranteed in writing to the Public Service Commission that a continuous source of water shall be available for use in said coal slurry pipeline.'" Georgia has never granted eminent domain authority, so this section never became effective.

Section 8
The bill amends s. 361.08(2), F.S., to delete subsection (d) on condemnation proceedings on coal slurry pipelines as contemplated in s. 350.80, F.S., which is to be repealed in Section 7 of the bill.

Section 9
This act shall take effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 350.01, F.S., relating to the term of Florida Public Service Commissioners, and Commission proceedings.

Section 2. Amends s. 350.011, F.S., relating to the jurisdiction, powers and duties of the Florida Public Service Commission.

Section 3. Repeals s. 350.051, F.S., relating to the Commission's Chief Auditor.

Section 4. Amends s. 350.06, F.S., relating to the Commission's place of meeting, expenditures, employment of personnel, records availability and fees.

Section 5. Amends s. 350.113(3), F.S., relating to the Florida Public Service Commission Regulatory Trust Fund.

Section 6. Amends s. 350.117(2), F.S., relating to reports and audits.

Section 7. Repeals s. 350.80, F.S., relating to the regulation of coal slurry pipelines.

Section 8. Amends s. 361.08(2), F.S., relating to the right of eminent domain to coal pipeline companies.

Section 9. Provides an effective date of July 1, 2006.

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:

   This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to the Public Service Commission; amending
3 s. 350.01, F.S.; correcting cross-references; revising
4 provisions for terms of commissioners on the Public
5 Service Commission; revising a reference to the office of
6 hearing examiners; amending s. 350.011, F.S.; deleting
7 obsolete provisions relating to a transfer of certain
8 functions and duties to the Public Service Commission;
9 repealing s. 350.051, F.S., relating to qualifications of
10 the Chief Auditor of the commission; amending s. 350.06,
11 F.S.; deleting certain provisions relating to the
12 employment of reporters and furnishing of transcripts by
13 the commission; revising provisions for the collection and
14 accounting of fees for furnishing transcripts and other
15 documents or instruments; amending s. 350.113, F.S.;
16 removing limits on the amount of certain regulatory fees;
17 amending s. 350.117, F.S.; removing an exception for
18 railroads from certain audits by the commission; repealing
19 s. 350.80, F.S., relating to regulation of certain coal
20 slurry pipeline companies; amending s. 361.08, F.S.;
21 removing a provision for consideration by the court of
22 certain findings by the commission relating to coal slurry
23 pipeline companies, to conform to changes made by the act;
24 providing an effective date.
25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Paragraphs (a) and (b) of subsection (2) and
29 subsection (5) of section 350.01, Florida Statutes, are amended
30 to read:
31 350.01 Florida Public Service Commission; terms of
32 commissioners; vacancies; election and duties of chair; quorum;
33 proceedings.--
34 (2)(a) Each commissioner serving on July 1, 1978, shall be
35 permitted to remain in office until the completion of his or her
36 current term. Upon the expiration of the term, a successor shall
37 be appointed in the manner prescribed by s. 350.031(5), (6), ~~(3)~~
38 and (7) ~~(4)~~ for a 4-year term, except that the terms of the
39 initial members appointed under this act shall be as follows:
40 1. The vacancy created by the present term ending in
41 January, 1981, shall be filled by appointment for a 4-year term
42 and for 4-year terms thereafter; and
43 2. The vacancies created by the two present terms ending
44 in January, 1979, shall be filled by appointment for a 3-year
45 term and for 4-year terms thereafter.
46 (b) Two additional commissioners shall be appointed in the
47 manner prescribed by s. 350.031(5), (6), ~~(3)~~ and (7) ~~(4)~~ for 4-
48 year terms beginning the first Tuesday after the first Monday in
49 January, 1979, and successors shall be appointed for 4-year
50 terms thereafter with each term beginning on January 2 of the
51 year the term commences and ending 4 years later on January 1.
52 (5) The primary duty of the chair is to serve as chief
53 administrative officer of the commission; however, the chair may
54 participate in any proceedings pending before the commission
55 when administrative duties and time permit. In order to

56 distribute the workload and expedite the commission's calendar,
57 the chair, in addition to other administrative duties, has
58 authority to assign the various proceedings pending before the
59 commission requiring hearings to two or more commissioners or to
60 the commission's staff ~~office~~ of hearing examiners under the
61 supervision of the office of general counsel. Only those
62 commissioners assigned to a proceeding requiring hearings are
63 entitled to participate in the final decision of the commission
64 as to that proceeding; provided, if only two commissioners are
65 assigned to a proceeding requiring hearings and cannot agree on
66 a final decision, the chair shall cast the deciding vote for
67 final disposition of the proceeding. If more than two
68 commissioners are assigned to any proceeding, a majority of the
69 members assigned shall constitute a quorum and a majority vote
70 of the members assigned shall be essential to final commission
71 disposition of those proceedings requiring actual participation
72 by the commissioners. If a commissioner becomes unavailable
73 after assignment to a particular proceeding, the chair shall
74 assign a substitute commissioner. In those proceedings assigned
75 to a hearing examiner, following the conclusion of the hearings,
76 the designated hearing examiner is responsible for preparing
77 recommendations for final disposition by a majority vote of the
78 commission. A petition for reconsideration shall be voted upon
79 by those commissioners participating in the final disposition of
80 the proceeding.
81 Section 2. Section 350.011, Florida Statutes, is amended
82 to read:

83 350.011 Florida Public Service Commission; jurisdiction;
84 powers and duties.--The state regulatory agency heretofore known
85 as the Florida Railroad and Public Utilities Commission or
86 Florida Public Utilities Commission shall be known and hereafter
87 called Florida Public Service Commission, and all rights,
88 powers, duties, responsibilities, jurisdiction, and judicial
89 powers now vested in said Railroad and Public Utilities
90 Commission or said Florida Public Utilities Commission and the
91 commissioners thereof are vested in the Florida Public Service
92 Commission and the commissioners thereof. ~~Whenever reference is~~
93 ~~made to the Florida Railroad and Public Utilities Commission or~~
94 ~~Florida Public Utilities Commission and the commissioners~~
95 ~~thereof in the laws of the state previously enacted or enacted~~
96 ~~at this session of the Legislature, such reference shall be~~
97 ~~construed to mean the Florida Public Service Commission and the~~
98 ~~commissioners thereof and all appropriations for the use of said~~
99 ~~Railroad and Public Utilities Commission or Florida Public~~
100 ~~Utilities Commission and the members thereof for the biennium or~~
101 ~~continuing in nature previously made or made at this session of~~
102 ~~the Legislature, shall be construed to be for the use of said~~
103 ~~Florida Public Service Commission and the commissioners thereof,~~
104 ~~to be used for the purposes set out in the laws making said~~
105 ~~appropriations; provided, however, the change in name of said~~
106 ~~regulatory agency shall in nowise affect any pending causes and~~
107 ~~proceedings, existing notices, orders, certificates, permits,~~
108 ~~licenses, or authorities previously granted or any action~~
109 ~~previously taken by the Florida Railroad and Public Utilities~~
110 ~~Commission or Florida Public Utilities Commission.~~

111 Section 3. Section 350.051, Florida Statutes, is repealed.
112 Section 4. Subsections (3) through (9) of section 350.06,
113 Florida Statutes, are amended to read:
114 350.06 Place of meeting; expenditures; employment of
115 personnel; records availability and fees.--
116 (3) The commissioners may employ clerical, technical, and
117 professional personnel reasonably necessary for the performance
118 of their duties and~~. The commissioners~~ may also employ one or
119 more persons capable of stenographic court reporting, to be
120 known as the official reporters of the commission~~, and fix the~~
121 ~~compensation of each not to exceed $28,000 annually. The~~
122 ~~official reporters shall furnish only to the commission~~
123 ~~transcripts of all testimony taken by them, and the commission~~
124 ~~may make and sell certified copies of such testimony and charge~~
125 ~~therefor the same fees as are allowed clerks of the circuit~~
126 ~~courts of the state, subject to such rules and regulations as~~
127 ~~may be prescribed by the commission~~.
128 (4) When needed, the commission may engage supplementary
129 qualified reporters at their usual rate of compensation;
130 however, the supplementary reporters shall furnish the
131 commission the original certified transcripts of testimony taken
132 by them~~, but such reporters shall have the right to sell copies~~
133 ~~of such transcripts subject to rules and regulations of the~~
134 ~~commission. The commission may make copies of the transcripts~~
135 ~~for internal use without further compensation. When~~
136 ~~supplementary reporters are unable to provide copies within a~~
137 ~~reasonable time, the commission may, upon request, sell copies~~

138 ~~at its usual rate and shall deposit the proceeds in the Public~~
139 ~~Service Regulatory Trust Fund~~.
140 ~~(5) Upon request by the governing body of a municipal or~~
141 ~~county government within 7 days after completion of the~~
142 ~~transcript and its delivery to the commission, the commission~~
143 ~~shall provide copies of the transcripts of testimony at the cost~~
144 ~~of reproduction and mailing, but such copies need not be~~
145 ~~certified unless specifically requested.~~
146 (5) ~~(6)~~ The commission shall make available to the public
147 counsel the original copy of all transcripts for use and study
148 in the commission offices. If the commission makes any copies of
149 transcripts for internal use and if the public counsel has so
150 requested in writing to the clerk of the commission ~~at the time~~
151 ~~of his or her intervention~~, the commission shall supply the
152 public counsel with a copy of the transcript at no charge. ~~In~~
153 ~~all other cases, the public counsel may obtain a copy of the~~
154 ~~transcript from the commission for the cost of reproduction.~~
155 (6) ~~(7)~~ The commission shall collect for copying,
156 examining, comparing, correcting, verifying, certifying, or
157 furnishing orders, records, transcripts of testimony, papers, or
158 other instruments no more than the same fees that are allowed
159 clerks of the circuit courts of this state ~~Florida~~. In cases
160 where the fee would amount to less than $1, no fee shall be
161 charged.
162 (7) ~~(8)~~ Copies of commission orders furnished to public
163 officials, newspapers, periodical publications, federal
164 agencies, state officials of other states, and parties to the
165 proceeding in which the order was entered and their attorneys

166 shall be without charge. However, the commission may in its
167 discretion charge fees for the furnishing of more than one copy
168 of any order to any of the foregoing.
169 (8) ~~(9)~~ The commission shall keep accounting records ~~a book~~
170 in which all fees collected by it as provided for herein shall
171 be recorded, together with the amount and purpose for which
172 collected. The accounting records ~~This book~~ shall be ~~a~~ public
173 records ~~record~~. ~~The commission shall prepare a statement of~~
174 ~~these fees in duplicate each month and remit one copy of the~~
175 ~~statement, together with all fees collected by it, to the Chief~~
176 ~~Financial Officer.~~ All moneys collected pursuant to this section
177 by the commission shall be deposited in the State Treasury to
178 the credit of the Florida Public Service Regulatory Trust Fund.
179 Section 5. Subsection (3) of section 350.113, Florida
180 Statutes, is amended to read:
181 350.113 Florida Public Service Regulatory Trust Fund;
182 moneys to be deposited therein.--
183 (3) Each regulated company under the jurisdiction of the
184 commission, which company was in operation for the preceding 6-
185 month period, shall pay to the commission within 30 days
186 following the end of each 6-month period, commencing June 30,
187 1977, a fee based upon the gross operating revenues for such
188 period ~~subject to the limitations of this subsection~~. The fee
189 ~~fees~~ shall, to the extent practicable, be related to the cost of
190 regulating such type of regulated company. ~~and shall in no event~~
191 ~~be greater than:~~

192 ~~(a) For each railroad operating under chapter 351, one-~~
193 ~~eighth of 1 percent of its gross operating revenues derived from~~
194 ~~intrastate business.~~
195 ~~(b) For each telephone company licensed or operating under~~
196 ~~chapter 364, one eighth of 1 percent of its gross operating~~
197 ~~revenues derived from intrastate business.~~
198 ~~(c) For each "public utility" as defined in s. 366.02,~~
199 ~~one-eighth of 1 percent of its gross operating revenues derived~~
200 ~~from intrastate business, excluding sales for resale between~~
201 ~~public utilities, municipal electric utilities, and rural~~
202 ~~electric cooperatives, or any combination thereof.~~
203 ~~(d) For each municipal electric utility and rural electric~~
204 ~~cooperative, one sixty fourth of 1 percent of its gross~~
205 ~~operating revenues derived from intrastate business, excluding~~
206 ~~sales for resale between public utilities, municipal electric~~
207 ~~utilities, and rural electric cooperatives, or any combination~~
208 ~~thereof.~~
209 ~~(e) For each regulated company licensed under chapter 367,~~
210 ~~2.5 percent of its gross revenues derived from intrastate~~
211 ~~business.~~
212
213 Differences, if any, between the amount paid in any 6-month
214 period and the amount actually determined by the commission to
215 be due shall, upon notification by the commission, be
216 immediately paid or refunded. Each regulated company which is
217 subject to the jurisdiction of the commission, but which did not
218 operate under the commission's jurisdiction during the entire
219 preceding 6-month period, shall, within 30 days after the close

220 of the first 6-month period during which it commenced operations
221 under, or became subject to, the jurisdiction of the commission,
222 pay to the commission the prescribed fee based upon its gross
223 operating revenues derived from intrastate business during those
224 months or parts of months in which the regulated company did
225 operate during such 6-month period. In no event shall payments
226 under this section be less than $25 annually.
227 Section 6. Subsection (2) of section 350.117, Florida
228 Statutes, is amended to read:
229 350.117 Reports; audits.--
230 (2) The commission may perform management and operation
231 audits of any regulated company ~~except railroads~~. The commission
232 may consider the results of such audits in establishing rates;
233 however, the company shall not be denied due process as a result
234 of the use of any such management or operation audit.
235 Section 7. Section 350.80, Florida Statutes, is repealed.
236 Section 8. Paragraph (d) of subsection (2) of section
237 361.08, Florida Statutes, is amended to read:
238 361.08 Right of eminent domain to coal pipeline
239 companies.--
240 (2) Any corporation, partnership, joint venture,
241 association, or other legal entity organized under the laws of
242 this state, or under the laws of any other state and qualified
243 to do business in this state, for the purpose of supplying any
244 electric utility or utilities; any city, town, or village or the
245 inhabitants thereof; or any community with coal or its
246 derivatives and any mixture and combination thereof by pipeline,
247 and for the purpose of serving as a common carrier operating or

248 proposing to operate a pipeline or pipelines for transporting or
249 delivering coal or its derivatives or any mixture or combination
250 thereof, shall have the right of eminent domain, for the purpose
251 of acquiring title, easements, rights-of-way, or other rights or
252 interests in property, necessary to acquire and take private
253 property which is or may be needed for the construction,
254 operation, maintenance, repair, or replacement of coal slurry
255 and derivative plants, pipelines, pumping stations, and any
256 other installations and works incident thereto. The procedure to
257 condemn property or interest therein shall be exercised in the
258 manner set forth in chapters 73 and 74. In any condemnation
259 proceeding under this act, the circuit court shall restrict the
260 exercise of the right of eminent domain in the following
261 particulars:
262 ~~(d) The court, in any condemnation proceeding brought~~
263 ~~pursuant to this section, shall be bound by the findings of the~~
264 ~~Florida Public Service Commission on the general issues of~~
265 ~~economic and environmental feasibility as determined pursuant to~~
266 ~~s. 350.80.~~
267 Section 9. This act shall take effect July 1, 2006.