

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 692

INTRODUCER: Senator Bennett

SUBJECT: Municipalities

DATE: December 21, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill amends the “Formation of Municipalities Act,” to require an earlier submission of a proposed municipality incorporation feasibility study. The bill also deletes definitions and cross references that are no longer applicable.

This bill amends sections 165.031, 165.041, 163.340, and 257.171 of the Florida Statutes.

**II. Present Situation:**

**History and Purpose of the “Formation of Municipalities Act”**

Chapter 165, F.S., the “Formation of Local Governments Act” was created pursuant to ch. 74-192, Laws of Florida. This legislation provided general law standards and direction and procedures for the formation and dissolution of municipalities and special districts.

The Legislature subsequently enacted the “Uniform Special District Accountability Act of 1989,” ch. 189, F.S., to provide general provisions for the definition, creation, and operation of special districts specifically. This legislation, ch. 89-169, Laws of Florida, changed the title for ch. 165, F.S., to the “Formation of Municipalities Act,” (Act) and simultaneously removed provisions for special districts from this law. The chapter is currently limited to procedures for municipal incorporation.

The stated purpose of the Act is to provide standards, direction, and procedures for the formation of municipalities in this state and the provision of municipal services 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.<sup>1</sup>

### **The Process for Establishing a City Government**

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.<sup>2</sup> Section 165.081, F.S., provides that any special law enacted pursuant to ch. 165, F.S., is reviewable by certiorari if the appeal is brought before the effective date of the incorporation.

Pursuant to s. 165.041(1)(b), F.S., a feasibility study must be completed and submitted to the Legislature 90 days before the first day of the regular session during which the bill proposing the incorporation would be enacted. The study enables the Legislature to determine if the proposed area meets the statutory requirements for incorporation, and if incorporation is financially feasible. Interested parties commission and pay for the effort.

### **Incorporation Feasibility Study**

An incorporation feasibility study requires the following elements:

- The general location of territory subject to a boundary change and a map of the area that identifies the proposed change.
- The major reasons for proposing the boundary change.
- The following characteristics of the area:
  - a list of the current land use designations applied to the subject area in the county comprehensive plan;
  - a list of the current county zoning designations applied to the subject area;
  - a general statement of present land use characteristics of the area; and
  - a description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.
- A list of all public agencies, such as local governments, school districts and special districts, whose current boundaries fall within the boundary of the territory proposed for the change or reorganization.
- 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,

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<sup>1</sup> Section 165.021, F.S.

<sup>2</sup> Section 165.041(1)(a), F.S. 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.

fire and rescue, zoning, street lighting, parks and recreation, and library and cultural facilities, and the estimated costs for each service.

- A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such services.
- The names and addresses of three officers or persons submitting the proposal.
- Evidence of fiscal capacity and an organizational plan that, at a minimum, includes:
  - existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate; and
  - a five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.
- 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.
- Evaluation of the alternatives available to the area to address its policy concerns.
- Evidence that the proposed municipality meets the standards for incorporation of s.165.061, F.S.<sup>3</sup>

### **Standards for Incorporation**

Section 165.061, F.S., requires a new municipality to meet the following conditions in the area proposed for incorporation:

- It must be compact, contiguous and amenable to separate municipal government.
- 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.
- 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.
- 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.
- 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.
- In accordance with s. 10, Art. I of the State Constitution,<sup>4</sup> the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation.

In counties that have adopted a municipal overlay for municipal incorporation pursuant to s. 163.3217, F.S., feasibility study information also is submitted to the Legislature in conjunction with any proposed municipal incorporation.

<sup>3</sup> Section 165.041(1)(b), F.S.

<sup>4</sup> No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

### **Additional Feasibility Study Assessment**

In the past, incorporation feasibility studies have been provided to a number of state governmental entities for a critical assessment to assist the Legislature in its findings. These entities include the Office of the Governor, the Department of Revenue, the Office of Economic and Demographic Research, the Department of Community Affairs, and the Legislative Committee on Intergovernmental Relations. Two of the primary evaluators utilized by the Legislature, the Legislative Committee on Intergovernmental Relations and the Department of Community Affairs (DCA), were recently abolished,<sup>5</sup> although many of the DCA functions have been transferred to other state agencies.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 165.031, F.S., to delete six definitions which are no longer applicable: “unit of local government,” “local general purpose government,” “service delivery,” “parties affected,” “qualified voter,” and “sufficiency of petition.” The five retained definitions in this section are reordered. Cross references to specific subsections of chapter 189, Florida Statutes are removed.

**Section 2** amends s. 165.041, F.S., to change the submission deadline for a municipality incorporation feasibility study. A feasibility study is currently due 90 days before the first day of the regular session of the Legislature. The bill establishes a deadline of the first Monday after September 1, immediately preceding the regular session. The earlier submission date would provide additional time to review a study.

**Section 3** amends s. 163.340, F.S., to delete a subsection cross reference in s. 165.031, F.S.

**Section 4** amends s. 257.171, F.S. to delete a cross reference to the definition of “unit of local government” which is deleted in section 1 of the bill.

**Section 5** provides that this act shall take effect July 1, 2012.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>5</sup> The Legislative Committee on Intergovernmental Relations, a joint committee, was not funded in the FY 2010 – 2011 General Appropriations Act, and ceased operations on June 30, 2010. The Department of Community Affairs was abolished pursuant to ch. 2011-142, L.O.F.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.