

**STORAGE NAME:** h1265a.ca

**DATE:** April 15, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMUNITY AFFAIRS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

**BILL #:** HB 1265

**RELATING TO:** Islamorada, Village of Islands (Monroe County)

**SPONSOR(S):** Representative Horan

**COMPANION BILL(S):** None

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

- (1) COMMUNITY AFFAIRS YEAS 5 NAYS 0
- (2) FINANCE & TAXATION
- (3)
- (4)
- (5)

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**I. SUMMARY:**

This bill authorizes a referendum for the creation of the Village of Islamorada and provides for its charter (See SECTION-BY-SECTION RESEARCH section for the exact contents of the charter).

According to the Department of Revenue, there is a projected loss of revenue to Monroe County of about \$.6 million. The other cities in Monroe County will also experience a loss of revenue because of the redistribution of revenue sharing funds (See attached table from the Department of Revenue).

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**Chapter 165, Florida Statutes**

Florida law governing the formation and dissolution of municipal governments is found in chapter 165, F.S., the "Formation of Municipalities Act." The stated purpose of the "Formation of Municipalities Act" is to provide standards, direction, and procedures for the incorporation of municipalities, and to achieve the following goals:

- Orderly patterns of growth and land use;
- Adequate public services;
- Financial integrity in government;
- Equity in fiscal capacity; and
- Fair cost distribution for municipal services.

Under Florida law, there is ONLY ONE WAY to establish a city government where no such government existed before: the Legislature must pass a SPECIAL ACT enacting the city's charter. The special act must include a proposed municipal charter that prescribes the form of government and clearly defines the legislative and executive functions of city government, and cannot prohibit tax levies authorized by law.

The 1996 Legislature revised section 165.041, Florida Statutes, to require completion of a feasibility study for any area requesting incorporation. The purpose of the study is to enable the Legislature to determine whether or not the area: 1) meets the statutory requirements for incorporation, and 2) is financially feasible. Specifically, the study must include:

- Data and analysis to support the conclusions that incorporation is necessary and financially feasible.
- Population projections and population density calculations and an explanation concerning methodologies used for such analysis.
- Evaluation of the alternatives available to the area to address its policy concerns.
- Evidence that the proposed municipality meets the standards for incorporation of section 165.061, Florida Statutes. These standards are:

The area to be incorporated must be compact and contiguous and amenable to separate municipal government.

The area must have a total population of at least 1,500 persons in counties with a population of less than 50,000, as determined in the latest official state census, special census, or estimate of population in the area proposed to be incorporated, and of at least 5,000 population in counties with a population of more than 50,000.

The area must have an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.

The area must have a minimum distance of any part of the area proposed for incorporation from the boundaries of an existing municipality within the county of at least 2 miles or have an extraordinary natural boundary which requires separate municipal government.

Recent Municipal Incorporations

From 1972 to the present, at least 11 municipalities were either created by special act (Lake Mary, Sanibel, Destin, Jacob City, Midway, DeBary, Ft. Myers Beach, Deltona, Wellington, and Weston) or recreated by special act after previous incorporation under authority of general law in effect prior to 1974 (Seminole). The cities of Key Biscayne, Aventura and Pinecrest were created under the charter provisions of Dade County's Charter. The following table indicates recent municipal incorporations by year, city, county, enabling law, and any other applicable chapter of the Laws of Florida:

Recent Municipal Incorporations

1970	SEMINOLE	Pinellas County	general law
1972	SEMINOLE	Pinellas County	ch. 72-693
1973	LAKE MARY	Seminole County	ch. 73-522
1974	SANIBEL	Lee County	ch. 74-606
1983	JACOB CITY	Jackson County	ch. 83-434 ch. 84-456
1984	DESTIN	Okaloosa County	ch. 84-422 ch. 85-471
1986	MIDWAY	Gadsden County	ch. 86-471
1991	KEY BISCAVNE	Dade County	by authority of the Dade Charter
1993	DEBARY	Volusia County	ch. 93-351 ch. 93-363
1995	AVENTURA	Dade County	by authority of the Dade Charter
1995	PINECREST	Dade County	by authority of the Dade Charter
1995	FT. MYERS	Lee County	ch. 95-494

BEACH

1995	DELTONA	Volusia County	ch. 95-498
1995	WELLINGTON	Palm Beach County	ch. 95-496
1996	WESTON	Broward County	ch. 96-472

Recently Failed Incorporations

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

The City of Deltona (1987/1990)  
(chapter 87-449, and chapter 90-410, Laws of Florida)

The City of Fort Myers Beach (1982/1986)  
(chapters 82-295, and 86-413, Laws of Florida)

A city in the Halifax area of Volusia County (1985)  
(chapter 85-504, Laws of Florida)

The City of Marco Island (1980/1982/1986/1990/1993)  
(chapters 80-541, 82-330, 86-434, 90-457, and 93-384, Laws of Florida)

The City of Spring Hill (1986)  
(chapter 86-463, Laws of Florida)

The City of Port LaBelle (1994)  
(chapter 94-480, Laws of Florida)

The City of Destiny (1995)  
(by authority of the Dade County Charter)

Municipal Dissolutions

During the last decade or so, several cities have been dissolved:

- Bayview in Bay County by chapter 77-501, Laws of Florida;
- Munson Island in Monroe County by chapter 81-438, Laws of Florida;
- Painters Hill in Flagler County by chapter 81-453, Laws of Florida;
- Hacienda Village in Broward County by chapter 84-420, Laws of Florida; and
- Pennsuco in Dade County under authority of the Dade County Charter.

**Islamorada**

The area known as Islamorada is a group of islands in the Florida Keys in Monroe County that includes the entire islands of Plantation Key, Windley Key, Lower Matecumbe Key, Teatable Key, and all land filled in between these islands, all connected by U.S. One, the Overseas Highway. The nearest city to the north is Homestead in Dade County more than 30 miles away. To the south and west the nearest city is Layton which is 4 miles away. The area is no wider than .5 miles and is 18.3 miles long. There is a mix of residential and commercial uses, with no manufacturing. A large proportion is state land. The estimated permanent population is approximately 7,173 persons. There is also a large seasonal population.

**B. EFFECT OF PROPOSED CHANGES:**

Authorizes a referendum for the creation of the Village of Islamorada and provides for its charter (See SECTION-BY-SECTION RESEARCH section for the exact contents of the charter).

**C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:**

Creates a new special act.

**D. APPLICATION OF PRINCIPLES:**

**1. Less Government:**

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

This bill creates a new municipal government. As such, there is a new governmental entity that is available to make rules and adjudicate disputes.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

This bill creates a new municipal government. As such, there is a new governmental entity that has responsibilities to provide services and conduct land use planning and regulation for its residents.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not Applicable (N/A).

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

N/A

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

**E. SECTION-BY-SECTION RESEARCH:**

Section 1. Provides the act be known and cited as "Islamorada, Village of Islands" (Village).

Section 2. Provides legislative intent that: the Islamorada area in Monroe County constitutes a community amenable to separate municipal government; it is in the best interest of the public health and welfare of those citizens to form a separate municipality; and, this charter and the incorporation of the Village will protect the distinctive characteristics of the individual communities within the Village.

Section 3. Provides for the incorporation of the municipality of Islamorada. Provides for a council-manager form of government.

Section 4. Provides that the Village be a body corporate and politic, and have all of the powers of a municipality under the Constitution and laws of the State of Florida. Provides that the Village shall have all governmental, corporate and proprietary powers necessary to enable it to conduct municipal government.

Section 5. Provides for a Village council and establishes the composition, qualifications, compensation, terms of office, and frequency of meetings for council members. Requires the authentication and recording in full of all minutes of meetings, and establishes such records as public records. Provides for the election of a mayor and vice mayor, and establishes their duties. Provides that legislative and police powers of the Village be vested in the council. Delineates the conditions upon which a vacancy, forfeiture, or suspension of office occurs. Provides procedures for filling vacancies in office. Authorizes the council to adopt any standard code of technical regulations by reference into an adopting ordinance, and provides procedures governing such an adoption ordinance. Restricts council members from being in the employment of the Village while in office, with such restriction remaining until the expiration of 1 year from the time of leaving office. Forbids council members from interfering with the performance of the duties of any employee of the Village government who is under the direct or indirect supervision of the Village manager or Village attorney.



Section 6. Establishes the fiscal year term, and procedures for budget adoption and appropriation amendments during the fiscal year.

Section 7. Designates the Village manager and the Village attorney as charter officers, allowing for the office of Village attorney to be contracted to an attorney or law firm. Provides procedures for appointment, removal, compensation, and filling of vacancies of charter officers. Provides qualifications, powers and duties of the Village manager.

Section 8. Provides election procedures which include: criteria to be a qualified elector; conduct of nonpartisan elections; criteria to qualify for office; timing of general elections and runoffs; procedure to fill remainder of an unexpired term; determination of election to office. Provides the Village canvassing board be composed of members of the Village council who are not candidates for reelection and the Village clerk, who shall act as chair. Provides procedures for the recall of Village council members by initiative and referendum.

Section 9. Provides the date of the referendum election called for by the act, and the question placed on the ballot. Provides dates for the initial election of council members; the qualifying period; certification of election results; dates elected candidates take office; and terms of office. Provides for the establishment of the Village to comply with section 200.066, Florida Statutes, relating to the assessment and collection of ad valorem taxes. Authorizes the Village to borrow money. Requires the Village to adopt ordinances and resolutions required to effect the transition. Provides that the Village adopt the applicable provisions of the Monroe County Comprehensive Plan, as it exists on the day the Village commences corporate existence, as the Village transitional comprehensive plan. Provides that the Village will be entitled to participate in all shared revenue programs of the State of Florida effective upon the date of incorporation. Provides the Village shall be entitled to receive local option gas tax revenues beginning October 1, 1998.

Section 10. Provides for the provision of interim municipal services; continuation, merger and dissolution of existing districts; and the continuation and allocation of Monroe County taxes levied within the boundaries of the Village to fund Village operations.

Section 11. Describes Village boundaries.

Section 12. Provides procedures for charter amendment. Provides that all elected officials and employees of the Village be subject to the standards of conduct for public officers and employees set by general law. Requires the Village council, by ordinance, to establish a code of ethics within 6 months of Village incorporation.

Section 13. Provides a severability clause.

Section 14. Provides this act is effective only upon approval of a majority of Village voters in a referendum election to be held November 4, 1997. Provides sections 3, 9(2), and 9(3) take effect upon certification of election results by the Monroe County Supervisor of Elections. Provides the remainder of this act be effective upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? February 6, 1997

WHERE? The Reporter, Monroe County, Florida

B. REFERENDUM(S) REQUIRED? Yes ☒ No ☐

IF YES, WHEN? November 4, 1997

C. LOCAL BILL CERTIFICATION FILED? Yes, attached ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached ☒ No ☐

IV. COMMENTS:

**Agency Review Comments**

The House Committee on Community Affairs coordinates a review of the feasibility study required by section 165.041, Florida Statutes, and the proposed charter with various other legislative committees and appropriate state agencies. Attached are review comments from the Department of Revenue, the Legislative Committee on Intergovernmental Relations, and the Division of Economic and Demographic Research of the Florida Legislature.

**Fiscal Comments**

**Fiscal Impact on Monroe County:** Incorporation of Marco Island would have fiscal impact on Monroe County and the other cities in Monroe County. The incorporation of Islamorada would result in a net shortfall in Monroe County of approximately \$.6 million in state revenue sharing funds. This may be partially offset through contract for service agreements between Monroe County and the Village of Islamorada.

**Fiscal Impact on other cities in Monroe County:** There are a variety of ways the incorporation of Islamorada could fiscally impact the other cities in Monroe County in regards to state revenue sharing and the local government motor fuel taxes. In each case, the cities of Monroe County would lose such funds if Islamorada incorporated. **Attached are tables produced by the Department of Revenue that show the losses to the cities of Monroe County.**

**Fiscal Capacity:** It is estimated that the new city would have available 4.0726 mills for municipal services and a per capita assessed valuation of \$136,285. Given this, there is sufficient fiscal capacity for Islamorada to incorporate.

**State Shared Revenues:** The bill contains language that **grants an exception to section 218.23, F.S., relating to state shared revenues with local governments.** Section 218.23, F.S., states a local government is required, at a minimum, to have reported its finances for the most recently completed fiscal year to the Department of Banking and Finance; made provision for annual post-audits of its financial accounts; levied ad valorem taxes of 3 mills;

certified that law enforcement officers and fire fighters meet state qualifications; and certified that any dependent special district has made provision for separate annual post-audits of its financial accounts. Islamorada cannot meet these deadlines and receive shared revenues the first year without such an exemption.

**Local Option Gas Tax:** The bill also provides that Islamorada shall receive an exception for requirements for the local option gas tax according to section 336.025, F.S. Paragraph 336.025(4)(b), F.S., states a new city is only eligible to receive funds in the first full fiscal year following incorporation if it is eligible to participate in state revenue-sharing programs of chapter 218, F.S.

### **Other Charter Concerns**

**Ballot Language:** Chapter 100, F.S., relating to general, primary, and special elections, contains provisions with regard to referendum elections.

Section 100.342, F.S., provides:

In any special election or referendum not otherwise provided for there shall be at least 30 days' notice of the election or referendum by publication in a newspaper of general circulation in the county, district, or municipality, as the case may be. The publication shall be made at least twice, once in the fifth week and once in the third week prior to the week in which the election or referendum is to be held. If there is no newspaper of general circulation in the county, district, or municipality, the notice shall be posted in no less than five places within the territorial limits of the county, district, or municipality.

Furthermore, subsection 101.161(1), F.S., relating to voting methods and procedures, requires:

(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

The language for the referendum does not contain a ballot title or the required YES and NO boxes.

### **Standards for Incorporation**

The incorporation of Islamorada meets all the standards for incorporation of chapter 165, F.S., with the possible exception of the density standard. Estimates for density in the feasibility study indicate the density is 1.83 persons per acre. However, estimates completed by the Division of Economic and Demographic Research (see attached memo) indicate that the density may be only 1.38 persons per acre.

**V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

On April 15, 1997, the House Committee on Community Affairs adopted 6 amendments as follows:

**Amendment 1:** Corrects a bill drafting error in the title of the bill.

**Amendment 2:** Corrects a reference to the population of the area.

**Amendment 3:** Provides a ballot title and YES and NO boxes for the incorporation referendum.

**Amendment 4:** Provides technical language allowing the Village of Islamorada to participate in state shared revenue programs.

**Amendment 5:** Strikes Section 10 relating to the budget of Monroe County from the bill.

**Amendment 6:** Provides language requiring the residents of Plantation Key to vote affirmatively for incorporation for the bill to take effect.

**VI. SIGNATURES:**

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

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Jenny Underwood Dietzel

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