

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2056

SPONSOR: Senator Futch

SUBJECT: Brevard County

DATE: February 17, 2002

REVISED: 02/19/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill is a special act proposing the incorporation of the City of Port St. John, providing a charter, providing for a referendum to approve the charter, and providing for the waiver of certain statutory requirements for incorporation and revenue-sharing.

The bill takes effect only if approved by a majority vote of qualified electors residing within the proposed corporate limits of the proposed City of Port St. John in a referendum to be called by the Brevard County Commission. If the referendum passes, the new municipality of the City of Port St. John will be incorporated effective December 31, 2002.

II. Present Situation:

MUNICIPAL INCORPORATION

Constitutional and Statutory Provisions

Section 2, Article VIII of the Florida Constitution

Section 2(a) of Article VIII of the Florida Constitution provides that municipalities may be established or abolished and have their charters amended by general or special law. The powers of municipalities are described in section 2(b) of Article VIII of the Florida Constitution. A municipality has governmental, corporate and corporate proprietary powers in order for it to conduct municipal government, functions and services. Unless otherwise provided by law, a municipality may exercise any power for municipal purposes. Section 2(c) of Article VIII of the Florida Constitution states that municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities, shall be as provided by

general or special law (an exception is Dade County, which has exclusive jurisdiction over its municipal annexations under Article VIII, Sections 11(1)(c), (5), and (6), of the Florida Constitution of 1885, as adopted by reference in Article VIII, Section 6(e), of the 1968 Revised Florida Constitution).

Chapter 165, Florida Statutes

Florida law governing the formation and dissolution of municipal governments is found in chapter 165, Florida Statutes, the “Formation of Municipalities Act (Act).” The stated purpose of the 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.

Requirements and Standards for Municipal Incorporation

Submittal of a feasibility study and a local bill that proposes the local government charter is required. In addition, the statutes provide standards for incorporation. These standards are:

- The area to be incorporated must be compact, contiguous, and amenable to separate municipal government.
- The area proposed to be incorporated 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 population in counties with a population of more than 75,000.
- 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.
- Any part of the area proposed for incorporation must have a minimum distance of at least 2 miles from the boundaries of an existing municipality within the county. Alternately, an extraordinary natural boundary that requires separate municipal government must be present.
- 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.

The standards for incorporation may be clouded by the adoption of chapter 00-304, Laws of Florida. It is not clear if section 165.061(2)(d), Florida Statutes, an incorporation standard for incorporations resulting from mergers also applies to incorporation standards for unincorporated areas provided in section 165.061(1), Florida Statutes. If the provision is applicable, then a municipal incorporation must honor existing solid waste contracts in the affected geographic subject area. However, the city may provide that the existing contracts be honored only for 5 years or the remainder of the contract term, whichever is shorter. In addition, if the city requests written evidence of the contract duration, excluding any automatic renewals or “evergreen provisions,” such evidence must be provided within a reasonable time.

Feasibility Study

A feasibility study is a study 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. In addition, a feasibility study must be completed and submitted to the Legislature at least 90 days prior to the first day of the regular Legislative Session during which the municipal charter would be enacted.

In 1999, the Legislature revised section 165.041, Florida Statutes, by adding new, more detailed requirements for the preparation of the required feasibility study for any area requesting incorporation. Specifically, the study must include:

- 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.
 - 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 boundary falls within the boundary of the territory proposed for the change or reorganization.
 - A list of current service providers and estimate of the cost of services.
 - A list of proposed service providers and estimate of the cost of the proposed 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.
- A 5-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, budgets.
- 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.
- Any part of the area proposed for incorporation must have a minimum distance of at least 2 miles from the boundaries of an existing municipality within the county. Alternately, an extraordinary natural boundary that requires separate municipal government must be present.

Eligibility of New Municipalities for Revenue Sharing Funds and Local Option Gas Tax Revenues

Section 218.23(1), F.S., provides that for a local government to be eligible for revenue sharing beyond the minimum entitlement in any fiscal year, the local government is required to have:

1. Reported its finances for its most recently completed fiscal year to the Department of Banking and Finance;
2. Made provisions for annual post audits of its financial accounts;
3. Levied ad valorem taxes to produce the revenue equivalent to a millage rate of 3 mills on the dollar based on the 1973 taxable values as certified by the property appraiser, or produce revenue equivalent to that which would have been produced by a 3-mill ad valorem tax. If a new municipality is incorporated, the minimum amount of revenue to be raised applies to the taxable values for the year of incorporation as certified by the property appraiser.
4. Certify that persons being employed by the local government as a law enforcement officer meets employment qualifications set by the Criminal Justice Standards and Training Commission and receives an annual salary of not less than \$6,000.
5. Certify that persons employed by the local government as firefighters meet employment qualifications established by the State Fire Marshall.
6. Certify that each dependent special district that is budgeted separately from the local government entity meets provisions for the annual postaudit of its financial audits.

Section 218.245(2), F.S., sets forth criteria for calculating an apportionment factor for calculating revenue sharing for municipalities. The apportionment factor is calculated based on three equally weighted portions including:

- a) The proportion of the population of a given municipality to the total population of all the eligible municipalities in the states;
- b) The proportion of the sales tax collected within a given municipality to the total sales tax collected within all eligible municipalities in the state;
- c) The ration of the relative local ability to raise revenue; and
- d) Special adjustments for a metropolitan or consolidated government.

Section 218.26(3), F.S., requires the Department of Revenue to compute the apportionment factors once each fiscal year prior to July 25, for use during the fiscal year. The computation is to be based on information submitted to the department prior to June 1 of each year, and the apportionment factors are to remain in effect for the fiscal year.

Section 336.025(4)(b), F.S., provides that any newly incorporated municipality which is eligible to receive a local option gas tax revenues under parts II and VI of chapter 218, F.S., and which is located in a county levying the tax, is entitled to receive a share of the tax revenues. However, the distribution to the newly incorporated municipality does not begin until the first full fiscal year following incorporation and is calculated based on:

1. the county's per lane mile expenditure in the previous year times the lane miles within the jurisdiction of the municipality, in which case the county's share is reduced proportionally;
or
2. determined by the local act incorporating the municipality.

The distribution must not adversely affect the rights of holders of outstanding bonds which are backed by the local option gas tax revenue, and the amounts distributed to the county and each municipality shall not be reduced below the amount necessary for the payment of principal and interest as required under the covenants of any bond resolution outstanding on the date of the redistribution.

Port St. John Feasibility Study

The community of Port St. John is located in Brevard County, Florida and is located between Cocoa Beach to the south and Titusville to the north. According to the feasibility study, the approximate population of the area proposed to be incorporated is 22,000, with a density of approximately 2.08 residents per acre. Hence, the proposed City of Port John appears to meet the minimum population requirement of 5,000 residents for incorporations in counties having populations greater than 75,000 and the density requirement of at least 1.5 persons per acre.

The area proposed for incorporation does meet the distance requirement that the area proposed for incorporation be located at least 2 miles from the boundary of an existing municipality or have an extraordinary natural boundary which requires separate municipal government. A review of the geographic area proposing incorporation reveals that the City of Titusville, lies

only 1.25 miles to the north of the area proposed for incorporation. As such, the area does not meet the requirement that it must have a minimum distance of two miles from the boundaries of existing municipalities within the county. However, the law does provide that as an alternative, an extraordinary natural boundary separates the municipal governments. The Feasibility Study represents that:

The City's northern boundary is 1.25 miles from the City of Titusville as a result of the City of Titusville's recent annexation of the TICO Airport. However, 17 of the 62 municipal incorporations since 1975 requested an exemption to the minimum two-mile rule. All 17 were approved. "Overview of Municipal Incorporations in Florida, February 2001, Legislative Committee on Intergovernmental Relations." Further, there exists a series of high power transmission lines emanating from the Reliant electrical generating plant on the north side of Kings Highway, and transiting approximately due west from their point of origin (outside the proposed northern boundary of the City) that constitutes a natural boundary between the City of Titusville and the proposed City.

Therefore, it appears that the proposed municipality may meet the alternative requirement of s. 165.061(1)(d), F.S.

The City Charter as created herein appears to provide for total or partial waiver of the following provisions of general law: s. 165.06(1)(e)2., F.S. at s. 10(3); s. 218.23(1), F.S. at s. 12(8); s. 218.26(3), F.S. at s. 12(8); and s. 336.025, F.S. at s. 12(9). Therefore, it appears that the bill provides exemptions from general law.

III. Effect of Proposed Changes:

The bill sets out the proposed charter of the City of Port St. John to be presented to electors residing in the area for incorporation for approval by referendum on November 5, 2002.

Section 1 of the bill sets forth the title of the special act as the "City of Port St. John Charter."

Section 2 of the bill contains legislative findings that the area to be incorporated is appropriate for incorporation.

Section 2(1). That the area comprising the City includes a compact and contiguous urban community amenable to separate municipal government.

Section 2(2). That it is in the best interest of public health, safety and welfare of the citizens of the community to form a separate municipality with all the powers and authority necessary to provide efficient and adequate municipal services to its residents.

Section 3. Incorporation

Section 3(1): Provides the effective date of incorporation as December 31, 2002.

Section 3(2): Provides corporate boundaries as described in s. 9(1).

Section 3(3): Provides for a council-manager form of government.

Section 4. Municipal Powers - Provides that the City shall be a body corporate and politic having all powers of a municipality as provided for by State Constitution and statutes, with all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions and render municipal services.

Section 5. City Council

Section 5(1): City Council; Composition; Qualifications

Section 5(1)(a): Composition - Provides for a seven-member city council consisting of a mayor and six council members. Each member shall be elected and serve at large. Each member must be a resident at the time of qualifying and shall maintain residency within the City limits.

Section 5(1)(b): Qualifications for Office - Each candidate shall be a qualified elector of the City; shall submit a petition with signatures of at least one percent of the resident electorate, or shall pay the city clerk a qualifying fee of 10 percent of the salary of the office. Each candidate shall reside within the City boundary at the time of qualification; and maintain residency during his or her term. Additionally, mayoral candidates and an elected mayor shall reside within the city limits for at least 45 weeks of each year.

Section 5(2): Terms of Office - The term of office shall be four years; however, to achieve a staggering of terms, initially, the mayor and even numbered seats shall serve four years, odd numbered seats will serve two years. No mayor or council member shall serve more than two successive terms in the same seat. Each member shall remain in office until his or her successor is elected and assumes the duties of the office at the first meeting of the new council.

Section 5(3): Powers and Duties of Council - Provides for powers and duties of the council.

Section 5(4): Powers and Duties of the Mayor - Provides for powers and duties of the mayor.

Section 5(5): Vice Mayor; Election and Duties - Provides for the annual election by the council of vice mayor and provides for when the election shall take place; and for the duties of such office.

Section 5(6): Compensation and Expenses - Provides for compensation as established by ordinance and for the reimbursement of reasonable expenses while in the performance of official duties.

Section 5(7): Vacancies, Forfeiture of Office, Suspension, Recall, Filling of Vacancies - Provides for the manner in which an office may become vacant; for forfeiture of office; for suspension from office; for recall; and for the method of filling vacancies.

Section 5(8): City Council Meetings; Organizational Meeting, Quorum, and Special Meetings - Provides for the organizational meeting of the council; provides for a quorum by majority; provides for special meetings and notice thereof.

Section 5(9): City Records - Provides for the keeping of public records, authentication, a codification of current ordinances and resolutions, and for the signing and attesting of same.

Section 5(10): Limit of Employment of Council Members - Prohibits the employment by the city of any sitting mayor or member of the council, and for the prohibition against their employment for one year after leaving office.

Section 5(11): Noninterference by City Council - Prohibits the interference of the council and its members of the performance of duties of any city employee under the direct or indirect supervision of the city manager or city attorney.

Section 6 Charter Officers - Provides for the city manager and city attorney as charter officers.

Section 6(1): Designated Charter Officer; Appointment, Removal, Compensation, Filling of Vacancies, Candidate for City Office - Provides for the appointment, removal, compensation, filling of vacancies, and candidacy requirements of charter officers.

Section 6(2): City Manager; Qualifications, Residency, Powers and Duties - Within 6 months of appointment the city manager must maintain residency within the corporate limits of the city; however, the council may extend the six months for an additional six months. Also provides for the powers and duties of the city manager.

Section 6(3): City Attorney; Qualifications, Residency, Powers and Duties - Provides for the qualifications of the city attorney. Provides that there is no residency requirement. Provides for the powers and duties of the city attorney.

Section 7 Budget and Appropriations

Section 7(1): Fiscal Year - Provides that the fiscal year will be October 1 through September 30 of the succeeding year.

Section 7(2): Budget Adoption - Provides for the adoption of the annual budget.

Section 7(3): Appropriation Amendments During the Fiscal Year; Supplemental Appropriations; Reduction of Appropriations; Transfer of Appropriations; Limitations; Effective Date - Provides that the council may by resolution make supplemental appropriations. Provides for actions in the event of a budget shortfall. Provides for the transfer of appropriations among units of the city government. Provides certain limitations on reductions and transfers.

Section 8 Elections

Section 8(1): Electors - Provides for elector qualifications.

Section 8(2): Nonpartisan Elections - Provides for nonpartisan elections.

Section 8(3): Qualifying for Office - Provides manner of candidate qualification.

Section 8(4): Schedule for Regular Elections and Primaries - Provides for the schedule of regular elections and primaries and for elections to fill vacancies.

Section 8(5): Schedule for Special Elections - Provides for the scheduling of special elections.

Section 8(6): Determination of Election to Office - Provides for various contingencies and for the determination of elections.

Section 8(7): City Canvassing Board - Provides for a city canvassing board and the duties thereof.

Section 9 Land Description - Provides the city boundary and for the change thereof in accordance with general law regarding annexations without the necessity of a charter amendment.

Section 9(1): City Boundaries - Provides the initial legal description of the City.

Section 10 General Provisions

Section 10(1): Charter Amendment - Provides that the charter may be amended in accordance with ch. 166, F.S. Provides that the form, content and certification of any petition to amend the charter shall be established by ordinance.

Section 10(2): Charter Review; Schedule, Charter Review Committee - Provides for charter review, a schedule for charter review, the appointment of a charter review committee; and the procedure for charter review.

Section 10(3): Initiative and Referendum - Provides for citizen initiative and referendum procedures. Provides that a minimum of 10 percent of the qualified city electorate shall be required to petition the council to propose an ordinance or require reconsideration of an adopted ordinance or to propose an amendment to the charter. However, the section appears to include an inaccurate citation to s. 165.061(1)(e)2., F.S.

Section 10(4): Standards of Conduct - Provides for the standard of conduct of all elected officials and employees of the City.

Section 11 Severability - Provides for severability.

Section 12 Transition Schedule

Section 12(1): Referendum - Provides for a referendum on November 5, 2002, for the voter approval of this bill.

Section 12(2): Creation and Establishment of City - Provides that the City is created and established effective December 31, 2002.

Section 12(3): Initial Election or Council Members; Dates; Qualifying Period, Certification of Election Results, Induction into Office - Provides for the initial election of the council and mayor on February 4, 2003, with a primary on January 15, 2003, if necessary. Provides for the qualifying period; certification of election results; and induction into office.

Section 12(4): Transition Services and Compensation - Provides for transition services and the compensation therefore.

Section 12(5): First-Year Expenses - Provides for the first year's expenses.

Section 12(6): Transitional Ordinances and Resolutions - Provides for the adoption of and expiration of transitional ordinances and resolutions.

Section 12(7): Transitional Comprehensive Plan and Land Development Regulation - Provides that the applicable provisions of the Brevard County Comprehensive Plan shall remain in effect as the transitional comprehensive plan of the City until the City adopts its own comprehensive plan.

Section 12(8): Shared Revenues - Provides for the sharing of revenues of programs of the state as of the first day of the month after the first meeting of the council. Provides for certain waiver of ss. 218.23(1), and 218.26(3) F.S., that would allow the City of Port St. John to obtain revenue sharing dollars before it has met the statutory requirements for revenue sharing dollars.

Section 12(9): Local Option Gas Tax Revenues - Provides that s. 336.025, F.S., notwithstanding, the City shall be entitled to receive local option gas tax revenues beginning January 1, 2003, in accordance with an interlocal agreement, until the City becomes eligible for local option gas tax revenue distribution, before the City has been in existence for a full fiscal year.

Section 13 Provides that the bill will take effect upon a majority approval of qualified voters residing in the proposed corporate limits of the City; and that the section will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The incorporation of the City of Port St. John will affect the revenue sharing and gas tax monies received by Brevard County and the other municipalities within Brevard County.

VI. Technical Deficiencies:

Section 10(3) of the bill contains an incorrect citation to s. 165.061(1)(e)2., F.S. The correct citation should be sections 166.031, F.S., relating to charter amendments, and 166.041, F.S., relating to the procedure for adopting ordinances.

Section 12(7)(b) relating to the powers and duties of other governmental entities as applied to the City of Port St. John is overly broad. The paragraph states that: “all powers and duties of the Brevard County Planning and Land Development Regulations Council, any boards of adjustment and appeals created pursuant to statutory trade codes, the Port St. John Special District Governing Board, and the Brevard County Commission, as set forth in these transitional zoning and land use regulations, shall be vested in the City Council of Port St. John until such time as the city council delegates all or a portion thereof to another entity.” The section should be clarified that only those powers of the other governmental entities that apply to zoning and land use regulation within the new municipality are vested in the City Council of Port St. John.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Comprehensive Planning, Local and Military Affairs:
Deletes an incorrect statutory citation.