

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 1491 w/CS                      City of West Park  
**SPONSOR(S):** Gottlieb  
**TIED BILLS:**                                      **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs</u>	<u>7 Y, 0 N</u>	<u>Nelson</u>	<u>Cutchins</u>
2) <u>Local Government &amp; Veterans' Affairs</u>	<u>20 Y, 0 N w/CS</u>	<u>Nelson</u>	<u>Cutchins</u>
3) <u>Finance &amp; Tax</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

This bill provides a city charter for the City of West Park; provides for a "commission-administrator" form of government; provides for the creation and establishment of the city; and provides that the act takes effect only upon its approval by a majority vote of qualified electors residing within the corporate limits of the proposed city.

According to the Economic Impact Statement, the new municipality would need to levy higher taxes to support the same level of service provided in the unincorporated area. The feasibility study suggests that the city would be required to levy approximately 6.5 mills (.9 mills higher than the current unincorporated rates) and expand public service taxes to include water and natural gas to support the new city budget if the current level of service is continued.

**Pursuant to House Rule 5.5(b), a local bill providing an exception 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. DOES THE BILL:

- |                                      |                              |                                        |                                         |
|--------------------------------------|------------------------------|----------------------------------------|-----------------------------------------|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

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

3. According to the Economic Impact Statement, which cites the feasibility study, the new municipality would need to levy higher taxes to support the same level of service provided in the unincorporated area. The feasibility study suggests that the city would need to levy approximately 6.5 mills (.9 mills higher than the current unincorporated rates) and expand public service taxes to include water and natural gas to support the new city budget if the current level of service is provided.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### ***Constitutional Provisions***

Article VII, s.2, of the State Constitution, provides that municipalities<sup>1</sup> 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. Municipalities 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 must 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 (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.<sup>2</sup>

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<sup>1</sup> 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."

<sup>2</sup> An exception to this rule exists in Miami-Dade County where it appears the county has the exclusive power to create cities through its home rule powers.

## ***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 population 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 have 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 art. I, s. 10, 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 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.

The feasibility study must be completed and submitted to the Legislature at least 90<sup>3</sup> 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 boundary falls 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;

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<sup>3</sup> See, s. 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;
  - a five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, 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 certiorari if the appeal is brought before the effective date of the incorporation.

## **HB 1491**

This bill provides a city charter for the City of West Park; provides for a “commission-administrator” form of government; provides for the creation and establishment of the city; and provides that the act takes effect only upon its approval by a majority vote of qualified electors residing within the corporate limits of the proposed city. The proposed incorporation would encompass the Carver Ranches, Lake Forest, Miami Gardens and Utopia areas of Broward County.

The feasibility study on the creation of a City of West Park was submitted to the Office of the Clerk of the Florida House of Representatives on February 23, 2004.<sup>4</sup> The study was reviewed by the:

- Office of Economic & Demographic Research;
- Legislative Committee on Intergovernmental Relations;
- Governor’s Office of Planning and Budgeting;
- Department of Revenue; and
- Department of Community Affairs.

Their comments indicate that the proposed incorporation and the feasibility study fail to meet a number of the statutory requirements of ch. 165, F.S., and are noted in “Comments” in Section III.C. of this analysis.

### **C. SECTION DIRECTORY:**

Section 1: Creates a municipal corporation known as the City of West Park upon the approval of the electorate and pursuant to the provisions of the act. Provides that the city shall have a “commission-administrator” form of government. Provides a legal description of the city’s boundaries. Provides that the city shall have all governmental, corporate, proprietary and home rule powers. Provides that the charter and the powers of the city shall be liberally construed in favor of the city.

Section 2: Provides for a city commission, consisting of four members and a mayor who shall be a voting member of the commission. Provides for a vice mayor to be elected from among the commission members for a period of two years. Provides that the commission members and mayor shall be elected at large for four-year terms. Provides qualifications for office. Provides that only electors of the city who have resided continuously in the city for at least one year preceding the date of

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<sup>4</sup> It is noted that the first day of the regular session was March 2, 2004. Thus, the submission of the feasibility study did not satisfy the requirements of s. 165.041(1)(b), F.S.

filing a written notice of candidacy shall be eligible to hold the office of commission member. Provides for office vacancies and forfeiture of office. Provides for compensation of commission members and mayor, and reimbursement for expenses. Provides that the commission shall determine its own rules of procedure.

Section 3: Provides for a city administrator, and the appointment, removal and compensation of that person. Provides for the powers and duties of the administrator. Provides for the absence or disability of the administrator. Provides that the administrator shall furnish a surety bond. Provides for the appointment of a city clerk or management firm. Provides for the appointment of a city attorney, and that person's powers and duties. Provides for the expenditure of city funds.

Section 4: Provides for commission meeting procedure, prohibitions, emergency ordinances, emergency appropriations, the adoption of an annual budget, a city fiscal year, and appropriations amendments. Provides for authentication, recording, and disposition of ordinances, resolutions and charter amendments. Provides for borrowing of money and issuing of bonds. Provides for an independent audit.

Section 5: Provides elections procedures.

Section 6: Provides for charter amendments.

Section 7: Provides for severability, conflicts of interest and ethical standards, the city personnel system, and charitable contributions.

Section 8: Provides transition provisions.

Section 9: Provides that the West Park city commission may amend its charter by ordinance to rename the city within one year after incorporation.

Section 10: Provides that the act shall take effect upon approval of a majority of the qualified electors residing within the proposed corporate limits of the proposed city in an election to be held on November 2, 2004.

## **II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? January 25, 2004

WHERE? The *Sun-Sentinel*, a daily newspaper, published in Broward County, Florida.

B. REFERENDUM(S) REQUIRED? Yes ☒ No ☐

IF YES, WHEN? November 2, 2004

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

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

According to the Economic Impact Statement, which cites the feasibility study, the new municipality would be required to levy higher taxes to support the same level of service provided in the

unincorporated area. The feasibility study suggests that the city would need to levy approximately 6.5 mills (.9 mills higher than the current unincorporated rates) and expand public service taxes to include water and natural gas to support the new city budget if the current level of service is continued.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### **Exemptions to General Law**

Pursuant to House Rule 5.5(b), a local bill providing an exception 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. There are several exemptions noted:

- 1) Section 165.041, F.S., in that the feasibility study was received eight days prior to the first day of the regular session of the Legislature, rather than the 90 days required by law. It also is noted that the feasibility study did not contain the following required information: a list of all public agencies whose current boundary falls within the boundary of the territory proposed for the change or reorganization; the name and addresses of three persons submitting the proposal; and a five-year operational plan and budget.
- 2) Section 165.061, F.S., in that a portion of the proposed city (Lake Forest) is surrounded by the Town of Pembroke Park and does not comply with the requirement that a new municipality be contiguous.
- 3) Section 165.061, F.S., in that the proposed municipality does not have a minimum distance of at least two miles from an existing municipality.

#### **Feasibility Study Reviews**

##### ***Legislative Committee on Intergovernmental Relations (LCIR):***

##### 1) Does the proposed incorporation meet state standards for a municipal incorporation specified in s. 165.061(1), F.S.?

According to information provided in the *Study* (page 21), one of the neighborhoods (Lake Forest) is separated from the other three neighborhoods included in the proposed incorporation by the City of Pembroke Park. As such, the proposed area for incorporation does not meet the requirement that the area be compact and contiguous. (s. 165.061(1)(a), F.S.) However, the *Study* (page 29) reports that the Pembroke Park management staff indicated in 1999, that the city would be willing to grant an easement through de-annexing two blocks in the city that separates the Lake Forest community from the remaining three neighborhoods in order to make the neighborhoods contiguous. The *Study* did not indicate whether Pembroke Pines offer of easement is remains valid.

Based on the figures provided in the *Study* (page 23), the area proposed for incorporation meets the population requirements found in s. 165.061(1)(b), F.S.

The *Study* (page 29) identifies the number of acres proposed for incorporation at 1,067 acres. Based on the proposed population of 12,713, the density of the area proposed for incorporation is 11.9 persons per acre. As such, the proposed incorporation appears to meet the density requirement found in s. 165.061(1)(c), F.S., of 1.5 persons per acre.

It should be noted that the LCIR sought to verify information contained in the *Study* regarding compactness, population and acreage of the area to be incorporated with the Broward County Planning Department, but was unsuccessful.

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 existing municipalities, 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.

It is recognized, however, that the Broward County government in conjunction with the Broward County Legislative Delegation implemented an annexation/incorporation policy to have all residents residing within an incorporated area by 2010. Prior attempts to have these four neighborhoods annexed into existing municipalities were unsuccessful.

Under s. 165.061(1)(e)1., F.S., a proposed charter must prescribe the form of government and clearly define the responsibilities for legislative and executive functions. However, several provisions regarding the means to implement executive functions, as noted below, may require clarification.

- Section 3(1) and (2). Subsection (1) establishes the position of "City Administrator" as the chief administrative officer of the city and subsection (2) provides that the commission shall appoint an individual or a firm to serve as the Administrator. While these subsections are consistent with the suggestion contained within the *Study* that the city be formed as a "contract city" with certain functions, including the city's administration be outsourced, the *Study* contained no information to suggest that the residents of the proposed municipality want to function as a contract city. Without additional information regarding the community's preference or support for contracting out this function, it may be appropriate to use the more traditional term of "City Manager" and remove references to an outside "firm." Similar references to "firms" are contained in subsections (6) and (7) pertaining to the positions of City Clerk, and City Attorney, respectively.
- Alternatively, if it is the intent of the residents to contract out the management, legal, and such reporting functions as provided by the clerk, then it would be appropriate to maintain the language of these provisions.
- Section 3(3) and (10). Subsection (3) provides for the powers and duties of the Administrator including hiring, supervision and removal of all city employees and directing and supervising all departments and offices, but not city boards, or agencies, unless so directed by the commission from time to time. Subsection (10) provides that the commission may establish or terminate boards and agencies, appoint their members, and have these boards and agencies report to the commission. These sections appear to authorize two types of administrative organizations, personnel, and chains of command with one responsible to the Administrator and the other to the commission. In order to avoid confusion, it may be appropriate to have all city personnel reporting to the Administrator and delete subsection (10). Alternatively, references to "city boards and agencies" could be deleted or at a minimum, defined in order to distinguish between the "boards and agencies" that would report to the commission and the "departments and offices" that report to the Administrator.

- Section 3(8) provides for the powers and duties of the City Attorney. Subsection 3(8)(c) requires the attorney to approve all contracts and precludes any contract or related instrument to take effect without such approval. Such a provision would duplicate the function of the Administrator and the commission, could become over cumbersome in its implementation, and prevent the efficient and effective day-to-day operation of the city. It may be appropriate to delete this reference, change “approve” to “review,” or specify the types of contracts that would require the attention of the City Attorney. Alternatively, it may be appropriate to state in general terms that the City Attorney will review legal documents as required.

Given these concerns, we cannot ascertain whether the requirements that the proposed charter prescribe the form of government and clearly define the responsibilities for legislative and executive functions are met.

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. One provision in the proposed Charter may provide the opportunity for doing so:

- Section 4(6) of the *Charter* provides for appropriation amendments. Because some revenue sources are restricted to certain types of expenditures, it may be appropriate to include the phrase “in accordance with general law” within subsection (6)(a) and (6)(b) to clarify this point. It may be appropriate to include language that specifically excludes such actions from affecting budget appropriations or otherwise limiting the authority of the governing body from exercising its power to levy any tax authorized by the constitution or general law.

Other than the issue noted above, the Charter meets the requirement that it not limit the legislative body of the municipality from exercising its powers to levy any tax authorized by the Florida Constitution or general law.

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. It is unclear from the *Study* (pages 66-67) whether Broward County or BFI Waste Systems is the provider for solid waste. However, neither the *Study* nor the *Charter* specifically address the issue and as such, does not meet this criterion.

## 2) Does the Study meet the statutory requirements for a municipal incorporation feasibility study pursuant to s. 165.041(1)(b), F.S.?

A review of the *Study* indicates that while some of the required elements were included, other requirements were either not clearly identifiable or not addressed. Requirements both included and omitted from the *Study* are addressed below:

1. The *Study* meets the requirement that it provide the general location for the proposed municipality (south Broward County). The *Study* does not include a map of the area proposed for incorporation, and as such does not meet this requirement. (s.165.041(b)1., F.S.)
2. The *Study* (Executive Summary and Introduction) provides background of the annexation/incorporation policy in Broward County and its objective to have all residents within an incorporated area by 2010 as well as prior attempts to have the four neighborhoods annexed into existing municipalities. As such, the *Study* meets the requirement that it provide reasons for pursuing incorporation. (s.165.041(b)2., F.S.)
3. (a) The *Study* (page 29) meets 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.)



(b) The *Study* (pages 30 and 31) meets the requirement to provide a list of current zoning designations. (s.165.041(b)3.(b), F.S.)

(c) The *Study* provides information (pages 29 - 33) that meets the requirement to provide a general statement of present land use characteristics of the area.

(d) The *Study* (pages 32 and 33) suggests changes in current land use to expand commercial and industrial development as a necessary step in building a sustainable commercial tax base for the four communities. As such, it appears to meet the requirement to describe proposed development.

The *Study* (page 32) suggests possible formations of special districts to assist in the future development activities for the area to ensure mixed-use development occurs. It may be appropriate to examine future redevelopment actions through special districts that do not rely upon tax increment financing as do community redevelopment agencies. While CRAs have proven useful in redevelopment of certain types of areas, their funding reduces the amount of property tax revenues available to the new city for other purposes. It may therefore be prudent to project the fiscal impact to the new city prior to the formation of a CRA to implement redevelopment projects. As an alternative, it may be useful to investigate the extent to which the Broward County government could provide additional revenues to assist in redevelopment of the new city in lieu of tax increment revenue payments which the county would make if a CRA were created in the new city.

4. The *Study* does not appear to identify all local public agencies with boundaries lying within the territory proposed for incorporation.

5. Based on the information contained in the *Study*, (pages 34-35, 50, 52, 62-67), it appears to identify current providers of major public services, but not all the services identified in s. 165.041(1)(b)5., F.S., and appears to provide cost estimates for each of those major services.

6. The *Study* meets the requirement that it identify proposed services (pages 50-60 and 62-70) and estimated costs for the proposed services. However, the *Study* intends for Broward County government to provide major services including law enforcement, fire, emergency medical services, water, and sewer. It may be appropriate to include a letter of agreement or memorandum of understanding from county government officials indicating that it will provide the specified services at the level and for the amount identified in the feasibility study.

7. The *Study* does not meet the requirement that it include the name and address of three persons submitting the proposal.

8. The *Study* appears to meet the requirement that it provide evidence of the fiscal capacity for the area proposed for incorporation with the following caveats:

(a) The *Study* does address the majority of tax bases and revenue sources available to a municipality and provides revenue estimates for them. Issues regarding those sources include the following.

- The Broward County Property Appraiser's Office reported that current taxable value for property located within the area proposed for incorporation is slightly larger than the value identified in the *Study* (page 43) with the Broward County Property Appraiser's Office.
- One of the identified revenue sources, *Municipal Financial Assistance Trust Fund*, is no longer available for distribution to municipalities, but would have provided only a minimum amount of revenue to the proposed municipality.
- The *Study* correctly identifies the Local Option Gas Tax as a revenue source that counties share with municipalities within those counties either through an interlocal agreement or via a default formula specified in statute. The default formula is based on the county's lane-mile

expenditures for the prior year and the number of lane-miles contained within the new municipality. The method used to calculate revenues from this source for the proposed municipality was not specified in the *Study*. However, Section 10(9) of the *Charter* requires that local option gas tax revenues be distributed in accordance with the interlocal agreement with Broward County.

(b) The *Study* does not include a five-year operational plan and budget.

As noted above, it may be appropriate to include a letter of agreement or memorandum of understanding from Broward County government officials indicating their agencies will provide the specified services at the level and for the amount identified in the feasibility study.

9. The *Study* meets 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. One of the proposed budgets for the new municipality presented in the *Study* projects a slight budget shortfall of \$168,848 which could be addressed in a number of ways including: 1) the county contributing certain reserved funds to the new municipality totaling \$360,340 (page 1); 2) a slight increase in the ad valorem millage rate of 0.9 mills (page 2) which would generate an additional \$291,340; 3) the new municipality contracting out certain services (page 3) to ensure a balanced budget; or 4) changing the existing tax and fee schedule to that of comparable cities (page 4).

10. The *Study* meets the requirement for evaluating alternatives available to the area regarding the policy concerns.

11. 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., However, the role of Broward County's annexation/incorporation policies, and the history of these communities re: proposed annexations also also acknowledged.

3) Are the proposed revenues and expenditures contained in the *Study* consistent with statutory provisions?

The *Study's* proposed budget includes revenue sources that a municipality is eligible to levy or receive under general law. It should be noted that certain revenues are restricted to certain types of expenditures. For example, revenues derived from motor fuel taxes, including a portion of the Municipal Revenue Sharing program and all Local Option Gas Tax revenues are restricted to transportation-related activities.

According to the Florida Department of Revenue, municipalities may assume that 35.6 percent of their estimated 2003-2004 fiscal year distribution is derived from the municipal fuel tax. As a result, \$380,928 (\$123,374 of the estimated revenue from the Municipal Revenue Sharing program and the \$257,554 estimated revenue from the Local Option Gas Tax) of the proposed city's revenue is restricted to transportation-related expenditures. The budget proposed in the *Study* (Table 16, page 60) allocates \$1,042,125 to Roads and Streets and can expend the transportation restricted revenue in accordance to general law. Should the transportation budget be reduced or eliminated, revenues restricted to transportation-related activities would not be available for other types of expenditures.

The potential revenues and expenditures identified in the *Study* appear consistent with statutory provisions.

4) Are the proposed revenues and expenditures contained in the *Study* consistent with revenues and expenditures of municipalities of similar size?

**Comparison of Total Revenues and Expenditures for 8 Municipalities with Populations Similar to the Population Estimate for the Proposed City of West Park<sup>5</sup>**

<b>Municipality</b>	<b>2002 Pop. Est.<sup>6</sup></b>	<b>Revenues</b>	<b>Expenditures</b>
West Park	12,713	6,747,209	6,916,057
West Melbourne	12,049	8,916,070	8,536,963
North Palm Beach	12,339	13,521,336	13,339,538
Wilton Manors	12,414	14,080,054	13,995,872
Niceville	12,446	10,813,724	9,732,081
Holly Hill	12,504	11,715,016	9,857,848
Lady Lake	12,556	7,215,558	6,706,095
Gulfport	12,692	13,226,443	13,520,113
Palm Springs	12,944	14,182,981	13,087,349
<b>AVERAGE</b>	<b>12,493</b>	<b>\$11,708,898</b>	<b>\$11,096,982</b>

Seven of the eight comparison municipalities reported FY 2000-01 total expenditures greater than those projected for West Park. The estimated expenditures projected for West Park (\$6,916,057) is less than two-thirds (62.3 percent) of the “average” reported expenditures for the eight comparison municipalities (\$11,096,982).

It should be noted that the fiscal data for the eight comparison municipalities reflect total reported revenues and expenditures for FY 2000-01, while the fiscal estimates for West Park are those projected for FY 2005-06. It can be assumed that total expenditures and revenues for these eight municipalities will increase during these five years, and as a result, the gap between their “average” reported expenditures and those projected for West Park also will increase.

The *Study* (page 62) reported that Broward County has committed nearly \$100 million towards the improvement of public infrastructure in the areas proposed for incorporation. Improvements include: upgrades to the existing water system, a new sewer system, a new drainage system, roadways to be reconstructed or resurfaced after the installation of underground utilities, sidewalks, major renovations to neighbor parks, and landscaping. This extensive capital improvement program raises some questions when comparing the proposed budget of West Park with the comparison municipalities.

<sup>5</sup> FY 2000-2001 reported revenues and expenditures by the eight comparison municipalities and projected 2005-06 revenue and expenditure estimate for West Park contained within the Feasibility Study for the Creation of a New Municipality in South Broward County, Florida.

<sup>6</sup> 2003 population counts for comparison municipalities reported by the Bureau of Economic and Business Research, University of Florida. Population estimates for proposed West Park for calendar year 2003 contained within the Feasibility Study for the Creation of a New Municipality in South Broward County, Florida.

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 Feasibility Study for the Creation of a New Municipality in South Broward County, Florida.

- West Park's proposed budget allocates \$1,042,125 for roads and streets. Is this amount necessary given the recent expenditures or commitment from the county government for streets and roads? A review of the eight comparison municipalities reported revenues and expenditures indicates that only two of the municipalities reported expenditures greater than \$1,000,000 for streets and roads. The average reported expenditure in this category ranged between \$400,000 and \$700,000.
- West Park's proposed budget allocates no revenues for capital outlay. Does this suggest that all public infrastructure needs for the West Park communities have or are being addressed by Broward County's capital improvement program?
- West Park's proposed budget allocates no revenues for debt service. Section 4(8)(b) of the Charter authorizes the city to assume all outstanding indebtedness related to facilities it acquires from other units of local government and be liable for payment. This suggests that any outstanding debt from the capital improvement made to the public infrastructure by Broward County government will not be assumed by the West Park city government upon incorporation, including infrastructure that will become city property. It may be appropriate to clarify this issue, including which infrastructure will become property of the new city.

#### 5) Distribution of state shared revenues (SSR) and impacts on existing local governments.

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, Florida Department of Revenue, prepared SSR estimates for the proposed City of West Park and estimates on the impact from such an incorporation to SSR distribution to other units of local government within Broward County. If West Park had incorporated in 2003, Broward County government would realize a reduction in 2003-04 SSR distributions totaling an estimated \$608,434. 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 \$6 for Lazy Lake to a high of \$36,666 for Pembroke Pines.

#### 6) Are charter provisions within the proposed *Charter* consistent with the Florida Constitution and general law?

Provisions within the *Charter*, as discussed above, may not meet the statutory requirement for proposed charters in regards to prescribing the form of government, clearly defining the responsibilities for legislative and executive functions and not prohibiting the legislative body of the municipality from exercising its powers to levy any tax authorized by the Florida Constitution or general law in accordance with s. 165.061(1)(e), F.S. As noted in the following comments, other provisions may conflict with general law, and in some instances, may raise constitutional issues. Other provisions are noted which would benefit from clarification and, in some instances, editing. These provisions are identified below:

**Section 2(4)** This section (and relevant provisions in Section 5 addressing elections) provides for the four commission members to be elected at-large. Such an election scheme may be vulnerable to legal challenge under the 1965 U.S. Voting Rights Act,<sup>7</sup> depending upon the area's demographics.

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<sup>7</sup> The Voting Rights Act of 1965 protects every American against racial discrimination in voting. This law also protects the voting rights of many people who have limited English skills. It stands for the principle that everyone's vote is equal, and that neither race nor language should shut any of us out of the political process. The Voting Rights Act is located in the United States Code at 42 U.S.C. 1973 to 1973aa-6. The Voting Rights Act is not limited to discrimination that literally excludes minority voters from the polls. Section 2 of the Act (42 U.S.C. 1973) makes it illegal for any state or local government to use election processes that are not equally open to minority voters, or that give minority voters less opportunity than other voters to participate in the political process and elect

**Section 2(6)** This section provides for vacancies and forfeiture of office. Subsection (b) identifies non-residence status and absence (without good cause) from a certain number of meetings as just cause for removal from office. It may be appropriate to expand the reasons for forfeiture of office to include those identified in ch. 112, part III, F.S., which addresses the code of ethics for public officers and employees.

**Sections 3(3) and (10)** Subsection (3) provides for the powers and duties of the City Administrator including hiring, supervision and removal of all city employees and the directing and supervision of the administration of all departments and offices, but not city boards or agencies, unless so directed by the commission. Subsection (10) provides that the commission may establish or terminate boards and agencies; that the boards and agencies shall report to the commission; and members of these boards and agencies shall be appointed by the commission. This arrangement appears to establish two administrative structures, one accountable to the City Administrator and the other to the commission. With the exception of the City Attorney, it may be appropriate to have all entities reporting through the City Administrator. At a minimum, it would be advisable to define city boards and agencies to distinguish them from the departments and offices which are responsible to the City Administrator in order to avoid possible confusion.

**Section 3(5)** This section requires that the City Administrator be bonded. Although not prohibited by general law, it is somewhat unusual for, in essence, the city manager to be bonded as a condition for employment. Such a provision is more often used with individuals or organizations under contract with a local government.

**Section 3(7)** This section authorizes the position of City Attorney. It may be appropriate to provide a list of qualifications for the position that at a minimum include being a member in good standing with the Florida Bar.

**Section 3(8)** This section specifies powers and duties of the City Attorney. Subsection (8)(c) requires that the City Attorney approve all contracts, bonds and other "instruments in which the city is concerned" prior to their being in effect. Such a provision may prove cumbersome and impede the efficiency and effectiveness in daily operations of the city government. If at a later date, the city commission decides to include such a requirement, it may be more appropriate to specify the types of contracts or other "instruments" and adopt it as a city ordinance.

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representatives of their choice to public office. In particular, Section 2 makes it illegal for state and local governments to "dilute" the votes of racial minority groups, that is, to have an election system that makes minority voters' votes less effective than those of other voters. One of many forms of minority vote dilution is the drawing of district lines that divide minority communities and keep them from putting enough votes together to elect representatives of their choice to public office. **Depending on the circumstances, dilution can also result from at-large voting for governmental bodies.** When coupled with a long-standing pattern of racial discrimination in the community, these and other election schemes can deny minority voters a fair chance to elect their preferred candidates.

Additionally, section 5 of the Voting Rights Act (42 U.S.C. 1973c) requires state and local governments in certain parts of the country to get federal approval (known as "preclearance") before implementing any changes they want to make in their voting procedures: anything from moving a polling place to changing district lines in the county. Under Section 5, a covered state, county or local government entity must demonstrate to federal authorities that the voting change in question (1) does not have a racially discriminatory purpose; and (2) will not make minority voters worse off than they were prior to the change (i.e. the change will not be "retrogressive"). Section 5 applies to all or parts of the following states: Alabama, Alaska, Arizona, California, **Florida**, Georgia, Louisiana, Michigan, Mississippi, New Hampshire, New York, North Carolina, South Carolina, South Dakota, Texas, and Virginia.

Anyone aggrieved by minority vote dilution can bring a federal lawsuit to stop it. If the court decides that the effect of an election system, in combination with all the local circumstances, is to make minority votes less effective than white votes, it can order a change in the election system. For example, courts have ordered states and localities to adopt districting plans to replace at-large voting, or to redraw their election district lines in a way that gives minority voters the same opportunity as other voters to elect representatives of their choice.

**Section 4(1)** Subsection (b) requires that all voting shall be by roll call. Such a provision may prove cumbersome and time consuming. It may be more appropriate to allow for a roll call vote at the request of the mayor or any commission member. Such a provision would allow for the more efficient use of time at commission meetings while permitting a record of voting when desired.

**Section 4(3)** Subsection (b) requires the affirmative vote of four commission members to adopt an emergency ordinance while subsection 4(1)(b) allows for the affirmative action of three members. It may be appropriate to allow a simple quorum to pass an emergency ordinance in order to address an emergency situation, rather than postponing action until a fourth member is present.

**Section 4(6)** Subsection (a) provides for supplemental appropriations to the annual budget. It may be appropriate to add the phrase "in accordance with general law" to note that additional revenues may be restricted as to expenditures. In addition, it may be appropriate to add a subsection (c) to authorize the transfer of funds among budget categories during the fiscal year. Such a provision should include the caveat "in accordance with general law" recognizing that certain revenues are restricted to certain types of expenditures.

**Section 4(7)** This section provides that the commission shall establish procedures to make city government materials and documents available to the public for purchase at a reasonable rate. It may be appropriate to replace the phrase "at a reasonable rate" to "in accordance with general law."

**Section 5(8)** This section provides for the oath of elected officers and includes the phrase "So help me God." in parentheses at the end of the oath. It is unclear whether this phrase may be subject to possible legal challenge.

**Section 6** This section provides for charter amendments. It may be appropriate to add language noting that an amendment to the 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.

**Section 8(8)** This subsection authorizes the city to participate in all shared revenue programs to the state. It would be appropriate to qualify this statement to all such programs for which a municipality is entitled. In addition, this subsection waives certain financial reporting requirements until FY 2005-2006. Some of these reports and audits may take up to three years to generate and provide to the Department of Revenue. As such, it may be appropriate to extend this time period to 2007-2008.

**Section 8(10)** This subsection directs Broward County to distribute taxes, fees and other revenues collected within the boundaries of the new city to the city. It may be appropriate to add the phrase "for which the city is entitled" to clarify revenues entitled to county or which are forwarded to the state.

**Section 9** This section calls for a general election in November 2014 to merge Pembroke Park with the proposed city of West Park. It is unknown whether this section would comply with the provisions in s. 165.061(2), F.S., which provide for the incorporation of a new municipality through merger of existing municipalities.

### ***Governor's Office of Planning and Budgeting:***

The review of the proposed feasibility study for West Park revealed several issues that could pose potential obstacles to incorporation:

- As pointed out in the study, while the proposed area for incorporation does meet the minimum population threshold of 5,000 and the population density of 1.5 persons per acre, it is unclear if it meets the minimum distance requirement of being at least two miles from an existing municipality. It appears that it would not meet this requirement given the municipal situation in Broward County and their directive to have all unincorporated areas of the county within a municipal boundary by 2005. This variance from the requirements would necessitate a request for waiver of the requirement in the local bill.
- The proposed incorporation does not appear to fully satisfy the requirement of geographic contiguity. It appears that a de-annexing of property by the City of Pembroke Park would have to occur in order for this incorporation not to create an enclave of the City of Pembroke Park. The feasibility study addresses this matter by stating that Pembroke Park city officials have publicly indicated (on record) that they would be willing to de-annex two blocks that separate the proposed incorporation area in order to make the entire area contiguous. It is strongly recommended that this matter is addressed prior to incorporation of the area.
- The revenue capacity as outlined in the feasibility study falls short of the proposed first year proposed budget of the city by \$168,848. There was an outline of four different options for attaining a balanced budget for the municipality. It is strongly recommended that prior to incorporation, a comprehensive solution is agreed upon (by all affected parties) on how to best address this potential revenue shortfall. During discussions with Broward County staff, it was indicated that County budget staff has reviewed the fiscal analysis and feels there is a sufficient base in the revenue capacity for a budget for the new city, and that it is financially viable. Some level of financial contribution and/or commitment by Broward County should be considered at least during the transition of services period of the newly incorporated municipality. Furthermore, partnerships and contractual agreements via interlocal agreements with the county appear to be another viable option in attaining cost effective economies of scale and to help alleviate financial strain on the newly formed city.
- The study outlined a variety of different ad valorem, and non-ad valorem revenues sources. Included in the non-ad valorem revenues were such revenues as the state's local government half-cent sales tax, state-shared revenues, gross receipts tax, and other federal and state grant programs. In order for the proposed municipality to be eligible for these sources of revenue, it is imperative the charter properly address the timing requirements related to revenue eligibility. This issue would best be addressed by a thorough review of the dates proposed in the incorporation by the Florida Department of Revenue.
- Other timing issues such as elections for city officials and commission dates for the proposed newly incorporated city will need to be evaluated further to ensure proper compliance with other statutory requirements and local (county) ordinances prior to incorporation.

The matter of incorporation or annexation of this area has been a subject of a great deal of analysis and discussion over the years. While the incorporation is contingent upon a successful referendum of the qualified electors of the area and county staff has indicated a high level of citizen support for this incorporation, documentation on the level of interest in the community to incorporate would add further value to the feasibility study.

Apart from the issues identified above, the approach and methodologies for determining municipal revenue and expenditure projections after incorporation seem reasonable and the feasibility study findings seem to be professionally sound.

## ***Department of Revenue:***

### Timeline

Section 10 of the bill specifies that the charter referendum will be held on 11/2/04. However, Section 8 (1) specifies that the incorporation is effective on 9/15/04, approximately one and a half months prior to the referendum.

Section 8 (2)(a) of the bill does not specify the day in March on which the council election is to be held. Section 8 (2)(d) specifies that the council will take office on 3/10/04, making reference to the council election held on 3/8/04.

### Revenue Sharing

Section 8 (8) provides that West Park shall be entitled to participate in all state shared revenue programs effective on the date of incorporation (9/15/04). The entitlement to immediate revenue sharing participation upon the date of incorporation poses two problems.

It appears that such early participation conflicts with the definition of a "municipality" in s. 218.21(3), F.S. 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, West Park will not hold its first council meeting until 3/10/05, well after the date specified for participation in revenue sharing, 9/15/04.

Also, the date of 9/15/04 for the beginning participation is problematic, as it requires the revenue sharing distributions for all Florida counties and municipalities to be calculated for a partial period of 9/01/04-9/14/04 without West Park and then to be recalculated for the period of 9/15/04-9/31/04 including West Park. It is recommended that the initial date for revenue sharing participation be the first day of a month occurring after the first meeting of the council, preferably the first day of the beginning of the next state fiscal year (6/1/05).

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 43 discusses millage rates and in Table 10B provides the rates for the Broward County (5.639 mills) and the millage rates for comparable cities: Dania Beach (6.3900 mills), Pembroke Park (8.500 mills), South Miami (7.8730 mills) and Belle Glade (9.1181 mills). The Feasibility Study does not specify a proposed millage rate for West Park, but does indicate that it would be in the range of the rate imposed by Broward County and the other comparable cities. This seems to indicate that the proposed rate for West Park would be in excess of the three mill requirement of s. 218.23(1)(c), F.S.

The Feasibility Study on pp. 40-41 discusses the Municipal Revenue Sharing Program and the Municipal Financial Assistance Trust fund and includes estimates of distributions from each of the programs. The 2000 Legislature (ch. 2000-355, L.O.F.) abolished the Municipal Financial Assistance Trust Fund and amended the funding of the Municipal Revenue Sharing Trust fund by repealing the sharing of cigarette tax and replaced it with 1.0715 percent of the sales and use tax collections.

### Gas Tax Revenues

Section 8 (9) of the charter states that West Park shall be entitled to receive local option gas tax revenues beginning 10/01/05. 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 West Park would be 10/01/05.

Section 336.025(4)(b), F.S., requires that gas tax distributions to newly incorporated municipalities are to be in accord with the default lane-mile formula unless provided otherwise by the local law providing



for the incorporation. Section 8(9) of the charter states that the distribution is to be made pursuant to an interlocal agreement between Broward County and the municipalities within Broward County. Section 336.025 (3)(a)1, F.S., requires that interlocal agreements regarding local option gas tax distributions must be executed prior to June 1 and s. 336.025(5)(a), F.S., requires that a certified copy of that interlocal agreement must be provided to the Department of Revenue by July 1 of that year, to become effective at the beginning of the next local fiscal year on October 1. Unless that interlocal agreement is entered into by Broward County and the other municipalities constituting a majority of the municipal population by 6/01/05, the distribution shall be in accordance with the default lane-mile formula specified in s. 336.025(4)(b), F.S. Thus, Section 8(9) of the charter should be amended to state that the interlocal shall be entered into prior to 6/01/05.

#### Local Communications Services Tax

The Feasibility Study on page 39 discusses the Communications Services Tax and includes estimates of the amount of revenue the new municipality expects to generate from this service.

Section 8(5) of the bill provides that all municipal taxes and fees imposed by the county within the municipal boundaries that are in effect on the date of adoption of the "Charter" shall continue as if these taxes and fees had been adopted by the new city. Broward County has a local communications tax rate of 5.22 percent. This tax currently is imposed in the boundaries of the new proposed city.

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. A municipality adopting, changing or repealing this tax must notify the Department of Revenue by September 1, prior to the January 1 effective date. Early participation in this revenue source would be problematic in that the incorporation date of September 15, 2004, is after the September 1 notification date and the new city council will not have held their first council meeting until March 10, 2005.

In the administration of the local communications services tax, the Department maintains an address database. Each local taxing jurisdiction is required to furnish service addresses and any changes in jurisdictional boundaries to the department.

If the intent of section 8 (5) of the bill is for the local communications tax to continue at the county's current rate in the new city, the address database should be updated by the county as soon as possible after the November referendum and before the statutory deadline for the next available effective date of the address database (March 4, 2005). Since West Park will not conduct council elections until March 8, 2005, Broward County should exercise its provisional power under section 8(5), and furnish this data to the Department. Once approved, these addresses would be shored in the auxiliary file, pending inclusion in the next database update, effective July 1, 2005, but published 90 days prior to the effective date (April 1, 2005). Communications services tax dealers may download changes stored in the auxiliary file, but are not required to do so. The Department would notify dealers of the new city effective January 1, 2005, and encourage dealers to download the auxiliary file.

#### Discretionary Sales Surtax

Currently, Broward County does not impose any discretionary sales surtax authorized by s. 212.055, F.S.

#### Revenue Estimates

The estimated total revenue to the City of West Park after incorporation for 2003-2004 would be \$1,134,208. This amount includes revenue sharing, ½ cent distributions; discretionary surtax, and municipal revenue sharing funds.

### ***Office of Economic & Demographic Research:***

This office was able to offer the following comments:

- 1) With regard to the estimates of revenues, they found the methodology applied to be reasonable, and have no reservation as to the information provided in the study, subject to qualifications discussed in the proposal..
- 2) The feasibility study indicates that the proposed City of West Park would include the Census Designated Places (CDP) of Carver Ranches, Lake Forest, Miami Gardens and Utopia. While the proposed municipality meets the minimum size requirement of 5,000, and the required population density of 1.5 persons per acre, it does not meet the requirement that it be at least two miles from an existing municipality, unless separated by a natural boundary. Also, Florida law requires the area being considered for incorporation to be compact and contiguous. In fact, areas of Pembroke Park separate the Lake Forest CDP from the other three parts of the proposed municipality.

### ***Department of Community Affairs (DCA):***

If the City of West Park should incorporate, it will face many challenges in fulfilling its growth management responsibilities. The city will be required to develop and adopt a comprehensive plan as provided by ch. 163, part II, F.S., and Rule 9J-5, F.A.C. within three years after the date of incorporation. The Broward County comprehensive plan as it exists on the date of incorporation will be the controlling document for guiding growth and development until West Park adopts its own plan. Within one year of incorporation, the city must establish a local planning agency pursuant to s. 163.3174, F.S., and notify the DCA of the establishment of its local planning agency for the purpose of developing the comprehensive plan.

The feasibility study indicates that the area meets the population requirement for incorporation. The South County Unincorporated Neighborhoods (SCUN) of Miami Gardens, Carver Ranches, Utopia and Lake Forest have a land area of 1,067 acres and a combined population of 12,713 (which exceeds the 5,000 required for incorporation).

The proposed feasibility study does not address the two-mile separation required by Florida law. The neighborhood of Lake Forest, with a population of 4,994, is separated by the Town of Pembroke Pines from the other neighborhoods of the SCUN and does not meet geographic compact and contiguity criteria. According to county staff, there have been various efforts to have West Park annexed into Pembroke Park. However, the population of the West Park area is greater than that of Pembroke Park, and Pembroke Park has objected to being submerged by annexation of a larger population. There also has been an effort to have the area of West Park split into sections and annexed into the several adjacent cities. Apparently, the proposal under review is a counter effort to "retain the identity" of the West Park area.

## **IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES**

The Committee on Local Government & Veterans' Affairs adopted a strike all amendment to the bill at its meeting on March 31, 2004. This amendment corrects title language; makes technical and clarifying changes; provides March 1, 2005, as the date for establishment of the proposed city; changes the legal description of the city; removes language relating to a merger of the proposed city and the City of Pembroke Park; and provides that the city commission may rename the city by ordinance within one year of the incorporation.