

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1035 Incorporation of Municipalities

SPONSOR(S): Local Administration & Veterans Affairs Subcommittee, Williamson

TIED BILLS: **IDEN./SIM. BILLS:** SB 1554

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|------------------|---------|--|
| 1) Local Administration & Veterans Affairs Subcommittee | 15 Y, 0 N, As CS | Darden | Miller |
| 2) Public Integrity & Elections Committee | | | |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

The Florida Constitution provides municipalities may be established or abolished and their charters amended pursuant to general or special law. To facilitate this process, the Legislature passed the Formation of Municipalities Act, governing the formation and dissolution of municipal governments in order to provide for orderly patterns of urban growth and land use, adequate quality and quantity of local public services, financial integrity of municipalities, the elimination or reduction of avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions, and equity in the financing of municipal services.

As part of the incorporation process, a proposed municipality must submit a feasibility study to the Legislature no later than the first Monday after September 1 of the year before the regular legislative session during which the municipal charter would be enacted. The feasibility study must include:

- The boundaries of the proposed municipality;
- Information concerning land use, zoning, and proposed development;
- Information concerning other public agencies and providers of services within the boundaries of the proposed municipality;
- A list of services to be provided with the proposed incorporation area;
- The names and addresses of three officers or persons submitting the proposal;
- Evidence of fiscal capacity, including information of revenue sources available to the proposed municipality upon incorporation and a five-year operational plan that includes proposed staffing, building acquisition, construction, debt issuance, and budgets;
- Data and analysis to support the conclusion that incorporation is necessary and financially feasible, including population projections and population density calculations, and an explanation concerning methodologies used for such analysis;
- An evaluation of the alternatives available to the area to address its policy concerns, and
- Evidence that the proposed municipality meets the standards for incorporation in statute.

The bill:

- Changes the deadline to submit a feasibility study for a proposed municipality from the first Monday after September 1 to August 31 of the year before the regular legislative session during which the municipal charter would be enacted;
- Requires the feasibility study contain documentation attesting to the accuracy of the property description and map included in the study and providing a list of acceptable types of documentation; and
- Requires the feasibility study document the passage of a non-binding referendum, conducted at a primary or general election, indicating support for the proposed municipal incorporation by at least 60 percent of the electors within the area of the proposed municipality voting in the referendum.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Municipal Incorporation

Constitutional Provisions

Municipalities may be established or abolished and their charters amended pursuant to general or special law.¹ Municipalities are granted all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services. Additionally, municipalities are authorized to exercise any power for municipal purposes except when expressly prohibited by general or special law.² The power to tax is granted only by general law.³ The legislative body of a municipal government must be elected.⁴

Municipal Home Rule Powers Act

The Municipal Home Rule Powers Act structures the use of the constitutional powers authorized for municipalities.⁵ A special law forming a municipality or a municipal charter may not be amended without a referendum of the affected voters if the change impacts:

- The exercise of extraterritorial powers;
- An area that includes lands within and without a municipality;
- The creation or existence of a municipality;
- The terms of elected officers and their manner of election, except for the selection of election dates and qualifying periods for candidates and for changes in terms necessitated by change in election dates;
- The distribution of powers among elected officers;
- Matters prescribed by charter relating to appointive boards;
- Any change in form of government; or
- Any rights of municipal employees.⁶

Formation of Municipalities Act

The Formation of Municipalities Act (Formation Act) governs the formation and dissolution of municipal governments.⁷ The stated purpose of the Formation Act is to provide standards, direction, and procedures for the incorporation, merger, and dissolution of municipalities so as to achieve:

- Orderly patterns of urban growth and land use;
- Adequate quality and quantity of local public services;
- Financial integrity of municipalities;
- The elimination or reduction of avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions; and
- Equity in the financing of municipal services.⁸

Under the Formation Act, a municipal government may be established where no such government exists only if the Legislature adopts the municipal charter by special act after determining the

¹ Art. VIII, s. 2(a), Fla. Const. A municipality is a local government entity, located within a county that is created to perform additional functions and provide additional services for the particular benefit of the population within the municipality. The term "municipality" can be used interchangeably with the terms "city," "town," and "village."

² Art. VIII, s. 2(b), Fla. Const.

³ Art. VII, s. 9(a), Fla. Const.

⁴ Art. VIII, s. 2(b), Fla. Const.

⁵ Ch. 166, F.S.

⁶ S. 166.021(4), F.S. The charter of a municipality may be amended by a referendum called pursuant to s. 166.031, F.S.

⁷ Ch. 165, F.S.

⁸ S. 165.021, F.S.

appropriate standards have been met.⁹ With certain exceptions, the Legislature has chosen to create the charter for a new municipality only by special act.¹⁰

Requirements for Municipal Incorporation

Standards for Incorporation

The area proposed for incorporation must meet the following conditions in order to be eligible for incorporation:¹¹

- Be compact, contiguous, and amenable to separate municipal government.
- 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 75,000 or less, and of at least 5,000 persons in counties with a population of more than 75,000.
- 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.
- Have a minimum distance of at least two miles from the boundaries of any existing municipality within the county or have an extraordinary natural boundary that requires separate municipal governments.
- Have a proposed municipal charter that prescribes the form of government and clearly defines the responsibility for legislative and executive functions, and does not prohibit the legislative body from exercising its power to levy any tax authorized by the Florida Constitution or general law.
- Have a plan for incorporation that honors existing contracts for solid waste collection services in the affected areas for the shorter of five years or the remainder of the contract term.¹²

Special Act

Special acts for municipal incorporation are initiated as local bills. A local bill is legislation relating to (or designed to operate only in) a specifically indicated part of the state or purporting to operate within a classified territory when such classification is not permissible or legal in a general bill.¹³ To incorporate a municipality, the special act must include a proposed municipal charter prescribing the form of government and clearly defining the legislative and executive functions of city government. The special act may not prohibit or limit tax levies otherwise authorized by law.¹⁴ A bill proposing creation of a municipality is reviewed based on the statutory standards for municipal incorporation.¹⁵

Because municipal incorporation creates a new local government within an area, the Legislature has made such special acts subject to approval by a referendum of the affected voters.¹⁶

Feasibility Study

A feasibility study and a local bill proposing the municipal government charter must be submitted to the Legislature for consideration of incorporation. The feasibility study is a detailed report about the proposed area to be incorporated. The purpose of the study is to inform the Legislature as to whether

⁹ S. 165.022, F.S. An exception to this principle is the home rule authority of Miami-Dade County, where the board of county commissioners has been granted the exclusive power to create municipalities within that county through the Florida Constitution. See s. 165.022, F.S., and art. VIII, s. 6(e), Fla. Const. Adopted in 1957, the Miami-Dade County Home Rule Charter provides for the creation of new municipalities at art. 6, s. 6.05.

¹⁰ S. 165.041(1)(a), F.S. Municipalities in Miami-Dade County are created only by the Miami-Dade County Commission. See art. VIII, s. 6(e), Fla. Const., incorporating art. VIII, s. 11, Fla. Const. (1885, as amended); s. 165.22, F.S. (conversion of certain independent special districts to a municipality is by petition and referendum of the district electors). See s. 165.0615, F.S.

¹¹ S. 165.061(1), F.S.

¹² See art. I, s. 10, Fla. Const.

¹³ *State ex rel. Landis v. Harris*, 163 So. 237, 240 (Fla. 1934).

¹⁴ S. 165.061(1)(e)2., F.S.

¹⁵ S. 165.061, F.S.

¹⁶ See, e.g., ch. 2014-249, Laws of Fla. (authorizing referendum to create the Village of Estero), ch. 2015-182, Laws of Fla. (authorizing referendum to create the City of Panacea), ch. 2017-195, Laws of Fla. (authorizing referendum to create the Village of Indiantown), and ch. 2018-166, Laws of Fla. (authorizing referendum to create the Town of Hobe Sound).

the area meets the statutory requirements for incorporation and if incorporation is financially feasible. The feasibility study must be completed and submitted to the Legislature no later than the first Monday after September 1 of the year before the regular legislative session during which the municipal charter would be enacted.¹⁷

In 1999, the Legislature adopted detailed requirements for the preparation of the required feasibility study for any area requesting incorporation.¹⁸ 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 boundaries fall within the boundary of the territory proposed for the change or reorganization.
- A list of current services being provided within the proposed incorporation area, including, but not limited to, water, sewer, solid waste, transportation, public works, law enforcement, fire and rescue, zoning, street lighting, parks and recreation, and library and cultural facilities, and the estimated costs for each current service.
- A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such 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 five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.
- Data and analysis to support the conclusion that incorporation is necessary and financially feasible, including population projections and population density calculations, and an explanation concerning methodologies used for such analysis.
- Evaluation of the alternatives available to the area to address its policy concerns.
- Evidence that the proposed municipality meets the statutory standards for incorporation.¹⁹

In counties that have adopted a municipal overlay for municipal incorporation, such information must also be submitted in the feasibility study.²⁰

¹⁷ S. 165.041(1)(b), F.S.

¹⁸ S. 165.041, F.S.

¹⁹ See s. 165.061, F.S.

²⁰ S. 165.041(1)(c), F.S. Municipal overlays are adopted pursuant to s. 163.3217, F.S.

Referenda

A county or municipality may, by enabling ordinance or resolution, submit a referendum on a matter of public importance to the electors of the county or municipality.²¹ The enabling ordinance or resolution must contain a ballot summary of no more than 75 words and the title to appear on the ballot. The ballot summary must be printed in clear and unambiguous language such that a “yes” vote will indicate approval of the proposal and a “no” vote will indicate rejection.

Effect of Proposed Changes

The bill changes the deadline to submit a feasibility study for a proposed municipality from the first Monday after September 1 of the year before the regular legislative session during which the municipal charter would be enacted to August 31 of that year.

The bill requires the feasibility study to contain documentation attesting to the accuracy of the property description and map included in the study. The bill provides that acceptable forms of documentation include, but are not limited to:

- A property information report as defined in s. 627.7843(1), F.S.;
- A final drawing, plan, specification, plat, or report prepared by a professional surveyor or mapper licensed and in good standing under ch. 472 and sealed as required by s. 472.025, F.S., or
- A title opinion prepared by a member in good standing of The Florida Bar.

The bill would also require that the feasibility study contain evidence documenting the passage of a non-binding referendum, conducted at a primary or general election, indicating support for the proposed new municipality by at least 60 percent of the electors within the affected area voting in the referendum.

B. SECTION DIRECTORY:

Section 1: Amends s. 165.041, F.S., revising submission deadline for feasibility studies for proposed municipalities and requiring evidence of voter support in a non-binding referendum.

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

²¹ See s. 101.161(1), F.S.
STORAGE NAME: h1035a.LAV
DATE: 1/19/2022

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2022, the Local Administration & Veterans Affairs Subcommittee adopted an amended strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment requires the feasibility study to include documentation attesting to the accuracy of the property description and map provide and lists acceptable forms of documentation.

This analysis is drafted to the committee substitute as passed by the Local Administration & Veterans Affairs Subcommittee