

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 923 Sarasota County

SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, McFarland

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	17 Y, 0 N, As CS	Mwakyanjala	Darden
2) Ways & Means Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill would create a municipality in Sarasota County to be known as the Town of Siesta Key (Town or Siesta Key). The bill contains the charter of the proposed town, including the following authority, powers, and duties:

- Corporate name, purpose of the charter, and creation and establishment of the Town of Siesta Key;
- Powers of the town;
- A commissioner-manager form of government;
- Town commissioner, mayor, and vice mayor;
- Powers and duties, composition of the council, eligibility, terms, compensation, commission meetings, vacancies, forfeitures, and investigations;
- Administration by town manager and provision for town clerk, town attorney, personnel, planning;
- Adoption and enforcement of ordinances and resolutions;
- Financial management, including budget administration, capital program, and public records;
- Authority to raise revenue for municipal purposes, including imposing ad valorem taxes;
- Qualifications of commission members and election procedures;
- Powers of initiative and referendum;
- Amendments to the charter and severability; and
- Transition provisions, including a referendum election, initial council election, eligibility for state-shared revenues, local revenue sources, local option gas tax revenues, contractual services and facilities (including existing solid waste contracts), and the continuation of existing county municipal services taxing service units.

The Economic Impact Statement submitted for the town projects revenues of \$4,714,086 in FY 2025 (first full year of municipal government). The EIS projects expenditures of \$1,053,800 in FY 2024 and \$4,714,086 in FY 2025, representing the cost of municipal administration. The expenditure figure does not include payments from the proposed municipality to Sarasota County for services provided by interlocal agreement.

The bill takes effect upon approval by a majority vote of the proposed municipality's electors voting in a referendum conducted in accordance with section 3 of the bill, except that subsection (1) of section 14 and section 16 take effect upon becoming law.

Pursuant to House Rule 5.5(b), a local bill providing an exemption 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. EFFECT OF PROPOSED CHANGES:

Present Situation

Municipal Incorporation

Constitutional Provisions

The Florida Constitution states 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:⁶

- 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.

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 the following:

- 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

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.

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 appropriate standards have been met.⁹

Requirements for Municipal Incorporation

Standards for Incorporation

The area proposed for incorporation must meet the following conditions in order to be eligible for incorporation:¹⁰

- 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 an 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 honoring existing contracts for solid waste collection services in the affected areas for the shorter of five years or the remainder of the contract term.¹¹

Special Act

With certain exceptions, the Legislature has chosen to create the charter for a new municipality only by special act.¹² 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

Unless conditioned to become effective only upon approval by qualified electors, no special act may be passed without prior publication of intent to seek such enactment.¹⁵ The notice of intent to file must be published in the manner provided by general law.¹⁶ The Legislature has required special acts creating municipal incorporations to be subject to a referendum. A bill proposing creation of a municipality is reviewed based on the statutory standards for municipal incorporation.¹⁷

Feasibility Study

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. 165.061(1), F.S.

¹¹ In accordance with Art. I, s. 10, Fla. Const.

¹² 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.

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

¹⁴ S. 165.061(1)(e)2., F.S.

¹⁵ Art. III, s. 10, Fla. Const.

¹⁶ S. 11.02, F.S., specifies the publication of notice must occur one time, at least 30 days prior to introduction of the local bill in the Legislature.

¹⁷ S. 165.061, F.S.

A feasibility study and a local bill proposing the municipal government charter must be submitted for consideration of incorporation. The feasibility study is a survey of the proposed area to be incorporated. The purpose of the study is to enable the Legislature to determine whether (1) the area meets the statutory requirements for incorporation, and (2) 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.¹⁸

In 1999, the Legislature adopted detailed requirements for the preparation of the required feasibility study for any area requesting incorporation.¹⁹ 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 standards for incorporation in s. 165.061, F.S.

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

The Proposed Town of Siesta Key²¹

Siesta Key is located in west Sarasota County and includes residential communities southwest of the City of Sarasota. Archeological discoveries point to human habitation of Siesta Key long before

¹⁸ S. 165.041(1)(b), F.S. For any proposed incorporations to be considered during the 2023 Legislative Session, this deadline fell on September 5, 2022.

¹⁹ S. 165.041, F.S.

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

²¹ See Sarasota History Alive!, *The Siesta Key Beach Pavilion*, <http://www.sarasotahistoryalive.com/index.php?src=directory&srctype=detail&refno=1349&category=Articles&view=history&back=history> (last visited Mar. 24, 2023).

European settlement. However, Siesta Key was largely uninhabited during the late 1800s and early 1900s. The Siesta Land Company, for which the area is named after, contributed greatly to the growth of the community in the early 1900s. Formed in 1907, the Siesta Land Company developed the area by building hotels and a post office, and provided advertising in order to entice residents and tourists. In 1952, the community living in the key officially adopted the name “Siesta Key”.

The population of Sarasota County experienced a boom after World War II. The county’s population increased by almost 80% between 1940 and 1960, with its population rising from 16,106 to 76,895 residents in the 20-year period. During this time of growth, Siesta Key and its beaches began to grow in popularity and global recognition. In 1950, National Geographic Magazine named Siesta Beach as one of the four most beautiful beaches in the world. With an increase in the use of mosquito and other pest controls, Siesta Key became a desirable area for residential development and tourism.

Feasibility of the Proposed Town of Siesta Key

This section examines whether the proposed town meets the statutory criteria for the form and structure of municipal government and demonstrates sufficient fiscal integrity for self-governance.

The proponents of municipal incorporation submitted their feasibility study (2022 Study) addressing each element required by statute in September 2022.²² Upon review by staff, the study was found to contain certain deficiencies. Evaluations of the study were also requested from the Department of Revenue (DOR),²³ Department of Economic Opportunity (DEO),²⁴ and Office of Economic and Demographic Research (EDR).²⁵ The staff’s concerns and evaluation of the 2022 Study were sent to proponents on October 14, 2022. Correspondence from the proponents addressing these concerns was received on October 20, 2022.²⁶ The following compiles how each element was presented in the 2022 Study, the evaluations conducted by DOR, DEO, and EDR, and finally addressed by the proponents.

Meeting the Statutory Criteria for Municipal Incorporation

Section 165.041(1)(b)1., F.S. – Location and Boundaries

The location of territory subject to boundary change and a map of the area which identifies the proposed change.

The 2022 Study provides a description of the area proposed for incorporation, together with a map of the area that identifies the proposed change.

DEO concluded the 2022 Study adequately addressed this requirement, EDR found no significant issue, and DOR had no comment.

Section 165.041(1)(b)2., F.S. – Major Reasons for Boundary Change

The major reasons for proposing the boundary change.

The 2022 Study lists five major reasons for proposing the boundary change: (1) allowing orderly patterns of urban growth and land use; (2) assuring adequate quality and quantity of local public services; (3) ensuring financial integrity of municipalities; (4) eliminating or reducing avoidable and

²² Underwood Management Services, LLC, *Town of Siesta Key Incorporation Feasibility Study*. (September 2022), on file with the Local Administration, Federal Affairs, & Special Districts Subcommittee. See also ss. 165.041(1)(b) & 165.061(1), F.S.

²³ Dept. of Revenue, Proposed Incorporation – Siesta Key, Sarasota County (Dec. 6, 2022) (herein DOR 2022 Review), on file with the Local Administration, Federal Affairs, & Special Districts Subcommittee.

²⁴ Dept. of Economic Opportunity, Review of Town of Siesta Key Incorporation Study (Dec. 12, 2022) (herein DEO 2022 Review), on file with the Local Administration, Federal Affairs, & Special Districts Subcommittee.

²⁵ Office of Economic and Demographic Research, Proposed Municipal Incorporation of Siesta Key (Dec. 14, 2022) (herein EDR 2022 Review), on file with the Local Administration, Federal Affairs, & Special Districts Subcommittee.

²⁶ Underwood Management Services, LLC, *Re: 2022 Feasibility Study: Proposed Municipal Incorporation of Siesta Key – Response* (Oct. 20, 2022) (herein October Letter), on file with the Local Administration, Federal Affairs, & Special Districts Subcommittee.

undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions; and (5) promoting equity in the financing of municipal services.

DEO concluded the 2022 Study adequately addressed this requirement, EDR believes assessment of the validity and reasonableness of the reasons for proposing the boundary change is more appropriate for policymakers, and DOR had no comment.

Section 165.041(1)(b)3.a.-d., F.S. – Land Use, Zoning Designations

- a. A list of the current land use designations applied to the subject area in the county comprehensive plan.**
- b. A list of the current county zoning designations applied to the subject area.**
- c. A general statement of present land use characteristics of the area.**
- d. A description of development being proposed for the territory, if any, and a statement of when actual development is expected to begin, if known.**

The 2022 Study indicates that Sarasota County land use designations within the proposed Town of Siesta Key are limited to the “Barrier Island” designation. The 2022 Study indicates the area has county zoning districts designated as commercial, government, marine, open use, and residential. The study indicates that as of August 31, 2022, there are two proposed developments in the proposed area of incorporation. One proposed development is the demolition of the Siesta Key Beach Resort and Suites, which is to be replaced by a new 8-story, 170-room resort hotel (Siesta Key Hotel). The other proposed development is another 8-story hotel to be located southeast of the proposed Siesta Key Hotel. The study does not provide a date for when actual development is expected to begin for either proposed developments.

Section 165.041(1)(b)4., F.S. – Public Entities Currently Within the Incorporation Area

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.

The 2022 Study lists county government entities, courts with jurisdiction over the area proposed for incorporation in Sarasota County, the Sarasota County Court, the Sarasota County School Board, the Sarasota County Public Hospital District, the Sarasota County Mosquito Control District, the West Coast Inland Navigation District, the Navigable Waterways, the Second District Court of Appeal, the Southwest Florida Water Management District, and the Twelfth Judicial Circuit. The study indicates no initial impact on these districts due to incorporation.

DEO and EDR found that the 2022 Study adequately addressed this requirement and DOR had no comment.

Section 165.041(1)(b)5., F.S. – Current Services and Costs

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.

The 2022 Study indicates that Sarasota County currently provides law enforcement, transportation, parks and recreation, and library services and provides many residences in the proposed incorporated with water and wastewater service. The Navigable Waterways Municipal Services Taxing Unit (MSTU) is an ad valorem taxing district used to maintain boat passages in the intercoastal waterway. The West Coast Inland Navigation district (WCIND) is a multi-county special taxing body covering Manatee, Sarasota, Charlotte, and Lee counties. WCIND supports county and local governments in maintaining and enhancing public navigation channels and inlets, boating access facilities, waterfront parks, and

piers and special structures. The Sarasota County Mosquito Control District serves the entirety of Sarasota County.

The Study provides the total cost of services for the residents of the proposed Town of Siesta Key, based on the Adopted Fiscal Year 2021-22 Sarasota County budget:

Population Estimates for FY 2021-22		Sarasota County 438,810	Town of Siesta Key 6,769
Services	FY 21 Adopted	County Per Capita Cost	Total Cost for Siesta Key Residents
Sarasota County Sheriff	\$134,580,766	\$306.69	\$2,076,017
Transportation SCAT	\$33,894,686	\$77.24	\$522,853
Emergency Medical Svc	\$58,800,318	\$134.00	\$907,043
Public Works	\$51,694,208	\$117.81	\$797,425
Building Insp	\$13,924,212	\$31.73	\$214,792
Culture & Recreation	\$63,912,165	\$145.65	\$985,897
Code Enforcement	\$1,874,892	\$4.27	\$28,922
Planning & Zoning	\$23,411,291	\$53.35	\$361,138
All Other County Services	\$1,153,459,889	\$2,628.61	\$17,793,054
Total Sarasota County Budget	\$1,535,552,427	\$3,499	\$23,687,141

DEO and EDR concluded the 2022 Study adequately addressed this requirement and DOR had no comment.

Section 165.041(1)(b)6., F.S. – Proposed Services and Costs

A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such proposed services.

The 2022 Study provides the following table of proposed services for the first full year, Fiscal Year (FY) 2024-25, to be included within the proposed area of incorporation with their estimated cost:

Service	Town of Siesta Key Services Cost
Water	Private provider or Sarasota County Utilities
Sewer	Private provider or Sarasota County Utilities
Solid Waste/Landfill	County Assessment
Local Government	\$3,293,700
Public Works	County + \$460,946
Library	County
Planning and Zoning	\$584,440
Parks and Recreation	County
Building Inspections	County
Sheriff	County + \$375,000
Fire and Rescue	County Tax and Assessment

The Study states interlocal agreements between the proposed Town of Siesta Key and Sarasota County shall be entered to provide fire, emergency medical, law enforcement, mosquito control, public works, solid waste, water and sewer, library, building inspections, and parks and recreation services. Estimated costs for all proposed interlocal agreements are not currently available. The Sarasota County Sheriff has stated that law enforcement services will continue at the “current level of service”²⁷

²⁷ Letter from Kurt A. Hoffman, Sheriff, Sarasota County to the Local Administration, Federal Affairs & Special Districts Subcommittee (August 12, 2022). A copy of this letter is on file with the Local Administration, Federal Affairs & Special Districts Subcommittee.

and the Study states that if services beyond the current level are required in the future, the issue of increased services shall be addressed at that time.

DEO and EDR concluded this requirement was adequately addressed. EDR notes that the inclusion of an additional \$375,000 in the budget for the Sheriff's services in the event that law enforcement services beyond the current level become necessary satisfies this requirement. In regards to the interlocal agreements, EDR notes that in the event that interlocal agreements are not achieved, the operational plan includes approximately \$2 million in fiscal year 2024-25 from budgeted contingency, public works, and law enforcement appropriations that could be reallocated.

DOR had no comment.

Section 165.041(1)(b)7., F.S. – Names of 3 Persons Submitting the Proposal

The names and addresses of three officers or persons submitting the proposal.

The 2022 Study provides full information for the three officers or persons submitting the proposal.²⁸ DEO concluded the list in the Study appeared complete and adequately addressed this requirement, EDR stated they did not attempt to contact the individuals for the purpose of verifying the given information, and DOR had no comment.

Section 165.041(1)(b)8.a. and 8.b., F.S. – Fiscal Capacity and Organizational Plan

Evidence of fiscal capacity and an organizational plan as it relates to the area seeking incorporation.

- a. 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.***
- b. A five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets.***

The 2022 Study provides the following estimates of annual revenues projected to begin in FY 2024:

- Ad Valorem Taxes (the Town of Siesta Key plans to levy ad valorem taxes at 0.500 mills) – \$4,389,051
- Electric Franchise Fees – \$283,424
- Alcoholic Beverage Licenses – \$8,323
- Investment Earnings – \$20,000
- Code Enforcement Fines – \$10,000
- General Government Charges & Fees – \$1,020

Projections provided by the 2022 Study estimate revenues to exceed expenses each year for the first five years after incorporation, yielding cumulative reserves of \$1,178,521 after the town's first full fiscal year of operation and such reserves increasing by approximately \$550,000 annually thereafter. The Study does not provide projections concerning building acquisition or construction. The November Letter from the proponents of incorporation stated the town intends to rent office space sufficient to conduct business and hold public meetings and that this cost is accounted for in the annual operating overhead portion of the budget.

EDR made the following comments regarding components of this requirement:

- EDR comments that the 2022 Study would be more useful if the study included a more complete incorporation and revenue timeline that specifies actual or anticipated dates (i.e., month & year) of activities critical to Siesta Key's formation and organization.
- The 2022 Study states that properties in unincorporated Sarasota County are currently assessed 3.2232 mills by Sarasota County. EDR concluded based on their analysis that the 5% annual increase in taxable value growth seems reasonable but would defer to the Department

²⁸ John Davidson, Timothy Hensey, and Tracy Jackson.

of Revenue's (DOR) conclusions regarding the validity of the proposed town's projected ad valorem taxable values and tax revenues.

- EDR notes that revenue streams such as utility services tax, communications services tax, and a local business tax are typically seen in new municipal incorporations but the 2022 Study states that those revenue sources will not be needed to fund Siesta Key's operations. The 2022 Study states that Siesta Key will not opt into state revenue sharing but may participate in the future by meeting the 3-mill equivalency test. The proposed town may implement the aforementioned revenue sources in the future as well.
- The proposed town of Siesta Key states that the town will not need to tax their citizens more than 0.5000 mills due to revenue from other sources, including an infrastructure sales tax approved by voters. However, the 2022 Study does not include the infrastructure sales tax within the five-year operational plan submitted.
- The 2022 Study states that the electric franchise fee revenues reported in the five-year operational plan show 0.8% growth but according to EDR's independent calculation, a growth rate around 0.08-0.09% is more plausible. EDR notes that the electric franchise fee annual growth rate may be a mathematical or typographical error. The 2022 Study's franchise fee revenues in FY 2024-25 may be understated due to using a conservative growth rate as compared to the growth rate as calculated by EDR.
- Siesta Key plans to employ six full-time equivalent (FTE) employees to serve within its municipal government. EDR compared this number of regular or permanent positions to figures reported by other similarly-populated municipalities and found that all other comparable cities employed between 61 and 342 employees. EDR notes that all other comparable cities were incorporated prior to 2000 but this disparity in the number of FTE employees raised concern on whether Siesta Key's budgeted positions will be sufficient for its model of government.
- The 2022 Study projects Siesta Key will receive external funding to begin operations but does not elaborate on the source. The October Letter stated that the Town Council plans to authorize a short-term bank loan as its external funding source and that the operational plan anticipates loan repayment after tax collections begin to be received.
- Siesta Key plans to enter into interlocal agreements with Sarasota County to continue a number of services at current service levels and funding rates. EDR notes while there is no model for how this interlocal agreement may be structured within the 2022 Study, the five-year operational plan does include approximately \$2 million in FY 2024-25 for budgeted contingency, public works, and law enforcement that could be reallocated for such services.

An evaluation of the feasibility study submitted by the proposed Siesta Key was requested from the DOR. DOR made the following comments regarding the feasibility study submitted by Siesta Key:

Revenue Sharing

To be eligible for revenue sharing, a municipality not only must exist but must have elected and seated its legislative body.²⁹ As a unit of local government, the municipality also must comply with the requirements of s. 218.23, F.S., including reporting its finances for its most recently completed fiscal year³⁰ and either levied ad valorem taxes of at least 3 mills or collected revenue from specified other sources equivalent to what would be raised by such an ad valorem assessment.³¹

The Proposed Charter for Siesta Key³² does not address revenue sharing. The feasibility study states that the current intent of Siesta Key is to forgo revenue sharing.³³ Siesta Key will not become a municipality until an election for its legislative body pursuant to law is conducted and established such a legislative body, which meets pursuant to law.³⁴ Though revenue sharing may start to accrue upon incorporation, the distribution of funds would be withheld until the Town becomes a municipality.

²⁹ S. 218.21(3), F.S.

³⁰ S. 218.23(1)(a), F.S. This report is submitted to the Dept. of Financial Services. S. 218.32, F.S.

³¹ S. 218.23(1)(c), F.S.

³² Town of Siesta Key Municipal Charter, *The Town of Siesta Key: Incorporation Feasibility Study* (2022), pg. 55 (Appendix A).

³³ *The Town of Siesta Key: Incorporation Feasibility Study* (2022), pg. 36.

³⁴ S. 218.21(3), F.S.

In order to be eligible for revenue sharing, a local government must impose 3-mills of ad valorem tax or a 3-mill equivalent.³⁵ The feasibility study states that though the Town does not intend to participate in revenue sharing, the Town may participate upon meeting the 3-mill equivalent at some future date. The study indicates the Town will use ad valorem taxes in order to meet the equivalent test and is requesting to count the ad valorem millage levied by special districts toward its total.³⁶ DOR notes that if a special district millage is to be used to satisfy the 3-mill equivalent requirement, the usage of said special district should be stated clearly in the Proposed Charter.

DOR prepared revenue sharing estimates for if Siesta Key had been incorporated during the state fiscal year 2022-2023. The following is a summary of the estimates provided by DOR:

- Sarasota County will lose 6,825 of its unincorporated population to the newly incorporated Siesta Key.
- There are four municipalities whose half-cent distributions and revenue sharing will be impacted by the incorporation of Siesta Key: North Port, Sarasota, Venice, and Longboat Key.³⁷
- The estimated impact of the incorporation of Siesta Key on half-cent distributions from is as follows:
 - North Port: Loss of \$69,253.00
 - Sarasota (City): Loss of \$49,089.00
 - Venice: Loss of \$23,139.00
 - Longboat Key: Loss of \$4,221.00
 - Sarasota County: Loss of \$587,019.00
 - Siesta Key: Gain of \$732,721.00
- The estimated impact of incorporation on discretionary taxes (based on estimated interlocal agreements) is as follows:
 - Sarasota County: Loss of \$1,245,082.00
 - Siesta Key: Gain of \$1,245,082.00
- The estimated impact of incorporation on municipal revenue sharing is as follows:
 - North Port: Loss of \$517.00
 - Sarasota (City): Loss of \$760.00
 - Venice: Loss of \$299.00
 - Longboat Key: No impact
 - Siesta Key: Gain of \$94,638.00
- The estimated impact of incorporation on county revenue sharing is as follows:
 - Sarasota County: Loss of \$123,254.00
- The estimated impact of incorporation on total revenue sources is as follows:
 - North Port: Loss of \$69,770.00
 - Sarasota (City): Loss of \$49,849.00
 - Venice: Loss of \$23,439.00
 - Longboat Key: Loss of \$4,221.00
 - Sarasota County: Loss of \$1,955,355.00
 - Siesta Key: Gain of \$2,072,441.00

Half-Cent Sales Tax

A newly-incorporated municipality not only must meet the statutory requirements for revenue sharing to participate in the local government half-cent sales tax distribution but also all applicable criteria for incorporation under s. 165.061, F.S.³⁸ Half-cent sales tax distribution is based on collection at the retail level. Therefore, the first possible distribution of the half-cent sales tax would be based on the month after the referendum approval. Distribution would occur two months later. Those distributions will be held until the election of the governing body and the first commission meeting is held.

Other Comments

³⁵ S. 218.23(1)(c), F.S.

³⁶ S. 336.025(4)(b), F.S.

³⁷ Longboat Key is located both in Sarasota County and Manatee County and the estimates by DOR for Longboat Key account only for the portions located within Sarasota County.

³⁸ S. 218.63(1), F.S.

In addition to their comments on revenue sharing and the half-cent sales tax, DOR also made the following comments:

- Section 12 of the Proposed Charter indicates all provisions of S. 165.061, F.S., have been met with the exception of the minimum distance threshold specified in S. 165.061(1)(d), F.S.
- The Proposed Charter does not address the distribution of local option gas taxes.³⁹
- The Proposed Charter does not address local communications services taxes.⁴⁰

Section 165.041(1)(b)9, F.S. – Data and Analysis Showing Incorporation is Necessary and Feasible

Data and analysis to support the conclusions that incorporation is necessary and financially feasible, including population projections and population density calculations, and an explanation concerning methodologies used for such analysis.

The 2022 Study states that the Siesta Key community desires for minimal government with associated minimal incremental taxes and plan to manage expenditures for services such that the proposed ad valorem millage rate of 0.500 will not increase. The study states that the town will rely on Sarasota County to provide services whenever possible in order to limit expenditure. The Town projects a total budget of \$4,714,086 for FY 2024-25 (the first full year of operation). For comparison, the following are the millage rates and general fund expenditures (for FY 2022-2023) for similarly-sized municipalities:

	Indiantown	Lake Alfred	Live Oak	St. Augustine Beach
Millage Rate	1.6304	6.989	9.500	2.500
Expenditures	\$7,785,599	\$10,065,700	\$10,867,775	\$9,703,202

DEO stated that the projected 0.13 percent annual increase in population and the revenue and expenditure projections were reasonable based on staff findings.

EDR concluded that the 2022 Study's discussion of the data and analysis to support its conclusion that incorporation is necessary and financially feasible were reasonably deduced. EDR stated the Study's projected population, projected annual ad valorem revenue, and projected revenue and expenditure growth rates were conservative compared to the growth rates calculated by EDR but were reasonably assumed nonetheless.

DOR had no comment.

Section 165.041(1)(b)10. – Evaluation of Alternatives to Incorporation

Evaluation of the alternatives available to the area to address its policy concerns.

The 2022 Study identifies five alternatives to incorporation:

1. *Remain in Unincorporated Sarasota County:* The Study states this is an undesirable alternative due to residential concerns about lack of representation within the county, taxes being used to support other, more densely populated areas within the county, developments leading to higher densities, traffic gridlock, and a general degradation of the residents of Siesta Key's quality of life.
2. *Incorporate:* The Study states that home rule through the Town of Siesta Key would be the most desirable outcome.
3. *Annex into the City of Sarasota:* The Study states that this is an undesirable alternative because it would not provide the residents of Siesta Key the ability to control their quality of life. The 2022 Study states that the issues and concerns of mainland City of Sarasota residents are very different from the issues and concerns of the residents of the barrier island Siesta Key.
4. *Create an MSTU:* No discussion is provided on this subject.

³⁹ This differs from the practice observed by the last four municipal incorporations. See chs. 2014-249 (Village of Estero), 2015-182 (City of Panacea), 2017-195 (Village of Indiantown), 2018-166 (Town of Hobe Sound), Laws of Fla.

⁴⁰ *Id.*

5. *Create a Special District.* No discussion is provided on this subject.

DEO concluded that the evaluation of the alternatives available to the area to address its policy concerns were adequately addressed.

EDR stated that the assessment of the validity and reasonableness of the discussion of alternatives is more appropriate for policymakers.

DOR had no comment.

Section 165.041(1)(b)11., F.S. – Evidence the Proposed Municipality Meets the Requirements for Incorporation under s. 165.061(1), F.S.

***Section 165.061(1)(a), F.S. – Compact, Contiguous, Amenable to Municipal Gov't.
New municipality is compact and contiguous and amenable to separate municipal government.***

The 2022 Study includes a map identifying the area proposed for incorporation. EDR stated that Siesta Key's boundary appears to be contiguous but its analysis of Siesta Key's compactness is inconclusive. DEO concluded that the area proposed for incorporation met the requirement. DOR took no position.

***Section 165.061(1)(b), F.S. – Minimum Population
New municipality has a total population, as determined in the latest official state census, special census, or estimate of population, in the area proposed to be incorporated of at least 1,500 persons in counties with a population of 75,000 or less, and of at least 5,000 population in counties with a population of more than 75,000.***

The 2022 Study identifies an estimated population of 6,769 for the proposed area for municipal incorporation. As of the 2020 U.S. Census, Sarasota County had a population of 452,378.

DEO and EDR concur that the proposed town meets this requirement. DOR had no comment.

***Section 165.061(1)(c), F.S. – Minimum Population Density
New municipality has an average population density of at least 1.5 persons per acre or has extraordinary conditions requiring the establishment of a municipal corporation with less existing density.***

Barring extraordinary circumstances, a proposed municipality must have an average population density of 1.5 persons/acre. The 2022 Study indicates an estimated population of 6,769 for the proposed municipality, which spans 2,284.8 acres in total and 2,049.3 acres in total land mass. This would result in a population density of 3.03 persons per acre.

DEO and EDR concur that the 2022 Study adequately addressed this requirement. DOR had no comment.

***Section 165.061(1)(d), F.S. – Minimum Distance from Existing Municipalities
New municipality has a minimum distance of any part of the area proposed for incorporation from the boundaries of an existing municipality within the county of at least two miles or has an extraordinary natural boundary which requires separate municipal government.***

The 2022 Study states that the nearest existing municipality is Sarasota, which is contiguous to the Town's northern border. The Study states Siesta Key would need and requests a waiver of the requirement that a new municipality have two miles of separation from an existing municipality.

DEO and EDR concur with the 2022 Study that some of the area proposed for incorporation does not meet the statutory requirement that the area must have a minimum distance of at least two miles from the boundary of an existing municipality within the county.

Section 165.061(1)(e)1. & (e)2. – Proposed Municipal Charter

- 1. Proposed charter prescribes the form of government and clearly defines the responsibility for legislative and executive functions.**
- 2. Proposed charter does NOT prohibit the legislative body of the municipality from exercising its powers to levy any tax authorized by the Constitution or general law.**

The 2022 Study includes the proposed charter, which is set out in the bill. The proposed charter prescribes the form of government (commissioner-manager form) and defines the responsibility for legislative (town commission) and executive functions. Neither the 2022 Study nor the bill prohibits the mayor or commission members from levying any authorized tax. The proposed charter established by the bill complies with this requirement.

DEO concluded the proposed charter both prescribed the form of government and did not prohibit the town council from exercising its power to levy any tax authorized by the Florida Constitution or general law. EDR deferred to DEO and DOR; DOR took no position.

Section 165.061(1)(f), F.S. – Solid Waste Contracts

Per s. 10, Art. I, Fla. Const., plan honors existing solid-waste contracts in the affected geographic area subject to incorporation. (May provide for existing contracts for solid-waste-collection services to be honored only for five years or the remainder of the contract term, whichever is less, and may require that a copy of the pertinent portion of the contract or other written evidence of the duration of the contract, excluding any automatic renewals or evergreen provisions, be provided to the municipality within a reasonable time after a written request to do so.)

The 2022 Study states that Siesta Key will honor existing solid-waste contracts for five years or the remainder of the contract term, whichever is less. The Study indicates that Siesta Key plans to have Sarasota County continue to service the proposed city through Sarasota County's solid-waste contracts.

EDR and DEO concluded that the 2022 Study adequately addresses this requirement, and DOR had no comment.

Section 165.041(1)(c), F.S. – Information on County Municipal Overlay

Incorporates information on county's municipal overlay adopted per s. 163.3217, F.S.

The 2022 Study states that Sarasota County has created the Siesta Key Overlay District that applies to all property within the proposed area for incorporation.

Ability of Proposed Municipality to Meet Annual Financial Reporting Requirements

As a local government entity, the town will be required to file with the Department of Financial Services a copy of its annual financial report for the previous fiscal year.⁴¹ If the town's total revenues, or total expenditures and expenses, exceed \$250,000, the town must have an annual financial audit by an independent certified public accountant.⁴²

Effect of Proposed Changes

The bill creates the Town of Siesta Key in a previously unincorporated area of Sarasota County and provides a charter structuring the town government, providing powers and authority, and providing for a transition to the fully-functioning town government.

The charter provides for a commissioner-manager form of government, with five town commission members serving staggered four-year terms, elected by the qualified electors of the town. For the initial

⁴¹ S. 218.32(1)(a), F.S.

⁴² S. 218.39(1), F.S.

election held after incorporation, the three commission candidates receiving the highest number of votes will be elected to four-year terms and the two commission candidates receiving the next highest number of votes will be elected to two-year terms. At the first regularly scheduled meeting after the town's first election and each regular election thereafter, the commission will select, by majority vote, from amongst its membership a mayor and vice mayor. The mayor shall serve for one year and will preside over meetings of the commission, be recognized as the head of town government for all ceremonial purposes, and will be recognized by the Governor for purposes relating to military law and for service of process. The mayor will have no administrative duties. The vice mayor will act as the mayor in the absence or disability of the mayor.

After the initial election, elections will be held for full four-year terms in conjunction with the state's general election. The charter authorizes the commission to extend or shorten terms by up to one year to align municipal election dates with the statewide general election. Excluding the commission members elected for two-year terms at the initial election, commission members are prohibited from being elected for or serving more than two terms or portions of terms consecutively. The Sarasota County Supervisor of Elections will conduct elections. For the initial election, candidates are required to have resided within the town boundaries of Siesta Key for at least one year prior to the end of the qualifying period. Commission members are required to reside within Siesta Key. The charter provides for disciplinary standards of the commission and provides that the commission may appoint boards, other commissions, and committees.

Procedures are provided for determining and filling vacancies on the council. Council members are entitled to reimbursement as provided in general law their actual and necessary expenses incurred in the performance of their official duties. No compensation is established initially, but the council is authorized to provide for compensation of its members; however, no such compensation may take effect until after the expiration of the terms of members elected at the next regular election.

The legislative power of the town is vested in the commission. The town commission is to conduct regular public meetings on due notice. Special meetings may be conducted on the call of the mayor or a majority of commission members. The commission exercises this authority through the adoption of ordinances and resolutions.

The council will employ a town manager (or a management firm to fulfill the duties of a town manager), who serves as the chief administrative officer of the town at the pleasure of the commission. The town manager acts under the supervision of the commission. The administrative section of the charter also provides for the office and duties of the town clerk and the town attorney. The town manager is required to prepare and submit an annual budget and capital program to the commission. The commission is responsible for the approval of the annual budget.

The bill will allow Siesta Key to be eligible for new distributions of the communications services tax, revenue sharing, and local option gas tax, reducing certain amounts currently distributed to Sarasota County and the cities of Longboat Key, North Port, Sarasota, and Venice.⁴³

The charter provides for a referendum to create the town to be held on November 5, 2024. If approved, the town is created and incorporated. The charter provides for the first regular election of commission members to take place on March 11, 2025.⁴⁴ The referendum and initial election of commission members shall be conducted by the Sarasota County Supervisor of Elections and expenses for the election shall be funded by the Board of County Commissioners of Sarasota County. Siesta Key will reimburse the Board of County Commissioners of Sarasota for costs relating to conducting the initial election of commission members.

⁴³The Florida Constitution authorizes municipalities to levy ad valorem taxes up to 10 mills. The Florida Constitution and general law will control the town's ability to levy ad valorem taxes. The town plans to impose ad valorem taxes at 0.500 mills. The 2022 Study foresees the continuation of services via interlocal agreements with the county to result in the redirection of existing revenues rather than the need to impose additional tax revenues to support the financial viability of the proposed town.

⁴⁴ This provision conforms the date of future elections for the town council to the date for regularly scheduled primary elections. See s. 100.061, F.S.

Candidates for the commission are required to have resided to meet qualifications as prescribed by the state.

The bill provides an explicit waiver of the general law requirement that a proposed municipal incorporation has a minimum distance of at least two miles from the boundaries of an existing municipality.

B. SECTION DIRECTORY:

- Section 1: Provides corporate name and purpose of charter; creates and establishes Town of Siesta Key, subject to voter approval.
- Section 2: Provides for powers of the form and powers of the town government.
- Section 3: Provides municipal boundaries.
- Section 4: Provides the fiscal year of the town.
- Section 5: Provides for town commission.
- Section 6: Provides for town manager.
- Section 7: Provides for town clerk.
- Section 8: Provides for town attorney.
- Section 9: Provides actions that must be taken by ordinance.
- Section 10: Provides initiative, referendum, and recall process.
- Section 11: Provides charter amendment process.
- Section 12: Provides charter review process.
- Section 13: Provides for severability.
- Section 14: Provides for referendum to establish the town and the transition process.
- Section 15: Provides waiver for statutory requirements for incorporation.
- Section 16: Provides that the bill takes effect upon approval by a majority vote of the proposed municipality's electors voting in a referendum conducted in accordance with section 3 of the bill, except that subsection (1) of section 14 and section 16 take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

WHERE?

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? November 5, 2024

C. LOCAL BILL CERTIFICATION FILED? Yes No

D. ECONOMIC IMPACT STATEMENT FILED? Yes No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides rulemaking authority nor requires implementation by executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to House Rule 5.5(b), a local bill providing an exemption 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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute provides an end date for the initial qualifying period for individuals wishing to run for the town commission.

This analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs & Special Districts Subcommittee.