

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CMAS 12-01 Formation of Local Governments

**SPONSOR(S):** Community & Military Affairs Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Community & Military Affairs Subcommittee		Nelson	Hoagland

### SUMMARY ANALYSIS

The purpose of ch. 165, F.S., the "Formation of Municipalities Act," is to provide standards, direction and procedures for the formation of municipalities in this state and the provision of municipal services 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.

In order to establish a new municipality, the Legislature must pass a special act creating the city's charter, upon determination that the statutory standards for incorporation have been met. A feasibility study of a municipal incorporation must be completed and submitted to the Legislature 90 days before the first day of the regular session during which a bill proposing an incorporation would be enacted.

This PCB amends ch. 165, F.S., to change the deadline for submission of a feasibility study to the first Monday after September 1. The bill also removes several obsolete definitions from the Act, adds specificity to a feasibility study requirement, and conforms a cross-reference.

There is no fiscal impact associated with this PCB.

The PCB has an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Chapter 165, F.S., the "Formation of Local Governments Act" was created pursuant to ch. 74-192, L.O.F. The purpose of this legislation was to provide general law standards, direction and procedures for the formation and dissolution of municipalities and special districts in the state.

The Legislature subsequently enacted the "Uniform Special District Accountability Act of 1989," ch. 189, F.S., to provide general provisions for the definition, creation and operation of special districts. This legislation, ch. 89-169, L.O.F., changed the title for ch. 165, F.S., to the "Formation of Municipalities Act," and simultaneously removed provisions for special districts from this law. The chapter currently is limited to procedures for municipal incorporation.

The stated purpose of the Act is to provide standards, direction and procedures for the formation of municipalities in this state and the provision of municipal services 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>1</sup> 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.

Pursuant to s. 165.041(1)(b), F.S., a feasibility study must be completed and submitted to the Legislature 90 days before the first day of the regular session during which the bill proposing the incorporation would be enacted. The feasibility study is a survey of the proposed area to be incorporated, and is commissioned and paid for by the parties interested in the incorporation effort. 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 is required to contain the following elements:

- 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:

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<sup>1</sup> An exception to this rule exists in Miami-Dade County where the county has been granted the exclusive power to create cities through the State Constitution and its home rule powers. See, s. 165.022, F.S., and s. 6(e), Art. VIII of the State Constitution. Adopted in 1957, the Miami-Dade Home Rule Charter provides for the creation of new municipalities at section 5.05.

- 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; and
- 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 service.
- A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such 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; and
  - 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 of s.165.061, F.S. These standards require that the new municipality meet the following conditions in the area proposed for incorporation:
  - It must be compact, contiguous and amenable to separate municipal government.
  - 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 persons in counties with a population of more than 75,000.
  - 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.
  - It must be 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.
  - 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.

- In accordance with s. 10, Art. I of the State Constitution,<sup>2</sup> the plan for incorporation must honor existing solid-waste contracts in the affected geographic area subject to incorporation.

In counties that have adopted a municipal overlay for municipal incorporation pursuant to s. 163.3217, F.S., such information also is submitted to the Legislature in conjunction with any proposed municipal incorporation.

In the past, these feasibility studies have been provided to a number of state governmental entities—including the Office of the Governor, the Department of Revenue, the Office of Economic and Demographic Research, the Department of Community Affairs, and the Legislative Committee on Intergovernmental Relations—for a critical assessment to assist the Legislature in its findings. Two of the primary evaluators utilized by the Legislature—the Legislative Committee on Intergovernmental Relations and the Department of Community Affairs (DCA)—were recently abolished,<sup>3</sup> although many of the DCA functions have been transferred to other state agencies.

### **Effect of Proposed Changes**

This PCB amends ch. 165, F.S., the “Formation of Municipalities Act,” to change the deadline for submission of a feasibility study to the Legislature from 90 days before the first day of regular session to the first Monday after September 1. The earlier submission date required by the PCB will assure adequate time for review of these studies.

The PCB also deletes the following definitions from ch. 165, F.S., which are no longer applicable, as the terms previously were removed by various amendments to the Act, or were never used in the Act:

- “unit of local government,”
- “local general purpose government,”
- “service delivery,” and
- “sufficiency of petition.”

The PCB also deletes a cross reference to the deleted definition of “unit of local government,” which is currently found at s. 257.171, F.S.

Additionally, the PCB changes the requirement in a feasibility study for “the general location of territory” to “the location of territory,” indicating a greater need for specificity.

The PCB has an effective date of July 1, 2012.

### **B. SECTION DIRECTORY:**

Section 1: Amends s. 165.031, F.S., relating to definitions.

Section 2: Amends s. 165.041, F.S., relating to feasibility studies for municipal incorporation.

Section 3: Amends s. 257.171, F.S., deleting a cross-reference.

Section 4: Provides an effective date.

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<sup>2</sup> ARTICLE I, SECTION 10: Prohibited laws.—No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

<sup>3</sup> The Legislative Committee on Intergovernmental Relations, a joint committee, was not funded in the FY 2010 – 2011 General Appropriations Act, and ceased operations on June 30, 2010. The Department of Community Affairs was abolished pursuant to ch. 2011-142, L.O.F.

## 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.

### 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. The bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES