

Overview of Municipal Incorporations in Florida

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Legislative Committee on Intergovernmental Relations



EXECUTIVE SUMMARY

The Legislative Committee on Intergovernmental Relations (LCIR) has conducted an interim project which provides an overview of municipal incorporations in Florida. The purpose of this report is to provide historical context to municipal incorporations and offer suggested practices to be used in future incorporation initiatives, particularly with regard to the feasibility study and charter, both required documents for incorporation. Such suggested practices may be used within the current statutory framework.

This report builds on a 1999 interim project conducted by the LCIR in which it analyzed the state standards governing municipal incorporation. Several policy options were identified as a result of that project, with the establishment of a county-based, local boundary commission emerging as the most significant proposal. Although most of the proposals from that project did not move forward, the Legislature did adopt the recommendation in which the requirements for the statutorily mandated feasibility study were significantly expanded.

The LCIR reviews incorporation proposals at the request of the standing committees of the Legislature. Much of the analysis contained in this report is taken from the LCIR's review of incorporation proposals.

Background

The Florida Constitution and statutes address the establishment and authority of municipalities, as well as their annexation and merger.

Florida is comprised of numerous local governments, including 67 counties, 405 municipalities, 67 school boards and over 1,000 special districts. These governmental entities frequently have overlapping boundaries. However, each has its own set of governance structures and other characteristics. Municipalities, unlike counties, are not subdivisions of the state.

The first local government entities in the state were established by Provisional Governor Andrew Jackson in 1821: the counties of Escambia and St. Johns, and the cities of Pensacola and St. Augustine. When the first Constitution of the State of Florida was adopted in 1838, it made little mention of local government units. The second session of the general assembly, as the house and senate were collectively called, convened under this constitution in 1839, and passed the first state law in the nation providing for incorporation of towns by their inhabitants without further state legislative action.⁶ The next significant constitutional provision relative to local governments did not appear until 1861, when section 24 of article IV directed the general assembly to enact a general law for the incorporation of towns and prohibited incorporation of towns by special act.

As the emergence of municipalities continued, the relationship between municipalities and the state evolved. By the late 1860s, the prevailing attitude toward municipalities by state governments was that municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature.⁷ This philosophy, espoused by Iowa Supreme Court

Justice John Dillon, was followed widely throughout the nation and was referred to as *Dillon's Rule*.¹ This theory of municipal subservience to the state was the prevailing theory in the majority of states for many years. In Florida, *Dillon's Rule* was generally adhered to from the adoption of the 1885 state constitution until the late 1960's.

The 1968 Florida Constitution made a dramatic break with past treatment of municipal government and instituted a new approach referred to as *municipal home-rule*,² which is today the prevailing state policy in the United States. Under this new constitution, municipalities were granted general exercise of power for municipal purpose, *except as otherwise provided by law*.³ Florida courts were reluctant to recognize such a dramatic change, and in 1973, the Legislature enacted the *Municipal Home Rule Powers Act* to eliminate the confusion over the intended effect of the *Home Rule Amendment*. The general rule today, as recognized by the Florida courts, is that if the state has the authority to exercise a particular power, then a municipality, under its home rule authority, may also exercise that power unless it is expressly prohibited by law.

Consequently, until 1968, all local laws were made at the state legislative level through passage of a special act. This did not mean that local matters were the subject of a strong state interest. Rather, it reflected that municipalities had little or no authority. With the advent of municipal home rule, local laws were dealt with locally. However, it is of significance that incorporations continued to be handled only by the state Legislature.

Formation of Municipalities Act

In 1974, the Legislature passed the comprehensive *Formation of Municipalities Act*, Ch.165, F. S. The Act repealed all prior statutory provisions relating to the formation, organization and dissolution of municipalities and established the current exclusive provisions. Exceptions include: 1) where a county operates by a home rule charter that provides for a specific method, as explicitly authorized by the Florida Constitution and 2) incorporations in Miami-Dade County, which the Constitution grants exclusive authority over municipal incorporation to the county.

The Act's intent was to provide standards, direction and procedures for the incorporation of municipalities. The law sought to achieve: 1) orderly growth and land use 2) adequate public services 3) financial integrity in government 4) equity in fiscal capacity, and 5) fair cost distribution for municipal purposes. The general law increased the total number of state requirements for incorporation, expanded the scope of state oversight, and for the first time, established state standards governing municipal incorporation. Such standards required that a proposed municipal charter prescribe the form of government and define the responsibilities for executive and legislative functions. The law also specified that the legislative body of the municipality cannot be prohibited from exercising its powers to levy any tax authorized by the constitution or general law.

Another provision within the Act stated that a charter for incorporation of a municipality, except in the case of a merger, shall be adopted only by a special act of the Legislature after determination that the standards and requirements provided in

the law have been met. This provision made general law consistent with the 1968 constitutional revisions on creation of municipalities.

The adoption of the Act and subsequent legislation reflect a continuing interest on the state's part regarding incorporation activity. This interest, however, is balanced with the state's recognition that some matters are best left to the discretion of the local community. Incorporation proposals are initiated by local communities. In most cases, the special act establishing the municipality includes a provision that requires the measure be approved by the eligible voters within the area proposed for incorporation through a referendum. Thus, the Legislature frequently defers the final determination to the local citizenry.

The Act was not amended until 1996, at which time the Legislature amended s. 165.041, F. S., to require that a feasibility study be completed and submitted in conjunction with the incorporation bill. This was a significant step toward making the incorporation process more uniform. However, there were no guidelines or criteria for the feasibility study. Although specific requirements for the feasibility study were adopted in 1999, like the incorporation standards themselves, they are often waived.

Recent Incorporation Activity

Prior to the enactment of state standards in 1975, 386 municipalities were established, with more than one-half of those being established by 1930. Since 1975, 19 municipalities have been established, with most of the activity occurring in recent years. Fourteen out of the 19 municipalities were established between 1995-2000. It should be noted that 5 of the 19

municipalities were created by the Miami-Dade County Board of County Commissioners under the authority of the Dade County Charter; thus no state legislative review or action was necessary. Another indicator of increased interest in incorporation is suggested by the number of incorporation bills filed during recent years. Nearly one-half of the 43 proposed incorporations considered by the Legislature since 1975 were filed between 1995-2000.

Florida's new municipalities have formed in areas of the state which have traditionally attracted new residents and experienced the largest population growth, such as coastal communities. Thirteen of the 19 municipalities are located within the southernmost counties of the state. Four municipalities are also located in other coastal counties, whereas only two municipalities are in non-coastal counties.

Reasons Cited for Incorporation

Several underlying reasons are suggested for the recent increase in municipal activity. According to communities proposing municipal incorporation, these include dissatisfaction with service delivery by the county, land use and growth management concerns, the desire to have more fiscal control, a sense that representation is disproportionate to population, and political or social agendas. Incorporation can also be used as a means to stave off annexation by nearby municipalities.

Standards for Municipal Incorporation

There is little history available on the discussion that preceded passage of the Formation of Municipalities Act, Ch.74-192, L.O.F, establishing the first state standards for municipal

incorporations. However, there was apparently concern in the Legislature about the proliferation of what had proven to be relatively unviable bedroom municipalities in this state.

The standards listed in s.165.061(1), F. S., address issues of compactness, minimum population, minimum density, minimum distance from existing municipalities, and certain provisions which must be contained in the proposed charter. These standards are a reflection of the Legislature's interest in ensuring that municipalities are solvent and cohesive communities. Yet, there are generally no repercussions for failure to meet the standards and exemptions from them are common.

Under some circumstances, a special act may serve to exempt a municipality from certain statutory criteria in general law. The Legislature has frequently waived one or more of the provisions of ss. 165.041 and 165.061, F. S. Since 1975, 26 of the 62 municipal incorporation bills that have been filed regarding 34 proposed municipalities requested exemption from one or more state standards.

The Feasibility Study

Since 1996, s. 165.041, F. S., has required that communities that advocate legislation for incorporation submit a feasibility study to the Legislature for review. The feasibility study is a compilation of information that should support the conclusion that the proposed municipality will be a viable community. The information provided in early feasibility studies often lacked specificity regarding projected municipal services, service cost estimates, and revenue sources.

Not until 1999 were specific elements of the

feasibility study enumerated and codified in the law. At that time, s. 165.041, F.S., was amended to require that specific elements be included in a feasibility study. These elements are designed to inform the Legislature of whether the proposed municipality will be a viable community. Insufficient time has passed to gauge the effects of these new requirements on incorporation study proposals. However, the statutory requirements establish a logical and orderly format that could be used as the framework for future feasibility studies.

Many elements of a feasibility study cannot be met unless those seeking incorporation and county officials communicate and share information, particularly as it relates to service delivery. If the feasibility study states the county will continue providing certain services via a contract with the new municipality, in the absence of an agreement between the county and the new municipality, such as a Letter of Intent, such an outcome is uncertain. The fiscal conclusions offered by incorporation proponents should be based on the most reliable and comprehensive information possible.

Some feasibility studies fail to address potential problems such as how the municipality will deal with anticipated growth. Or, growth may be acknowledged, but no means for raising sufficient revenue to provide adequate services are identified in the city's five year plan.

The Charter

Since 1974, Florida law has required that a proposed charter is prepared in bill form and submitted to the Legislature. The charter is the document by which the municipality will govern itself and operate.

Although the charter sets the framework for the city's governance, there are only two statutorily required characteristics for a proposed charter under s. 165.061, F.S. First, the charter must describe the form of government that will be used by the municipality. Second, the charter cannot prohibit the legislative body of the municipality from exercising certain taxing powers. With little guidance yet much flexibility given to the drafters, as many contingencies as possible must be considered in preparing the charter. Shortcomings or omissions in the charter may give rise to problems later.

There are several resources for groups to utilize when drafting a charter, such as the Florida Municipal Officials Handbook, published by the Florida Institute of Government, and the Model Charter published by the National Civic League. Also, the House Committee on Community Affairs publishes annually the Local Bill Policies and Procedures Manual. This publication provides guidance regarding incorporation, annexation, merger and other local government formation matters.

Currently, chapter laws codifying municipal incorporation bills are not available electronically, which may impede research efforts. The Florida Legislature's Office of Legislative Services, Division of Statutory Revision, publishes a hard copy Index to Laws of Florida Special and Local Laws. The Index is searchable only by the municipality's name, however.

Basic Forms of Municipal Government

Florida law requires a proposed municipal charter to prescribe the form of government and clearly define the responsibility for legislative and executive functions. There are five basic forms of municipal government: Council-Weak Mayor

Form, Council-Strong Mayor Form, Commission Form, Council-Manager Form, and City-County Consolidation, such as in Jacksonville-Duval County. In Florida, the council-manager is currently the most common form of municipal government form. Regardless of which form of government is selected, it is incumbent on the drafters of the proposed charter to ensure clarity and thoroughness regarding the officials' powers, responsibilities and duties.

Financial Procedures

Under s. 165.061(1)(e)2, F.S., a new municipality must have a proposed charter which does not prohibit the legislative body of the municipality from exercising its powers to levy any tax authorized by the Constitution or general law. This provision has occasionally caused problems when a municipality seeks to limit its taxing authority as a means of making incorporation palatable to citizens.

Other issues arise when a new municipality seeks to establish its eligibility for revenue sharing under the Florida Revenue Sharing Act of 1972, Ch. 218, Part II, F.S., which sets forth the conditions and mechanisms under which local governments share in certain revenues. First, the municipality must show it has made at least a nominal taxing effort before it can participate in revenue sharing. Second, because some of the statutory provisions do not distinguish between existing and newly established municipalities when determining eligibility, the new cities are not able to meet certain criteria. Thus, it is often stated in the proposed charter that the new city is exempt from these provisions, which creates an inconsistency with general law. Some of the inconsistencies in the statutes pose administrative difficulties for the Department of Revenue, which administers the revenue sharing process for the state.

The statutes dealing with revenue sharing and other fiscal matters have been identified by the Department of Revenue as perhaps benefiting from technical amendments. Regardless of whether the statutes are clarified in the future, there are practical steps charter drafters can take to avoid potential problems. These steps include paying close attention to the dates that would affect their eligibility for revenue sharing, stating the formula under which they are eligible for certain tax revenues, and ensuring that the proposed municipality has a true grasp of its projected revenues and expenditures.

Elections

All elections must comply with the federal Voting Rights Act of 1965, as amended. There are currently no specific standards or feasibility study elements regarding voting that tie in directly to the establishment of a new municipality. Because voting structure must be determined based on the demographics of the individual local government, it would not be in the state's best interests to mandate at-large elections over single member districts. Charter drafters may wish to declare in the charter that the nuances of the specific area have been considered, and that the new municipality shall conform to all state and federal election laws. This will alert the Legislature that the drafters are cognizant of the law, and have integrated the particulars of the new municipality with all legal requirements.

Also, incorporation usually is contingent on the results of a local referendum in favor of incorporation. The language regarding the referendum must be carefully crafted in order to avoid litigation on the referendum results.

Planning and Growth Management

When a community incorporates, the

comprehensive plan of the county is the controlling document until the municipality adopts its own comprehensive plan pursuant to Ch. 163, Part II, F.S., and it is approved by the state. The Department of Community Affairs has recently taken a more pro-active role in facilitating better intergovernmental communication, cooperation and coordination. Despite the inroads made, more attention should be focused on finding and implementing innovative approaches to coordinating growth management issues among all affected local governments and water management districts.

Transition Issues

It is critical for new municipalities to have comprehensive transition language in their charters. Citizens must know who will be providing sewer services. Developers must be able to know where to go when applying for permits. Transitional issues are challenging because several areas are left up to interlocal agreements between the municipality and the county. However, until the new municipality is incorporated and there is a governing body, there is no entity with whom the county can enter an interlocal agreement.

Because there is no entity in existence which can speak for, or contract on behalf of, a community not yet incorporated, it may add legitimacy to the city's proposed budget if the citizen group advocating for incorporation provides written indication that it is working with the county or other affected local government to plan for and resolve service delivery issues. This indication could be in the form of a Memorandum of Understanding between the group and the other local government.

Recommendations

In the course of this project, certain areas of the incorporation process were identified as problematic, particularly the charter. The following suggestions regarding charter drafting are offered:

, Place charter provisions in a distinct section of the special act, with non-charter matters in other easily defined sections.

, Clearly define the form of municipal government, and state the officials' powers, responsibilities and duties.

, Be consistent regarding the date on which the municipality is officially established and the date the municipality will be eligible for revenue sharing. Simplify to the extent possible the fiscal administration of the municipality, taking into consideration the state fiscal cycle. Specify the formula that will be used to determine the municipality's share of Local Government Infrastructure Surtax of the Small County Surtax revenues. Consider what fiscal resources are genuinely available and do not paint an unrealistic financial picture.

, State affirmatively that the municipality shall abide by all state and federal election laws, and make sure that proposed referendum language is unambiguous.

, Explore intergovernmental relationships in service delivery and growth management matters, including land use, housing and other aspects that can be coordinated with the county and neighboring jurisdictions.

, Research successes and failures of preceding municipal incorporation efforts, and review existing municipal charters.

Conclusion

By setting forth in statute specific standards that must be met prior to incorporation, the state has clearly indicated that it has an interest in the vitality and viability of its municipalities. However, in granting exemptions to those standards, and recognizing the value of local discretion in incorporation initiatives, the state engages in an ongoing exercise of ensuring its interests are met while balancing a policy of local control. It remains an open question as to whether the standards relating to the establishment of municipal incorporations serve their stated purposes or have led to better local governance.

Community groups interested in municipal incorporation are urged to consider the suggestions above and to explore and take advantage of a variety of available resources. Reviewing feasibility studies and draft charters of predecessors, bill analyses and relevant caselaw, will offer a clearer vision of the future to the community's citizens. Further, incorporation advocates may wish to consider any impact, fiscal or otherwise, that incorporation may have on other municipalities in the area, the county, the region and the state as a whole. Examining the potential effect on others that a new municipality may have, will lead to better cooperation, coordination, and understanding among neighboring jurisdictions.

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ATTACHMENTS:

- Attachment A - Establishment of Florida's Municipalities by Year
- Attachment B - Municipal Incorporation Standards in Other States
- Attachment C - Chapter 96-542, Laws of Florida, House Bill 2633
- Attachment D - Fiscal Impact of a New Municipality on Other Local Governments
- Attachment E - Chapter 2000-383, ' ' 7 and 8, Laws of Florida, House Bill 565

INTRODUCTION

The Legislative Committee on Intergovernmental Relations (LCIR) determined to conduct an interim project in which municipal incorporation in Florida was examined. The report builds on a 1998 interim project conducted by the LCIR in which the LCIR reviewed the state standards governing municipal incorporation. Several policy options were identified as a result of that project, with the establishment of a county-based, local boundary review commission emerging as the most significant proposal. Although this and other recommendations from that project did not go forward, one recommendation of the study was enacted into law. The requirements for the statutorily mandated feasibility study were significantly expanded. This report focuses on improvements to the incorporation process within the existing statutory framework.

Florida is comprised of many local governments, often with overlapping boundaries, but each with its own governance structure and other characteristics. Florida is currently home to more than 1,000 special districts, 67 county governments, 67 school boards and 405 municipalities. Whereas the last time a new county was formed was in 1925 when Gilchrist County was established, the newest municipality adopted its charter in December, 2000. The small number of county formation activities can be contrasted with a marked increase of proposals for municipal incorporation, particularly in the last decade.

In accordance with general law, two documents are required to be submitted by those wishing to incorporate: the feasibility study and the proposed municipal charter. The feasibility study, which must address specific issues set forth in statute, is a tool to help the Legislature determine if the new municipality will be viable. The proposed charter, written in bill form and enacted as a special act, lays the framework for the governance of the new municipality. Although Florida statutes set out certain procedures and requirements for municipal incorporation, the process is essentially a community-based one. Citizen groups pursuing incorporation often hire consultants to assist in the preparation of the statutorily required feasibility study and proposed municipal charter. A review of these documents reflects notable disparities in the content and thoroughness of the documents.

Traditionally, the feasibility study and proposed charter are reviewed by the Florida House Committee on Local Government and Veterans= Affairs and other governmental entities, including the LCIR. Various feasibility studies and proposed charters from successful and unsuccessful incorporation efforts have been reviewed as part of this interim project, as have been numerous bill analyses prepared by the House Committee on Local Government and Veterans= Affairs. LCIR staff also solicited input for this project from the Florida Department of Community Affairs, Department of Revenue, Department of Transportation, the Florida League of Cities, the Florida Association of Counties, local governments and other legislative staff.

This report will address five primary areas relative to municipal incorporation. The first three sections of the report focus on background information and include: the legal history of municipal incorporations; recent incorporation activity; and state standards for incorporation. The remaining two sections shift the focus to the critical incorporation documents, the feasibility study and the charter. The report concludes with specific suggestions on how to avoid potential problems related to the municipal charter.

I. LEGAL HISTORY

The legal history of municipal incorporations in Florida began years before Florida was admitted to the Union in 1845. Provisional Governor Andrew Jackson established the first local government entities in the state when Florida became a Territory in 1821.¹ Jackson's ordinance established the counties of Escambia and St. Johns, and also recognized the cities of Pensacola and St. Augustine.

A. Constitutional History

The first Constitution of the State of Florida of 1838 made little mention of local government units. The second session of the general assembly, as the house and senate were collectively called, met in 1839, and made history in passing the first state law providing for incorporation of towns by their inhabitants without further state legislative action.² The law established population and notice requirements, and allowed incorporation if a majority of the eligible voters of the town were in favor of incorporation. This law was passed in conjunction with general incorporation procedures for societies and other companies, seeming to equate the municipal incorporation with that of other more commonly incorporated entities.

The next significant constitutional provision relative to local governments did not appear until 1861. Section 24 of article IV directed the general assembly to enact a general law for the incorporation of towns and prohibited incorporation of towns by special act.³

As the emergence of municipalities continued, the relationship between municipalities and the state evolved. By the late 1860s, the prevailing attitude by the states towards municipalities was that espoused by Chief Justice John F. Dillon of Iowa, who held in an Iowa Supreme Court case:

Municipal Corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the State, and the corporations could not prevent it. We know of no limitation on this right so far as the corporations are concerned. They are, so to phrase it, the mere tenants at will of the legislature.⁴

¹ Ordinances of Major General Andrew Jackson, 25 F.S.A. 305-307 (1970).

² See Ch. 84, ' ' 1-21 [1846] Fla. Laws 28-33; Thompson's Digest, 2d div., title VIII, ch. 2 (1847).

³ Fla. Const. art. IV, ' 24 (1861).

⁴ *City of Clinton v. Cedar Rapids and Missouri River R.R. Co.*, 24 Iowa 455, 475 (1868).

Judge Dillon's philosophy that municipalities' power was limited to that expressly granted by the Legislature was followed widely throughout the nation and was generally referred to in later years as "Dillon's Rule."⁵ This theory of municipal subservience to the state was the prevailing theory in the majority of states for many years; some states still follow Dillon's Rule. In Florida, Dillon's Rule was generally adhered to from the adoption of the 1885 state constitution until the late 1960's.⁶

Under the constitution of 1885, local government issues had elevated to a position of such importance as to require a completely separate constitutional article.⁷ For the first time, a Florida constitution had addressed the question of creation and existence of counties. Article VIII recognized existing counties as "the legal political divisions of the State,"⁸ and granted the Legislature power to establish and abolish municipalities and to prescribe their jurisdiction and powers.⁹ The Legislature possessed absolute power over both cities and counties, and in this respect, the status of these entities was equal, except that the Legislature was not given the power to abolish existing counties. Cities and counties were regarded as extensions of the state, without any inherent powers, possessing only those powers granted them by the Legislature.¹⁰

In 1934, an amendment to article III, section 24 of the Florida Constitution, required the Legislature to establish a uniform system of county and municipal government, except where inconsistent with local or special laws for counties.¹¹ The amendment also directed the Legislature to enact a general law that would classify cities and towns according to population, and provide for their incorporation, government, jurisdiction, powers, duties and privileges under such classifications. Moreover, the amendment reiterated and expanded upon existing constitutional provisions that prohibited incorporation of cities or towns through special or local laws. The amendment possessed potential significance for the development of municipal government in Florida, but it was effectively nullified by a subsequent decision of the Florida Supreme Court. The court held that the prohibitions on special and local laws were not self-executing and were therefore inoperative, since the Legislature had not enacted a general law classification scheme as directed.¹²

⁵ John Dillon, The Laws of Municipal Corporations, Sec. 55 (1st ed. 1872).

⁶ *City of Boca Raton v. State*, 595 So.2d 25, 27 (Fla. 1992) (citations omitted).

⁷ Fla. Const. art. VIII (1885).

⁸ *Id.* at * 2.

⁹ *Id.* at * 8.

¹⁰ *See Masters v. Duval County*, 114 Fla. 205, 210, 154 So. 172, 174, *cert. denied*, 293 U.S. 559 (1934).

¹¹ Senate Joint Resolution No. 582 [1933], Laws of Florida 881.

¹² *See State ex. rel. Matthews v. Alsop*, 120 Fla. 628, 163 So. 80 (1933).

Another constitutional amendment brought an end to the longstanding rule from a court decision¹³ that allowed passage of special legislation relating to municipalities without compliance with the special notice-referendum procedural requirements. In 1938, an amendment to article III, section 21, brought special and local laws relating to municipalities within these requirements, by adding a specific reference to Any local or special law establishing or abolishing municipalities, or providing for their government, jurisdiction and powers, or altering or amending the same to the provision establishing this requirement for other special and local bills.¹⁴

B. Home Rule in Florida

1. The Move Away from Dillon's Rule

Before the 1968 constitutional revisions, Florida law severely restricted a city's ability to exercise the powers of local self-governance. The 1885 Florida Constitution stated that A[t]he Legislature shall have the power to establish . . . municipalities . . . to prescribe their jurisdiction and powers, and to alter or amend the same at any time.¹⁵ Municipalities could possess and exercise only those powers expressly granted by the Legislature or those implied in or incidental to the powers expressly granted, and those powers essential to the declared purposes of the municipality.¹⁶

A modest attempt at granting home rule authority came in 1915, in a general law chapter on municipal charter amendment, a grant that was limited in scope to modification of local government structures, election procedures, and mode of exercise of existing powers.¹⁷ The court interpreted the intent of the Legislature to allow cities to change their form of government, but not to enlarge their corporate powers beyond the limitations prescribed by law.¹⁸

The next movement toward establishment of home rule was the adoption of a new article VIII, section 11 of the 1885 constitution in 1956, authorizing the electors of Dade County to Aadopt, revise, and amend from time to time a home rule charter government for Dade County.¹⁹ In 1957, the people of Dade County approved a home rule charter establishing a metropolitan government.

¹³ See *State ex rel. McQuaid v. County Commrs*, 23 Fla. 483, 3 So. 193 (1887).

¹⁴ Senate Joint Resolution No. 81 [1937], Laws of Florida 1387.

¹⁵ Fla. Const. art. VIII, ' 8 (1885).

¹⁶ See *Liberis v. Harper*, 104 So. 853, 854 (Fla. 1925).

¹⁷ Law of June 4, 1915, Ch. 6940, ' ' 1-15 [1915] Fla. Laws 312-18.

¹⁸ See *Pursley v. City of Ft. Myers*, 87 Fla. 428, 430, 100 So. 366, 367 (1924).

¹⁹ Fla. Const. art. VIII, ' 11 (1956).

The approval of the 1968 Florida Constitution signified perhaps the most dramatic break with past treatment of municipal government and instituted a new approach referred to as *municipal home-rule*, which is today the prevailing state policy in the United States. Florida's Municipal Home Rule Amendment to the Florida Constitution reflected a fundamental change in the exercise of municipal power in the state. With this amendment, municipalities were granted general exercise of power for municipal purpose, except as otherwise provided by law.²⁰ Florida courts were reluctant to recognize such a dramatic change, and in 1973, the Legislature enacted the Municipal Home Rule Powers Act to eliminate the confusion over the intended effect of the Home Rule Amendment.²¹ The general rule today, as recognized by the Florida courts, is that if the state has the authority to exercise a particular power, then a municipality, under its home rule authority, may also exercise that power unless it is expressly prohibited by law.²²

2. Limitations to Home Rule Authority in Florida

Initially, express limitations to home rule authority were limited to those found in the Florida Constitution, and county and municipal charters and ordinances. Additional limitations have been added by the judiciary in construing the application of the *expressly prohibited by law* provision contained in Ch. 166, F.S., by preempting home rule authority on certain subjects. Other limitations have been added by various state agencies in their interpretation of statutory authority delegated to them by the state. Collectively, these entities have restricted the reach of home rule authority as envisioned in the 1968 Florida Constitution.

There are four basic sources of limitations on home rule authority. The first type of limitation can be found in municipal and county charters and ordinances. Both the governing body by ordinance, and its citizens by petition initiative, can require a referendum and thus place self-imposed limitations on their own home rule authority.²³ In non-charter counties, counties have only the authority given them by general and special law and cannot preempt the municipal home rule authority of cities within that county. In contrast, charter counties can exercise home rule authority. Currently, seventeen of Florida's sixty-seven counties have been organized as *charter counties* through adoption of a county charter by its electors of the county in a special election.²⁴ There may also be constitutional limitations on municipalities' home rule powers. For example, article VIII, section 2(c) of the Florida Constitution, preempts to the Legislature the power to change a municipality's boundaries or cause it to be annexed by a neighboring community, by general or special law.²⁵ Dade County

²⁰ Fla. Const. art. VIII, ' 2(b).

²¹ Ch. 166, F. S. (1973).

²² See *City of Ocala v. Nye*, 608 So.2d 15 (Fla. 1992).

²³ S. 166.021, F.S. (1999).

²⁴ Florida's charter counties are Alachua, Brevard, Broward, Charlotte, Clay, Jacksonville/Duval (consolidated), Hillsborough, Lee, Miami-Dade (by the state constitution), Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Volusia.

²⁵ Fla. Const. art. VIII, ' 2(c).

has a constitutional exception to this rule. The most important constitutional limitation is Article VII, section 1(a), which preempts most taxing power exclusively to the state. The only substantial tax which municipalities are authorized to levy is the ad valorem tax, also known as property tax,²⁶ and municipalities must depend on these, along with state-shared revenues and service charges, as their major sources of revenue.

The third and most obvious statutory limitation to home rule authority is found in section 166.021(1), F.S., which states that A[a]s provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.@ The State Legislature can restrict a municipality's home rule authority by general law, and the courts have upheld this authority.²⁷ A municipal ordinance must give way to state law to the extent the ordinance conflicts with state law, and a municipality's power to regulate in a particular area may be entirely or partly preempted by general law.²⁸

Judicial limitations on municipal home rule constitute the fourth class of limitations. Courts use a two-tier test to determine whether a municipal ordinance is a valid exercise of home rule authority.²⁹ This test examines (a) whether the action is undertaken for a municipal purpose, and (b) whether that action is expressly prohibited by the constitution, general or special law, or by the county or municipal charter. The A municipal purpose@ portion of the test has been interpreted to include all activities essential to the health, morals, protection, and welfare of the municipality.³⁰

C. Formation of Municipalities Act

In 1974, the Legislature passed the comprehensive Formation of Municipalities Act, Ch. 165, F.S. The Act repealed all prior statutory provisions relating to the formation, organization and dissolution of municipalities. It also established the current exclusive provisions, except where a county operates by a home rule charter that provides for a specific method, as explicitly authorized by the Florida Constitution.³¹ This general law increased the total number of state requirements, expanded the scope of state oversight, and for the first time, established state standards governing municipal incorporation. The Act reflects the state's efforts to distinguish

²⁶ *Id.* at art. VII, ' 9(b).

²⁷ See *City of Miami Beach v. Frankel*, 363 So.2d 555, 557 (Fla. 1978); *City of Miami Beach v. Rocio Corp.*, 404 So.2d 1066, 1069 (Fla. 3d DCA 1981).

²⁸ See *Frankel* at 557.

²⁹ See *City of Boca Raton v. Gidman*, 440 So.2d 1277, 1280 (Fla. 1983).

³⁰ See *State v. City of Jacksonville*, 50 So.2d 532, 535 (Fla. 1951).

³¹ Ch. 74-192, L.O.F. (1974).

between those activities that are genuinely local in nature, and those in which the state has an important role. The standards enumerated in the Act include:

- < requiring that the area to be incorporated be compact and contiguous
- < increasing the minimum population requirements
- < establishing density requirements of 1.5 persons per acre in the area proposed for incorporation
- < requiring a minimum two mile distance between the boundary of the proposed municipality and any existing municipalities within the same county

Additional requirements include a proposed municipal charter that prescribes the form of government, defines the responsibilities for executive and legislative functions, and does not prohibit the legislative body of the municipality from exercising its powers to levy any tax authorized by the constitution or general law.

Another provision within the Act provided that a charter for incorporation of a municipality, except in the case of a merger, shall be adopted only by a special act of the Legislature after determination that the standards and requirements provided in the law have been met. This provision made general law consistent with the 1968 constitutional revisions on creation of municipalities.

In 1996, the Legislature amended the Formation of Municipalities Act by adding the requirement that a feasibility study be completed and submitted in conjunction with a proposed special act for the enactment of the municipal charter.³² This requirement codified the standing general policy of the Florida House of Representatives Committee on Community Affairs.³³

As of 1996, elements required in the feasibility study included:

- 1) quantitative analysis that incorporation is necessary and financially feasible
- 2) evidence to support the conclusion that alternatives to incorporation are insufficient
- 3) evidence that the proposed municipality meets the requirement for incorporation pursuant to s. 165.061, F.S.
- 4) in counties that have adopted a municipal overlay for municipal incorporation pursuant to s. 163.3217, F.S., a copy of the overlay is to be submitted to the Legislature in conjunction with the required documents regarding the proposed incorporation.

³² Ch. 96-416, ' 8, L.O.F. (1996); s. 165.041, F.S.

³³ Florida House of Representatives, Committee on Community Affairs, 1995 Florida Local Government Formation Manual, 4th ed., at 2-4 B 2-7.

Legislative changes were made in 1999, including the requirement that the feasibility study be submitted to the Legislature ninety days before the first day of the regular session of the Legislature during which the municipal charter would be enacted³⁴. These changes will be discussed in Part IV of this report.

D. A Municipality Defined

The word A municipality can be defined in many ways. Although A municipality is often used interchangeably with A city, urban character should not be read into the use of the term. An encyclopedic definition looks to the creation and powers of a municipality, rather than what constitute its unique characteristics:

Municipality, in U.S. law, [is a] public corporation created by a state and under its legislative control. Until recently municipal corporations were formed by a special charter designating specific powers. Now, however, they may be formed under general Statutes. Among the more important provisions in a charter and the general laws of a municipality are those that give a municipality the power to tax and the power to pass ordinances effective as law for the protection of the public health, safety, morals, and general welfare. The rate of taxation that a municipality may levy is limited in many states by the municipal charter or the state constitution or Statutes. Among other rights that may be granted under a charter are the power to sell bonds or notes, to award franchises, to acquire property, to construct public improvements, and to operate public utilities.³⁵

The Florida Constitution serves as the foundation for the establishment of municipalities, as well as related matters such as annexation and merger. Section 2, Art. VIII provides:

SECTION 2. Municipalities.C

(a) **ESTABLISHMENT.** Municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, provision shall be made for the protection of its creditors.

(b) **POWERS.** Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

(c) **ANNEXATION.** Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.

Section 6, Art. VII further provides in relevant part:

³⁴ Ch. 99-378, ' 11, L.O.F. (1999).

³⁵ Microsoft Encarta Online Encyclopedia, 2000, at <http://encarta.msn.com>

SECTION 6. Schedule to Article VIII.C

(a) This article shall replace all of Article VIII of the Constitution of 1885, as amended, except those sections expressly retained and made a part of this article by reference.

(b) COUNTIES; COUNTY SEATS; MUNICIPALITIES; DISTRICTS. The status of the following items as they exist on the date this article becomes effective is recognized and shall be continued until changed in accordance with law: the counties of the state; their status with respect to the legality of the sale of intoxicating liquors, wines and beers; the method of selection of county officers; the performance of municipal functions by county officers; the county seats; and the municipalities and special districts of the state, their powers, jurisdiction and government.

Under Florida Statutes, municipality is defined as a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution.³⁶ The cited sections of the state Constitution do not offer much more in the way of describing a municipality, but instead explain the establishment, abolishment and authority of municipal government.

The state constitution is more explicit regarding the formation and powers of county governments.³⁷ And, the geographical boundaries of counties are clearly set under general law.³⁸ Although there have been 31 changes in county boundaries since 1925³⁹, the number of counties has not changed since that time. Conversely, there are no limits on the number of municipalities that can be established and municipal boundaries change continuously through annexation, dissolution, incorporation or merger. Counties were created as political subdivisions of the state to serve administrative purposes and to provide the machinery by and through which the powers of the state are exercised,⁴⁰ whereas municipalities are considered under Florida caselaw to be legal entities exercising independent governmental functions and public authority.⁴¹ They are organized by their citizens and reflect the citizenry's vision of local governance.

³⁶ S. 165.031(4), F.S.

³⁷ Fla. Const. art. VIII, ' 1.

³⁸ Ch. 7, F.S. (1994).

³⁹ Florida House of Representatives, Committee on Community Affairs, Florida Local Government Formation Manual, 1999, p.5.

⁴⁰ See *Keggin v. Hillsborough County*, 71 So. 372 (Fla. 1916).

⁴¹ See *City of Tampa v. Easton*, 198 So. 753, 754 (Fla. 1940).

II. RECENT INCORPORATION ACTIVITY

Municipal incorporation is a multi-step process. Once the Legislature passes a special act regarding the incorporation, most of such special acts traditionally have required that a referendum be held at the local level, thus giving the voters the final word on whether the municipality will be established. Table 1 indicates an increase in incorporation activity in the last decade. Yet, as Table 2 shows, passage of the special act by the Legislature is no guarantee that the voters will support incorporation.

A. Trends in the number of municipal incorporations and the dates established

1. Increase in Activity

A review of the dates for municipal formations in Florida, as noted in Table 1, indicates that 386 municipalities, approximately 95 percent of the state's 405 municipalities, were established prior to the establishment of state standards in 1975, with the remaining 19 municipalities established following enactment of the standards. Establishment of Florida's municipalities by year can be seen in **Attachment A**.⁴²

Fourteen of the 19 municipalities established after the enactment of the standards occurred between 1995-2000. (It should be noted that 5 of these 19 new municipalities were created by the Miami-Dade County Board of County Commissioners under the authority of the Dade County Charter, thus no legislative review or action was necessary.)

Another indicator of increased interest in incorporation is suggested by the number of incorporation bills filed during recent years. A review of these bills presented in **Table 2** indicates that nearly one-half (20) of the 43 proposed incorporations considered by the Legislature since 1975 were filed between 1995-2000.

⁴² The State of Florida Auditor General recently recommended that the Legislature consider enacting legislation, if cost effective, to officially dissolve 19 inactive municipalities created by special acts of the Legislature. Report No. 01-075, *Performance Audit of the State of Florida Local Government Financial Reporting System*. December, 2001.

TABLE 1
Formation of Florida Municipalities by Decade since 1821

Time Period	# of Municipal Incorporations
1821 - 1829	7
1830 - 1839	3
1840 - 1849	1
1850 - 1859	4
1860 - 1869	2
1870 - 1879	10
1880 - 1889	30
1890 - 1899	12
1900 - 1909	33
1910 - 1919	39
1920 - 1929	85
1930 - 1939	10
1940 - 1949	30
1950 - 1959	70
1960 - 1969	44
1970 - 1974	6
<i>Subtotal 1821 - 1974</i>	386
1975 - 1979	0
1980 - 1989	3
1990 - 2000	16
<i>Subtotal 1975 - 2000</i>	19
TOTAL	405

Note: This list reflects only those municipalities currently in existence. Municipalities that have been dissolved (such as Gulfview in 1997) are not included.

Compiled by the Legislative Committee on Intergovernmental Relations (revised January 2001)

TABLE 2
Legislative and Local Referenda on Proposed Municipal Incorporation 1975-2000

Municipality	Year	Exemption Requested	Bill Passed	Referenda Passed	County
Warrington	1975	No	Yes	No	Unknown
Marco Island	1980	No	Yes	No	Lee
	1982	No	Yes	No	Lee
	1984	No	No	N/A	Lee
	1986	No	Yes	No	Lee
	1990	No	Yes	No	Lee
	1993	No	Yes	No	Lee
	1997	No	Yes	Yes	Lee
Destin	1982	No	Yes	No	Okaloosa
	1984	Yes	Yes	Yes	Okaloosa
Ft. Myers Beach ⁴³	1982	No	Yes	No	Lee
	1986	No	Yes	No	Lee
	1995	No	Yes	Yes	Lee
Ft Myers Beach w/ Pelican Bay	1995	Yes	No	N/A	Lee/Collier
Pelican Bay	1991	Yes	No	N/A	Collier
	1995	Yes	No	N/A	Collier
Pelican Bay w/ Ft. Myers Beach	1995	Yes	No	N/A	Collier/Lee
Jacob City	1983	No	Yes	Yes	Jackson
Big Pine	1984	No	No	N/A	Monroe
Halifax Area	1985	No	Yes	No	Volusia
Spring Hill	1986	No	Yes	No	Hernando

⁴³ During the 1995 Legislative Session, multiple bills were filed in an effort to incorporate the area of Ft. Myers Beach and the neighboring area, Pelican Bay.

Municipality	Year	Exemption Requested	Bill Passed	Referenda Passed	County
Midway	1986	Unk*	Yes	Yes	Gadsden
Deltona Lakes	1987	Yes	Yes	No	Volusia
Silver Spring Shores	1990	Yes	No	N/A	Marion
	1992	Yes	No	N/A	Marion
Deltona	1990	Yes	Yes	No	Volusia
	1995	Yes*	Yes	Yes	
DeBary	1993	Yes*	Yes	Yes	Volusia
Port LaBelle	1994	Yes	Yes	No	Glades/Hendry
Wellington	1995	Yes	Yes	Yes	Palm Beach
Weston	1996	Yes	Yes	Yes	Broward
Islamorada	1997	Yes	Yes	Yes	Monroe
Suntree	1997	Yes	Yes	No	Broward
Ponte Vedra Beach	1998	Yes	Yes	No	St. Johns
Southport	1999	Yes	Yes	No	Bay
Palm Coast	1999	Yes	Yes	Yes	Flagler
Bonita Springs	1999	Yes	Yes	Yes	Lee
Marathon	1999	Yes	Yes	Yes	Monroe
Key Largo	1999	Yes	Yes	No	Monroe
Paradise Islands	2000	Yes	Yes	No	Monroe
Lower Keys	2000	Yes	Yes	No	Monroe
Southwest Ranches	2000	Yes	Yes	Yes	Broward

<u>Municipality</u>	<u>Year</u>	<u>Exemption Requested</u>	<u>Bill Passed</u>	<u>Referenda Passed</u>	<u>County</u>
Pensacola Beach	2000	Yes	No	N/A	Escambia
New City	2000	Yes	No	N/A	Broward
TOTAL:		YES: 27	YES: 34	YES: 15	
		NO: 16	NO: 10	NO: 19	
		UNKN: 1	N/A: 0	N/A: 10	
Total	44	44	44	44	

* State standard exempted without record of request for exemption.

Source: Material provided by staff from House Committee on Community Affairs, select local bills, select local acts, and Florida LCIR.

2. Location of Incorporation Activity

Florida's new municipalities have formed in the areas of the state which have traditionally attracted new residents and experienced the largest population growth. Florida coastal communities, and in particular those communities located in south Florida, have experienced more incorporation activities since 1975 than elsewhere in the state. A review of these new municipalities indicates that 13 of the 19 new municipalities were incorporated within the southern most counties of the state (Monroe, Miami-Dade, Broward, Palm Beach and Lee Counties). Four municipalities are also located in other coastal counties: Destin in Okaloosa County; Palm Coast in Flagler County; and DeBary and Deltona in Volusia County, whereas only two municipalities (Jacob City and Midway) formed in non-coastal counties (Jackson and Gadsden, respectively). The areas of the state that have experienced incorporation activities since 1975 are identified by county in **Table 3** and geographically displayed on the accompanying map.

The formation of new municipalities in the more heavily populated areas of the state is consistent with the higher rate of requests for exemption from the 2-mile limit standard noted later in this report. In addition to housing the majority of Florida's residents, coastal counties also contain the majority of Florida's municipal governments. For example, approximately one of every three Florida residents (4,659,187) and one of every four municipalities in Florida (96 municipal governments) is located in Broward, Miami-Dade, or Palm Beach County.⁴⁴

⁴⁴ *Florida Estimates of Population 1999*, Bureau of Economic and Business Research, University of Florida, February 2000.

TABLE 3
New and Proposed Municipal Incorporation By County: 1975-2000

County	Incorporation Bills Filed	Incorporations Created	Incorporation Activities Undertaken
Lee	3	3	Ft. Myers Beach (3 tries) passed 1995; Marco Island (7 tries) passed 1997; Bonita Springs passed 1999
Collier	1	0	Pelican Bay (2 tries) failed 1991 and 1995
Lee/Collier	1	0	Ft. Myers Bch merge with Pelican Bay failed 1995; Pelican Bay merge with Ft. Myers Bch failed 1995
Monroe	6	2	Big Pine failed 1984; Islamorada passed 1997; Marathon passed 1999; Key Largo failed 1999; Paradise Island failed 2000; Lower Keys failed 2000
Volusia	4	2	Halifax failed 1985; Deltona Lakes failed 1987; DeBary passed 1993; Deltona (2 tries) passed 1995
Broward	4	2	Weston passed 1996; Suntree failed 1997; New City failed 2000; Southwest Ranches passed 2000
Okaloosa	1	1	Destin (2 tries) passed 1984
Jackson	1	1	Jacob City passed 1983
Palm Beach	1	1	Wellington passed 1995
Flagler	1	1	Palm Coast passed 1999
Gadsden	1	1	Midway passed 1986
Escambia	2	0	Warrington failed 1975; Pensacola Beach failed 2000
Marion	1	0	Silver Springs Shores (2 tries) failed 1990 and 1992
Hernando	1	0	Springhill failed 1986
St. Johns	1	0	Ponte Vedra Beach failed 1998
Bay	1	0	Southport failed 1999
Glades/Hendry	1	0	Port LaBelle failed 1994
Total	31	14	
Miami-Dade		5	Key Biscayne created 1991; Aventura created 1995; Pinecrest created 1995; Sunny Isle Beach created 1997; Miami Lakes created 2000.

Source: Legislative Committee on Intergovernmental Relations, November 2000.

B. Reasons Cited for Incorporation

Several underlying reasons are suggested for this increase in municipal related activity. According to proponents of municipal incorporation, citizens feel the local county government is either doing something undesirable *to* them, or that the local county government is failing to do something *for* them.⁴⁵ Incorporation can also be used as a means to preclude being annexed by nearby municipalities.⁴⁶ Although Broward County explicitly supports increased municipal incorporation, in general, it is reported that most counties do not find further municipal incorporation desirable.

1. Service Delivery

Based on a review of various incorporation proposals and feasibility studies, citizens often comment that service delivery levels are unacceptable or too costly. Traditionally, municipalities provide services such as solid waste management, water and sewer facilities, cable TV franchises, parks and recreation, and road maintenance. These and other services can be contrasted with traditional county functions such as financial and administration services, judicial, comprehensive planning, law enforcement, welfare, and other services.⁴⁷ A municipality may establish a local police force, or it may continue to have public safety handled by the county sheriff through local agreement, as is often done in Broward County. Municipal public safety activities are considered to augment, not replace, county law enforcement powers.⁴⁸ When a community senses it is receiving poor or no services in those areas where it could assert control if incorporated, it may consider municipal incorporation as a viable option.

2. Land Use and Growth Management

When citizens seek more control over growth management and land use developments, municipal incorporation may be the mechanism to achieve that control. Reportedly, a primary motivator for citizens in Midway to incorporate in 1986 was to preclude the construction of a petroleum pipeline terminal in that area. The citizens also determined that they would increase their opportunities for securing housing and community development grants if they were incorporated. Efforts to achieve their goals failed, and municipal incorporation was used to gain some degree of self-determination.

Citizens may support incorporation as a means of avoiding development either by the county, or annexation by a neighboring city. The Southwest Ranches community in Broward County sought to preserve the *country* nature of the area and felt that only by controlling its own development could the community avert annexation

⁴⁵ Interview with Florida League of Cities staff, September 13, 2000.

⁴⁶ For more information concerning annexation, see Ch. 171, F.S.; Alison Yurko, *A Practical Perspective About Annexation in Florida*, 25 Stet. L. Rev. 699 (1996).

⁴⁷ Florida Advisory Council on Intergovernmental Relations, Local Government Function and Formation in the Service Delivery Area: Review of Relevant Research and Law, December 20, 1995.

⁴⁸ See Florida Institute of Government, The Florida Municipal Officials Manual, 3d ed. (1996), p. V-6.

by municipalities that preferred a more urban landscape.⁴⁹

In northwest Miami-Dade County, there is a predominantly rural area that is bordered by two existing municipalities, another municipality that has almost completed the county's imposed process for incorporation and a fourth area that has initiated the incorporation process.⁵⁰ Each of these communities has its eyes on annexing a parcel within the rural area. However, because the area is located in Miami-Dade County, it is up to the County Commission to decide whether it will grant a waiver to developers seeking to build 1,800 homes on a 43-acre parcel of the land, or at some point permit one of the neighboring jurisdictions to annex the land. In the meantime, the rural residents -- there are only 28 registered voters in the 9,000 acre area -- are keenly aware that their way of life could change at any given moment. Although incorporation is not an option for this small community, its concerns about being swallowed up are common in other communities that are able to meet the statutory criteria for incorporation.

3. Fiscal Control

Sometimes groups call for incorporation in response to perceived taxation without representation.⁵¹ Wealthy groups often want to exercise greater control over their tax burden. Prosperous communities that feel their taxes are subsidizing services in poorer neighborhoods may see incorporation as a means to end the subsidy. Several communities found that they could reduce their tax burden significantly while maintaining or even increasing the level of service delivery.⁵² This scenario only holds true, however, for communities, referred to as donor communities, that pay more taxes than the cost of the services they receive. A community contemplating incorporation should be aware that few communities are wealthy enough to be true donor communities, and because economies of scale are lost, incorporation may result in higher taxes to ensure adequate service delivery rather than in a more popular reduction in taxes.

4. Proportionate Representation

Hand in hand with citizens' desire to have greater say in how their tax monies are spent is their need to be heard, and to be heard in proportion to their numbers. For example, the residents of Palm Coast, located in Flagler County, make up approximately 70 percent of the county's population. Residents felt that despite their numbers, they did not have corresponding representation. The Palm Coast residents asserted that they have a disproportionate say in their future. They are not equally represented electorally. They are not in charge of

⁴⁹ Southwest Ranches Feasibility Study, June, 1999.

⁵⁰ Carolyn Salazar, *Vanishing Lifestyle is Imperiled*, The Miami Herald, October 5, 2000.

⁵¹ See Russell Lazega and Charles Fletcher, *The Politics of Municipal Incorporation in South Florida*, 12 J. Land Use & Envtl. L. 215 at 223 (1997).

⁵² In 1995, six of the seven communities that sought incorporation in Miami-Dade County paid out more in taxes than the equivalent of services received from the county. See Marjorie Lambert, *7 Unhappy Dade Groups Mount Drive to Form Cities*, Ft. Laud. Sun Sentinel, March 26, 1995, at B1.

their own destiny.⁵³ The citizens of Palm Coast have subsequently completed the municipal incorporation process with a successful referendum.⁵⁴

5. Single Issue Incorporation Efforts

On rare occasions, citizens have sought incorporation under the mantle of a very specific agenda. In 1995, a small group of African-American citizens in Dade County sought to incorporate in order to protect the civil rights of its community. One of the challenges facing this community, which called itself Destiny, was that it received approximately \$21 million in county services, yet contributed only \$17 million in taxes.⁵⁵ Nonetheless, the retired Metro-Dade County police officer who lead the initiative for incorporation suggested that the deficit in revenue could be made up by running the new municipal government more efficiently than the county had done. Though this incorporation was never realized as a result of a defeat by the voters, it serves to illustrate that a community's desire for self-rule can emanate from a community's unique political atmosphere.

C. Passage Rate of Incorporations in Local Referenda

Between 1990 and 1999, there were nineteen bills filed on behalf of citizens seeking incorporation, fourteen of which passed. Of the special acts passed by the Legislature, five were voted down by the citizenry in referenda, leaving a total of nine new municipalities established since 1990. In the 2000 legislative session, five special acts creating municipalities were introduced. Of those, three were passed by the Legislature and signed into law by the Governor. Two of the municipal incorporation proposals were defeated in the local referenda. Only one of the three proposed municipalities received voter approval. Regardless of where the incorporation efforts occur, or how strong local support for incorporation may appear, until a final referendum is concluded, incorporation may never come to fruition.

⁵³ Palm Coast Feasibility Study, November 2, 1998, p.10.

⁵⁴ *See also* Ch. 99-448, L.O.F. (1999).

⁵⁵ David Villano, *Does It take A Village?*, Florida Trend, July 1997.

III. STATE STANDARDS FOR MUNICIPAL INCORPORATION

Incorporation activities are not limited to Florida. Other states have developed their own policies and procedures dealing with municipal incorporation. While there are some elements held by several states in common, others are unique to particular states. Although this report focuses on Florida's incorporation practices, for comparison purposes, and as a resource for possible future consideration, a summary of other states' incorporation standards is provided in **Attachment B**.

A. Incorporation Standards in Other States

Florida is in the majority of states that require some state standards. Thirty-nine other states impose incorporation standards. Many states have standards regarding minimum population; multiple classification of cities; minimum distance from existing cities; and a required feasibility study. Some of the more unique standards, not commonly imposed, include involvement of boundary review boards; limitation on size of area incorporated; and minimum ad valorem tax base. Twenty states currently require a feasibility study as a condition for incorporation. A large percentage of the state standards having numerical requirements include provisions for exceptions to those numerical standards. Five of the 13 states that require the incorporation proposal to be reviewed by a Boundary Review Board have provided that board with authority to designate the incorporation status for the municipality. In contrast, Boards of County Commissioners are authorized to designate an incorporation in 17 states, while 12 states, including Florida, authorize the state legislature to designate incorporation status.

B. Purpose Behind Municipal Incorporation Standards in Florida

1. Legislative Treatment of Standards

State standards for municipal incorporations were first established as the Formation of Municipalities Act under Ch. 74-192, L.O.F. Little historical background surrounding passage of that law is available, but in a letter dated March 26, 1975, staff of the House of Representatives Committee on Community Affairs wrote that the bill "represents a statement of the 1974 Legislature's concern about the proliferation of what have proven to be relatively unviable bedroom municipalities in this state."⁵⁶ The author of that letter continues that the criteria established in the law are "general guidelines," and there is no prohibition on a special act being passed in support of a municipality that does not strictly meet the criteria. Nonetheless, the criteria contained in the Formation of Municipalities Act have come to be characterized by some as guidelines from which deviations may be, and commonly are, made, rather than statutory requirements from which exemptions may be secured.⁵⁷ With some limitations, a special law may serve to exempt a municipality from certain statutory

⁵⁶ Page 2 of the letter written on House Committee of Community Affairs letterhead is not contained in the state archives.

⁵⁷ Florida House of Representatives, Committee on Community Affairs, The Florida Local Government Formation Manual, p.29, n.22, November 1999.

criteria found in general law. However, it is noted that there is nothing in the statute that reflects a legislative intention to consider the criteria as guidelines rather than requirements.

2. Statutory Purposes

The state has a vested interest in the viability, financially or otherwise, of new incorporations. The standards discussed in the following section are intended to implement the purposes set forth in s. 165.021, F.S., which provides:

The purpose of this 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:

- (1) Allow orderly patterns of urban growth and land use.
- (2) Assure adequate quantity and quality of local public services.
- (3) Ensure financial integrity of municipalities.
- (4) Eliminate or reduce avoidable and undesirable differentials in fiscal capacity among neighboring local government jurisdictions.
- (5) Promote equity in the financing of municipal services.

3. Effectiveness of Standards to Meet their Purpose

It is difficult, if not impossible, to measure the extent to which current state standards serve the five purposes listed above. Some of the standards lend themselves more readily to quantifiable rather than subjective analysis. First, it is difficult to separate the impact of the standards from other incorporation policies provided in Ch. 165, F.S., and elsewhere in Florida law. This is particularly evident in the first purpose of allowing for orderly patterns of urban growth and land use, and the impact on this purpose from other policies such as state and local comprehensive planning and land use policies⁵⁸, as well as water and land use policies.⁵⁹ Second, the thought and preparation citizens seeking incorporation give to their incorporation strategy may have a significant impact on whether the above purposes were considered and efforts made to implement them were incorporated into the municipal charter.

The standards may have a positive effect on ensuring the financial integrity of municipalities by requiring minimum population and density and promoting compact jurisdictions. One assumption supporting this position is that a municipality requires a minimum number of residents to generate revenues through various taxes and fees necessary to finance local government operations and services. The requirements for compact

⁵⁸ Chs. 163, 186 and 187, F.S.

⁵⁹ Ch. 380, F.S.

boundaries and minimum population and density are based on the assumption that compact development and higher densities provide public service cost savings through economy of scale. The City of Midway is the only municipality created subsequent to the establishment of the standards that is identified as having experienced a financial emergency. It should be noted that Midway's population at the time of incorporation in 1986 was 1,118, which is significantly below the minimum population standard of 1,500.⁶⁰ Whether the standards for municipal incorporation are stringent enough to guard against similar fiscal capacity problems in the future remains uncertain.

C. Statutory Provisions

While statutory procedures for the adoption of municipal charters in Florida have been amended several times, standards for municipal incorporation have remained essentially unchanged since becoming law in 1974. Since then, incorporation proposals increasingly have requested and received exemption from one or more state standards. Inconsistent reliance on these standards in conjunction with an increase in the number of communities exploring incorporation as an alternative to their current structure of local government has generated interest in their function and the role of the state in maintaining them.

1. Statutory Standards

The standards address issues of compactness, minimum population, minimum density, minimum distance from existing municipalities, and certain provisions within a proposed charter. Specifically, s. 165.061(1), F.S., requires:

(1) The incorporation of a new municipality, other than through merger of existing municipalities, must meet the following conditions in the area proposed for incorporation:

(a) It must be compact and contiguous and amenable to separate municipal government.

(b) It must have 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 less than 75,000, and of at least 5,000 population in counties with a population of more than 75,000.

(c) 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.

(d) It must have 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 2 miles or have an extraordinary natural boundary which requires separate municipal government.

⁶⁰ Ch. 86-471, L.O.F. (1986).

(e) It must have a proposed municipal charter which:

1. Prescribes the form of government and clearly defines the responsibility for legislative and executive functions.

2. Does not prohibit the legislative body of the municipality from exercising its powers to levy any tax authorized by the Constitution or general law.

One explanation of why the standards for incorporation have not been evaluated or changed significantly since established may be the relative lack of incorporation activity until the mid-1990s. Furthermore, municipal activities have traditionally been viewed as a matter of primarily local concern. While the adoption of the 1968 Constitution and passage of the Formation of Municipalities Act put an end to the requirement that all local ordinances go through the state legislature, it did not necessarily turn local issues into state concerns. In addition, general law contains no provisions for the review or assessment of the state standards. Nevertheless, based on past reviews of incorporation proposals and issues raised by representatives of local communities interested in incorporation and by local government officials, some general comments are presented regarding the current incorporation standards.

2. Omissions and Vagueness in Statutory Standards

There are some significant omissions in these standards. For example, there is no requirement for an assessment of how or whether the creation of a new municipality affects other municipalities, county government(s) or the state. Although the group seeking incorporation must explain in its feasibility study alternatives available to the area to address its policy concerns, there are no standards or parameters under which this explanation is provided, and therefore, the response may be very general in nature. Thus, rather than encouraging annexation or better problem solving within the existing government structure, the looseness of the standards may suggest incorporation as a relatively easy path to take.

There is no statutory requirement for the incorporation advocates to analyze whether incorporation may cause a negative fiscal impact on the county or neighboring municipalities. It may be argued that the county will not be financially harmed because its cost for service delivery will be decreased as the new municipality picks up those responsibilities. Nonetheless, with the establishment of each new municipality, growing revenue streams are removed from the cache of the county. From a county's perspective, any negative fiscal impact on other cities within its borders, as well as a decrease of its own tax base, are legitimate concerns. Some counties have expressed a concern that an unwarranted increase in the number of municipal governments leads to Balkanization and frustrates, rather than promotes, cooperation and coordination.

The current standards do not contain any type of referendum requirement for municipal incorporation. Instead, the Legislature by tradition has included a provision for local referendum on incorporation within the proposed charter. The lack of a referendum requirement allows the Legislature to establish a municipal government without affirmation on the issue by local residents, although this power is generally not used,

particularly as the Legislature views incorporation as a matter of primarily local concern.

Another issue sometimes raised by citizens pertains to participation in the process through which incorporation issues are discussed and developed. A uniform process for developing the proposed charter and feasibility study is not prescribed by the Constitution or by general law. The local delegation, and in particular the chair of the local delegation, is responsible for determining whether sufficient support exists for the incorporation to sponsor the local incorporation bill. This discretion may lead to conflicting assessments with no consistent methodology for decision-making. The delegation should determine the level of support for incorporation. The delegation must also complete the House Committee on Community Affairs= annual Local Bill Certification Form and submit it to the Legislature.

The lack of specificity in several of the standards, while not necessarily a barrier to incorporation, at least warrant comment. For example, the standard requiring that the area to be incorporated be "amenable to separate municipal government" is vague and not otherwise defined in Ch. 165, F.S., or caselaw. There is no corresponding requirement that the new city have a municipal center or core. Similarly, the provision allowing less than a minimum population density requirement of 1.5 persons per acre if it has "extraordinary conditions requiring the establishment of a municipal corporation with less existing density" is vague and not otherwise defined in Ch. 165, F.S. Also undefined is the provision under s. 165.061(1)(d), F.S., allowing exception to the 2 mile minimum distance from existing municipalities if the area to be incorporated has "an extraordinary natural boundary which requires separate municipal government." Under what natural conditions a separate municipal government would be required is left unstated.

The lack of specificity in standards and procedures perhaps can also be perceived as a reflection of the attempt by the state to allow for flexibility by local communities. Allowing local delegations the opportunity to apply standards against a broad range of local conditions may somewhat balance out possible shortcomings in current state incorporation standards and related policies. Thus, while the Legislature would most likely want to follow its own policies, there is enough flexibility in those standards to allow each sitting Legislature to essentially defer to the judgment of the local delegation on some matters of incorporation. The Legislature, however, ultimately reserves its authority to sanction a municipality through the passage of a special act.

D. Specific Standards

1. Compactness and Contiguity

The need for a municipality to be compact and contiguous is premised on logic and ease of administration. As the statutory requirement states, the area must be amenable to separate municipal government. Some citizens who had felt disenfranchised from county government because of distance from, or dissonance within, their local government, may feel a benefit from being physically closer to the center of government. This is not to suggest that large areas of land are not amenable to municipal incorporation, but simply acknowledges that a municipality should have an epicenter not only for conceptual notions of governance, but also to ensure better accessibility by its citizens.

2. Population

Years before population standards were adopted, the courts recognized that A[p]opulation is essential to the creation of a municipal corporation@ and that there Amust exist a village, a community of people, a settlement or a town occupying an area small enough that those living therein may be said to have such social contacts as to create a community of public interest, in consideration of the general welfare, an organized agency for the management of their local affairs of a quasi public nature.@⁶¹ Over time, specific population requirements were enacted. Currently, in counties with populations greater than 75,000, the new municipality must have a minimum of 5,000 residents. In a small county, one with less than 75,000 people, the population requirement is 1,500 residents. These population criteria were amended in 1998, the 75,000 population figure having previously been 50,000.⁶² At present, approximately 30% of Florida's 405 municipalities have 1,500 residents or fewer.⁶³

3. Density and Spacing

The remaining two numerical standards regarding minimum population density requirements (1.5 persons per acre) and minimum distance from existing municipalities (2 miles) apply equally to municipalities in large and small counties. By setting these standards, the Legislature sought to ensure that municipalities were in fact communities, rather than clusters of houses or vast rural lands that would derive no benefit from or relate to a newly established municipality. Even with a requirement for a 2 mile minimum distance from an existing municipality, the result can be a splattering of individual communities with few shared common goals. This is also a result of there being no real limitation on the number of incorporations that can be pursued.

E. Exemptions from Statutory Standards

Under the law, a special act, such as one establishing a municipality, will take precedence over general law⁶⁴ unless the special act is found to be unconstitutional.⁶⁵ The Legislature has waived one or more of the provisions of ss.165.041 and 165.061, F.S., by passing a special act.

Since 1975, 62 municipal incorporation bills have been filed regarding 34 proposed municipalities, of which 26

⁶¹ *State v. Town of Lake Placid*, 147 So. 468 (Fla. 1933).

⁶² Ch. 98-258, ' 6, L.O.F. (1998).

⁶³ Many municipalities were created before minimum population requirements were codified in law in 1974 and subsequently increased in 1998. For example, Marineland, population 31, was established in 1941. Lake Buena Vista, population 23, was created in 1967. Islandia and Weeki Wachee, with 13 and 15 residents respectively, were created in 1960 and 1966. These figures are based on population estimates prepared by the Bureau of Economic and Business Research for 1999.

⁶⁴ *See State ex rel. Johnson v. Vizzini*, 227 So.2d 205, 207 (Fla. 1969).

⁶⁵ *See Alachua County v. Adams*, 702 So.2d 1253 (Fla. 1997).

requested exemption from one or more state standards⁶⁶ Information regarding select characteristics of municipal incorporation bills, legislative action on those bills, and referendum outcomes, where appropriate, is provided in **Table 4**.

A review of the information provided in the table includes the following highlights:

! *Number of incorporation proposals (bills) granted exemptions.*

Of the 26 municipal incorporation bills that required exemptions from one or more state standards, the following occurred:

- 19 bills were granted exemptions (i.e., approved by the Legislature and Governor);
- 7 bills died in committee or messages or were withdrawn from further consideration;

Of the 16 municipal incorporation bills that did not require exemptions from one or more state standards:

- 14 bills were approved by the Legislature and Governor;
- 2 bills died in committee or messages or were withdrawn from further consideration.

! *Number of times each state standard exempted.*

41 exemption requests were contained within bills that passed (14 exemptions), bills that were deferred to companion bills or died in committee/messages (21 exemptions), and bills that provided for exemptions, but were not requested (6 exemptions). Standards exempted include:

- 18 exemptions for 2-mile limit standard;
- 12 exemptions for 1.5 persons per acre minimum density standard;
- 7 exemptions for 1,500/5,000 minimum population standard;
- 3 exemptions for required charter provisions standard; and
- 1 exemption for compact and contiguous area standard.

! *Legislative action on incorporation proposals.*

- 19 of the 26 incorporation bills with exemptions were approved by Legislature and Governor.
- 14 of the 16 incorporation bills without exemptions were approved by the Legislature and Governor.

! *Comparison between rates of enactment for incorporation bills requesting exemptions from state standards and those not requesting exemptions.*

- 70 percent of bills requesting exemptions were enacted.
- 88 percent of bills not requesting exemptions were enacted.

! *Comparison between local referendum outcomes for incorporations requesting exemptions from state standards and those not requesting exemptions.*

- 10 of the 16 (63%) incorporation acts with exemptions were approved in local referenda.

⁶⁶ The disparity in the figures is because on occasion, incorporation bills with differing exemption requests were filed in both the House and the Senate.

3 of the 14 (17%) incorporation acts without exemptions were approved in local referenda.

Table 4
Incorporation Bills: 1975-2000
Summary of Select Characteristics

! Number of municipal incorporation bills filed since 1975: 62
(the year state incorporation standards became effective)

! Number of cities proposed for incorporation since 1975: 34

! Number of proposed incorporations requesting 1 or more exemptions: 26

! Exemption Related Activities Actions

Exemption Type	Requested	Granted	Denied
Compact and Contiguous:	1	2*	0
Minimum Population:	5	7*	0
Minimum Average Density	14	15*	0
2-Mile Limitation	17	17	0
Necessary Charter Provisions	5	4*	2
TOTALS	42	45	2

* Denotes incorporation proposals that required exemption from standard, but did not identify need in feasibility study or proposal.

! Outcome of proposed incorporation bills:

Approved by Legislature/Governor 34

Died in Com/Messages/Withdrawn 9

! Outcome of Incorporation Referenda

Referendum Approved 15

Referendum Voted Down 19

Source: Legislative Committee on Intergovernmental Relations, May 2000.

F. Considerations Regarding Miami-Dade County, Broward County and the Florida Keys

The standards set forth in s. 165.061, F.S., as well as other statutory provisions relevant to municipal incorporation, apply state-wide, with the exception of Miami-Dade County. Broward County, which seeks to incorporate all inhabited areas of the county, has adopted an ordinance dealing with incorporation. The Florida Keys, as discussed below, have issues unique to them that merit special mention.

1. Miami-Dade County

The Board of County Commissioners in Miami-Dade, not the state Legislature, possesses the sole authority to create new municipalities within the county.⁶⁷ Thus, the Legislature does not review municipal incorporation documents. In response to various controversies generated by municipal incorporation activities, the county sought to come up with a methodology whereby the establishment of a municipality would have a revenue neutral impact on the county government and existing municipalities. Under a recently implemented process, communities contemplating incorporation now use Municipal Advisory Committees comprising community members and county government staff to explore and solve problems and to arrive at an agreeable allocation of services and payment. These Committees assess whether the new city should, for example, continue to use the county's library system or the metropolitan police force. There are obvious benefits to both city and county governments if capital planning projects are funded for only one level of local government, rather than both, but are shared by the city and county by way of an interlocal agreement. The same can be said for having one large metropolitan police force, with a unified communication system, rather than a police force for each community of 10,000 people.

Once the terms of the arrangements are agreed upon by the interested parties and stakeholders, the new community includes the conceptual agreement in its proposed charter. The charter can then be amended only upon agreement by the county. In this way, both the county's and the city's interests are considered and protected. Although this process is unique to Miami-Dade County because of its constitutional status, there may be elements of the coordination steps that other communities would find helpful.

2. Broward County

In contrast to Metro-Dade County's deliberative eye towards incorporation, Broward County is striving for the incorporation of the entire populated area of the county through aggressive annexation or incorporation. In 1995, at the request of the Broward County Board of County Commissioners, the Broward County Legislative Delegation formed an Ad Hoc Committee on Annexation Policy. The committee's final report included the recommendation that all unincorporated neighborhoods be annexed or incorporated by the year 2010. A major objective of this policy is to reduce the number of traditional municipal services that the County provides, thus enabling it to focus on the provision of county-wide, urban, and regional services. This policy was approved and codified by the Legislature.⁶⁸ Most of Broward County is incorporated at this

⁶⁷ Fla. Const. art. VIII, ' 11(1)(e); Dade County Home Rule Charter, art. 5, ' 5.05.

⁶⁸ Ch. 96-542, L.O.F. (1996) (see Attachment C).

juncture, but there remain about sixty unincorporated neighborhoods in the county.⁶⁹

3. Areas of Critical State Concern

In 1972, the Florida Legislature established a process under Ch. 380, F.S., by which the Department of Community Affairs (DCA) could recommend to the Governor and Cabinet, also called the Administration Commission for purposes of this program, that certain areas of critical state concern be designated for specific recognition and regulation. The Florida Keys in Monroe County have been designated under this program. The Florida Keys have been experiencing a fair amount of incorporation activity in the last several years.

Under s. 380.0552, F.S., the Legislature declared its intent regarding the Florida Keys Area. Some of the Legislature's goals for the area included the intent to establish a land use management system that: protects the natural environment; conserves and promotes the community character; promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services; protects the constitutional rights of property owners to own, use, and dispose of their real property; and promotes coordination and efficiency among governmental agencies with permitting jurisdiction over land use activities in the Florida Keys.

Despite these goals that focus primarily on how the area is developed, allocation of funds from the county seat have been a source of discontent among residents in outlying areas. The disproportionate share of funds that are directed to Key West and land use decisions made by the county are most often the reasons given by citizen groups advocating for incorporation. Two groups were successful in getting incorporation special acts passed by in 2000 legislative session. Interestingly, on November 7, 2000, voters in Monroe County voted down in referenda the incorporations in those two communities, tentatively named Paradise Islands and the Village of the Lower Keys. Opponents of incorporation stated that adding another layer of government was not the answer to the communities' problems, and such action would probably increase their tax burden. Despite the defeat of their incorporation efforts, it was reported that those in favor of incorporation felt that they were victorious in that the county would now more fully appreciate the dissatisfaction of the citizenry and hopefully be more responsive to their needs.

The DCA continues to have conflicting jurisdictional issues arise, and the many programs for which it is responsible are not always easy to integrate. Communities in the Keys have not been strong adherents to intergovernmental coordination, thus leaving the area at risk to potentially serious problems concerning emergency management and water related matters. Because Areas of Critical State Concern are, by their very nature, areas whose development affect a compelling state interest, policy makers may wish to consider requiring approval for incorporation in these areas to be given only after the Legislature has determined that the area's growth management strategy and land use practices will strengthen, but not weaken, upon incorporation.

⁶⁹ Information located at Broward County's Internet website, <http://www.co.Broward.fl.us>.

G. Summary

Statutory criteria relating to the establishment of municipal incorporations have existed in modern terms since 1974. The state has articulated an interest in municipal incorporation in establishing the standards and the stated purpose for the standards. Yet, the frequency with which exemptions are granted clouds the clarity of that interest, and leaves uncertain the degree to which the state will safeguard its interests. In short, whether these standards have served their stated purposes and have led to better local governance remain unanswered questions. Further study may be warranted to assess whether current standards should be measured quantitatively or qualitatively, decreased or increased in scope.

IV. THE FEASIBILITY STUDY

The feasibility study is a compilation of information that supports the conclusion that the proposed municipality will be a viable community. Feasibility studies were not statutorily required until 1996. In recent years, the statute outlining the areas to be addressed in the feasibility study has been expanded, perhaps reflecting a growing interest on the Legislature's part in the factors involved in municipal incorporation. Although supporting documentation was submitted in one form or another to the Legislature prior to 1996 whenever incorporation was sought, the content often lacked specificity regarding projected municipal services, service cost estimates, and revenue sources. Statutory changes have made the format of the feasibility studies more uniform, but they still vary considerably in scope and thoroughness.

A feasibility study is generally conducted by a consulting firm on behalf of incorporation advocates. These studies are not performed by a disinterested party, nor are they reviewed by stakeholders other than the local legislative delegation. Thus, perhaps the most visible objective review of the information contained in the study is performed by legislative and state agency staff. Once the special act supporting incorporation is passed, the citizenry within the boundaries of the proposed municipality will most likely have the opportunity to pass its own judgment on whether or not to incorporate by virtue of a referendum. Nonetheless, this is not the same as participating in an objective analysis of the feasibility study.

A. Efforts at Uniformity

Until 1968, incorporation and other municipal activities were considered matters primarily of local concern yet handled at the state level through passage of special acts. As municipal home rule came to the forefront, commencing with the 1968 Constitution, and continuing through the enactment of the Formation of Municipalities Act in 1974, the state's interest in municipal incorporation became more defined. Although many local activities were handled under municipal home rule, the state maintained its authority over municipal incorporation. The Legislature has a role in the mechanics of incorporation, and the state's interest has been addressed on a certain level in s. 165.021, F.S. The state has expressed its interest in promoting viable and fiscally sound municipalities. Yet, the state is sensitive to balancing that interest with allowing local control of local issues. What is not clear is at what juncture do local and state interests intersect, and more interestingly, where do the state's and local community's interests conflict?

In 1996, the Legislature amended s. 165.041, F.S., to require that a feasibility study be completed and submitted in conjunction with the incorporation bill.⁷⁰ Requiring the submission of a feasibility study began as an initiative of the House of Representatives Committee on Community Affairs staff to enable them to prepare the analysis of local incorporation bills. That was a significant step toward making the incorporation process more uniform, but there were no guidelines or criteria for the feasibility study. The studies presented for review naturally varied in quality and content.

⁷⁰ Ch. 96-416, § 8, L.O.F. (1996).

Not until 1999 were specific elements of the feasibility study enumerated and codified in the law. As a result of an earlier LCIR interim project creating a state urban policy, the Legislature passed the **A**Urban Infill & Redevelopment Act.⁷¹ Initially, this legislation did not address municipal incorporation and feasibility study requirements. In subsequent versions of the bill, however, feasibility study requirements were added and enacted into law.⁷¹ The feasibility study requirements were developed by the LCIR as part of a separate project reviewing the standards for incorporation. Section 165.041, F.S., was amended in 1999 to require that the following elements must be included in a feasibility study:

1. *The general location of territory subject to boundary change and a map of the area which identifies the proposed change.*
2. *The major reasons for proposing the boundary change.*
3. *The following characteristics of the area:*
 - a. *A list of 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.*
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 current service.*
6. *A list of proposed services to be provided within the proposed incorporation area, and the estimated cost of such proposed services.*
7. *The names and addresses of three officers or persons submitting the proposal.*
8. *Evidence of fiscal capacity and an organizational plan as it relates to the area seeking*

⁷¹ Ch. 99-378, ' 11, L.O.F. (1999)

incorporation that, at a minimum, includes:

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

9. 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.

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

11. Evidence that the proposed municipality meets the requirements for incorporation pursuant to s.165.061.

The statute was also amended to require that the feasibility study be submitted to the Legislature 90 days before the first day of the regular session of the Legislature during which the municipal charter would be enacted.

B. Application of 1999 Requirements

Many of the requirements listed above are precise, and accessing the information needed to fulfill the requirements is relatively easy. However, many times the information contained in the feasibility study is speculative and based on presumptions that are not supported elsewhere in the study. For example, statements made in the feasibility study that the county would continue providing certain services via contract with the new municipality are without meaning unless there is some manifestation of an agreement between the county and the new municipality, such as a Memorandum of Understanding or a Letter of Agreement. Also, incorporation proponents may submit a fiscal picture that is more attractive than that which is supported by the evidence. Some feasibility studies fail to address potential problems such as how the municipality will deal with anticipated population growth. Conversely, growth may be acknowledged, but no means for raising sufficient revenue to provide adequate services are identified in the five year plan.

Problems can also arise when inadequate research is performed, or little effort is made to secure information from county officials, such as what the estimated costs may be for current services such as water, sewer, solid waste, parks and recreation and other services. It is imperative that there be good communication between those seeking incorporation and county officials to secure fiscal and other information that is critical to a high quality feasibility study.

A potential shortcoming in the statutory requirements is that there is no consequence for failing to address one

or more of the items. Yet, one of the inherent benefits of Ch. 165, F.S., is that if used wisely, it can serve as a framework for the feasibility study. By using the list of required elements as the foundation for the feasibility study, the study will be logical in form and complete in content.

C. Effectiveness of 1999 Requirements

Insufficient time has passed to gauge the effects of these new feasibility study requirements on incorporation study proposals. The majority of feasibility studies accompanying incorporation proposals presented during the 2000 regular legislative session were initiated prior to the new requirements becoming law on July 1, 1999. However, bill analyses prepared by legislative and agency staff during the 2000 legislative session identified those areas of the feasibility studies that were deficient or not in compliance with statutory requirements.

The continuing variation in quality and breadth of the feasibility studies may be attributable to the funds the community had available for hiring a consultant. Another factor that may contribute to the information contained in a feasibility study could be the relationship between the county and the proposed municipality. The lack of reliable fiscal information poses an ongoing challenge to some groups poised for incorporation.

V. THE CHARTER

The charter of any new municipal government is a critical document. It is the foundation on which the city will govern itself. This section will provide background on the charter document, address the requirements found in Ch. 165, F.S., and will offer suggested practices relevant to drafting charter provisions.

A. Background

Although the charter sets the framework for the city's governance, there are only two statutorily required characteristics for a proposed charter under s. 165.061, F.S. First, the charter must describe the form of government that will be used by the municipality. Second, the charter cannot prohibit the legislative body of the municipality from exercising certain taxing powers. With so little guidance and so much flexibility given to the drafters, as many contingencies as possible must be considered in preparing the charter, because shortcomings or omissions in the charter may give rise to problems later.

There are several resources available to groups considering a draft charter. The Florida Municipal Officials Handbook, published by the Florida Institute of Government, and the Model Charter published by the National Civic League are excellent sources. These publications offer the fundamentals of charter writing, but do not reach the level of detail that citizen groups may need. Also, the House Committee on Community Affairs publishes annually the Local Bill Policies and Procedures Manual.⁷² This publication provides guidance regarding incorporation, annexation, merger and other local government formation matters.

The National Civic League recommends that a city charter include, at a minimum, an article for each of the following subjects:

- <Powers of the City
- <City Council
- <City Manager
- <Departments, Offices and Agencies (Planning)
- <Financial Procedures
- <Elections
- <General Provisions
- <Charter Amendment
- <Transition/Separability Provision

The National Civic League offers alternatives to many of its suggested provisions. While some of these topics are straightforward, a few warrant special attention and comment. A good way to supplement the information provided by the National Civic League, the Florida Institute of Government and other sources is to review, analyze and build on existing charters found in the Laws of Florida, as well as the bill analyses that provided

⁷² This manual can be located at the Florida Legislature's Internet website at <http://www.leg.state.fl.us> and navigating to the House Committee on Community Affairs' publications.

invaluable feedback to the drafters. The need for attention to detail when drafting the charter cannot be overstated. By carefully considering and defining the form, function and powers of the governing body in the charter document, the new municipality will avoid the need for any subsequent clean-up ordinances or worse, litigation, to clarify the terms of the charter.

Neither statutory law nor House Committee on Local Government and Veterans Affairs prescribe any particular format for a special act or a proposed charter. Subsequently, special acts and charters vary in their structure. Under those circumstances when charter amendment may be necessary, it can be awkward to amend a charter that is not organized well. It may be more efficient if the special act is divided into major sections, rather than current practice to have any number of sections. The first section could address all of the charter provisions, and other non-charter items such as transitional matters and referendum procedures could be placed in distinct sections of the special act.

B. Basic Forms of Municipal Government⁷³

1. Background

Florida state law neither requires nor prohibits municipalities from adopting a particular form of municipal government. The only requirements are that each municipal legislative body shall be elective,⁷⁴ and that an acceptable proposed municipal charter is one that prescribes the form of government and clearly defines the responsibility for legislative and executive functions.⁷⁵

There are five basic forms of municipal government. The first type of government, the council-weak mayor form represents the original form of municipal government in this country. It is still widely used in small towns. In general, the mayor's authority is not significantly greater than that of the other council members.

The second type of municipal government is the council-strong mayor form, which provides for a distinct division of powers between the council and the mayor. The mayor is the chief executive and has substantial influence in the policy-making process and substantial control over administrative matters. The mayor holds important budgetary and appointing powers, along with the power to veto legislative actions of the council.

The commission or third type, combines both executive and legislative powers into a governing board, the commission. The underlying theory of this form of government is that the concentration of power in the hands of a few elected officials would make administration more effective and would enhance accountability to the public. However, some believe that the effect has been rather to provide inadequate coordination, insufficient

⁷³ See generally Florida Institute of Government, The Florida Municipal Officials Manual, 3d ed. (1996), at II-2 B II-7.

⁷⁴ Fla. Const. art. VIII, § 2(b).

⁷⁵ S. 165.061(1)(e), F.S.

internal control, and amateur direction of administration.⁷⁶

The National Civic League endorses the fourth type of municipal government, the council-manager structure, but not to the exclusion of all other forms.⁷⁷ The theory behind the council-manager form of government is that a strong, non-political executive office should function in the administrative role at the local level.

The fifth type of municipal government is the consolidated government. Its roots can be traced to 1933, when the Legislature approved a constitutional amendment declaring legislative power to establish a municipal corporation that consolidated the governments of Duval County and any of the municipalities within its boundaries, subject to referendum approval of the affected voters.⁷⁸ Similar constitutional amendments were provided for Key West and Monroe County in 1935, and Tampa and Hillsborough County in 1965. The revised Florida Constitution of 1968 included a grant of general authority for consolidation in article VIII, section 3, allowing consolidation of a county with one or more cities located therein, through special law and a vote of the electors of the county, to create a government that may exercise any and all powers of the county and the municipalities. The only successful consolidation in Florida occurred in 1967⁷⁹ when the Legislature approved the charter of Jacksonville-Duval County,⁸⁰ which was passed by the voters later that year, creating the largest city in land area in the contiguous United States.⁸¹

Most recent changes in municipal government form in Florida have been from some other form to the council-manager form, which is currently the most common form of municipal government in the state. It is difficult to provide precise numbers regarding the types of government in Florida because quite a few municipal charters call for a hybrid form of government. Presently, there are approximately 240 council-manager governments; about 30-40 municipalities with council-strong mayor; about 100 council-weak mayor governments and about 20 cities with the commission form of government.⁸²

⁷⁶ Florida Institute of Government, The Florida Municipal Officials Manual, 3rd ed. (1996), at II-4.

⁷⁷ National Civic League, Model City Charter, seventh ed. (1996), at p. x.

⁷⁸ Fla. Const. art. VIII, ' 9.

⁷⁹ The following unsuccessful consolidation attempts have been made in Florida: Tampa/Hillsborough County (1967, 1970, 1972); Pensacola/Escambia County (1970); Tallahassee/Leon County (1971, 1973, 1976, 1992); Ft. Pierce/St. Lucie County (1972); Gainesville/Alachua County (1975, 1990); Okeechobee/Okeechobee County (1979, 1989); Halifax/Volusia County (1985).

⁸⁰ Ch. 67-1320, L.O.F. (1967), *readopted in* Ch. 92-341, L.O.F. (1992). *See also* Jacksonville Ordinance Code, Part A, Charter of the City of Jacksonville.

⁸¹ Information from the City of Jacksonville homepage, <http://www.coj.net>.

⁸² Figures provided by the Florida League of Cities staff, November 1, 2000.

2. Suggested Practices

Explaining the form of government is one of the most important aspects of the charter. The charter must give the public notice of how the city officials are hired, fired, what their role will be, and what their limitations are, among other things. A common omission in proposed charters is the delineation of who is responsible for what, particularly whether a mayor is a voting member of the council. These types of gaps can negatively impact hiring and firing and other areas requiring decision making.⁸³ Regardless of which form of government is selected, it is incumbent on the drafters of the proposed charter to ensure clarity and thoroughness regarding the officials' powers, responsibilities and duties.

C. Financial Procedures

1. Background

Under s. 165.061(1)(e)2, F.S., a new municipality must have a proposed charter which does not prohibit the legislative body of the municipality from exercising its powers to levy any tax authorized by the Constitution or general law.⁸⁴ This requirement is the second element that must be included in the proposed charter. Fiscal matters can be quite complex and may pose the most significant challenges for groups drafting a charter.

Interestingly, there is no statutory provision that explicitly requires incorporation advocates to address the potential fiscal impact of a new municipality on existing municipalities, the parent county, and other local governments. This analysis could be prepared in a manner consistent with **Attachment D**.

2. Revenue Sharing Eligibility

Once a new municipality is established, it is entitled under the law to share in certain revenues collected by the state and distributed to local governments, provided certain criteria are met. Chapter 218, Part II, is the Florida Revenue Sharing Act of 1972⁸⁵ and sets forth the conditions and mechanisms under which local governments may share in certain revenues.

Section 218.21(3), F.S., requires that the new municipality must have held an election for its legislative body pursuant to law and established such a legislative body which meets pursuant to law⁸⁴ in order to be eligible to participate in revenue sharing. A newly established municipality will not meet this definition until such time as the legislative body meets. It appears that this provision as written does not distinguish between existing and newly established municipalities. Thus, it is often requested in the proposed charter that the new city be exempt from this provision, which is inconsistent with general law.

Requests are often made for a waiver of other statutory criteria, as well. For example, under s. 218.23(1)(a),

⁸³ See *Blake v. Partyka*, 731 So.2d 749 (Fla. 5th DCA 1999), *reh'g denied* 744 So. 2d 456 (Fla. 5th DCA 1999) (finding that under commission/manager form of government, power given in the charter to appoint the city attorney could not be read to imply the power to remove the city attorney).

⁸⁴ S. 218.21(3), F.S.

F.S., the local government is required to have reported its finances for its most recently completed fiscal year to the Department of Banking and Finance, pursuant to s. 218.32 in order to participate in revenue sharing. This waiver does not create a problem, provided the new municipality gives itself adequate time within which to comply with the statutory criteria in future years before it seeks to participate in revenue sharing. If a municipality seeks a waiver that is not long enough in duration to allow it to complete its entire fiscal year and report its finances accordingly, the municipality may become ineligible for revenue sharing, and will need to seek legislative correction. Any waiver of the required time constraints poses administrative challenges for the Department of Revenue, which administers the revenue sharing process. The department must reconcile the state fiscal year, the local government fiscal year and the ad valorem tax calendar year. Because the statute offers no guidance on how to interpret and reconcile these apparently conflicting timeframes, drafters must determine how much time is needed in order to fulfill the statutory criteria in the most logical manner possible. Islamorada, for example, did not allow itself adequate time within which to meet the eligibility requirements, and thus had to amend its charter by special act the following year.⁸⁵

3. Local Option Surtaxes

Sections 212.055(2)(c) and 212.055(3)(c), F.S., provide that distributions of Local Government Infrastructure Surtax or Small County Surtax revenues will be in accord with an interlocal agreement entered into by the county and municipalities representing a majority of the county's municipal population, or, if there is no such agreement, then in accordance with the default formula found in s. 218.62, F.S. On occasion, neither option is written in the proposed charter. Instead, the proposed charter will contain a date by which the municipality is entitled to receive these revenues, even where there is no interlocal agreement in place because there will be no municipality in existence with whom the county can enter into such agreement.

4. Adequate Fiscal Resources

Under s. 218.23(1)(c), F.S., the new municipality must also show that it has levied revenues equivalent to a millage rate of 3 mills either through a remittance by the county pursuant to s. 125.01(6)(a), F.S., by collecting an occupational license tax or utility tax, levying of an ad valorem tax, or any combination of these four sources. The purpose behind this 3 mill provision is to require the local government to show a nominal taxing effort before it would be eligible for revenue sharing. Occasionally, to satisfy this requirement, groups seeking incorporation inadvertently or shortsightedly include millage rates that are within the jurisdiction of special districts or school boards. Unless the charter specifically entitles the municipality to use these millage rates, there is no legal authority for counting such revenues as belonging to the proposed municipality.

On rare occasion, a charter may contain provisions that inadvertently tie the hands of the local government's legislative body to levy taxes. Bills containing such provisions generally fail or are amended to conform to the law. In the event the municipality limits its revenue raising or spending authority in its charter, it could find itself in a genuine financial bind. The City of Marco Island, for example, had inserted a provision in its charter that

⁸⁵ Ch. 97-348, L.O.F. (1997); Ch. 98-518, ' 1, L.O.F. (1998).

imposed a cap on the amount the city's operating expenditures could be increased from one year to the next.⁸⁶ The city must now convince voters to amend the charter to remove the cap so that it can provide adequate services, such as public safety, to the citizens.

5. Suggested Practices

The revenue sharing provisions in Ch. 218, F.S., as they relate to newly established municipalities are not a model of clarity. Over the years, local governments and the Department of Revenue have come to apply the statutes in a logical and productive manner. Nonetheless, these laws, possibly more so than any others relevant to municipal incorporation, appear amenable to amendment. Any such amendments would be aimed to clarify and codify current interpretation and application of the laws, rather than attempt to change the substance of the statutes. However, until such time as statutory amendment does occur, the following suggestions are offered.

First, bill drafters should ensure that the dates established in the bill call for election of the city's legislative body before the date on which the city is entitled to participate in revenue sharing. This will ensure that there is a municipal government in existence at the time when revenue sharing becomes effective.

Second, for purposes related to ease of administration, new municipalities may consider putting language in their charters that provide for receipt of other tax distributions, such as local option fuel tax revenues, in synchronization with the state fiscal year and the ad valorem tax year. As mentioned previously, any date provided for in the charter and thus in the special act, will supersede dates found in general law, in this case, s. 336.025(4)(b), F.S.

Third, if the new municipality is not going to use the local option sales tax default formula offered in statute, an explanation should be offered indicating on what basis that formula will not be used. This will ensure that the municipality has considered its options, and has made a clear selection on how it will proceed regarding surtax distributions.

Fourth, the municipality should be candid when determining and declaring its fiscal resources. Claiming resources which it is not legally authorized to claim as its own will leave the municipality short of funds.

Finally, incorporation advocates should be wary of an incorporation at any cost approach. Placing spending restrictions in the charter to make incorporation more attractive may bring on a fiscal controversy or crisis at some point down the road. Fiscal responsibility must be consistent with the municipality's responsibilities to provide adequate services to the people.

⁸⁶ Ch. 97-367, L.O.F. (1997). In particular, Section 1.01 of the Charter caps the city's operating expenditures to 3 percent over the previous years, plus the then-current federal cost of living adjustment, except under limited circumstances. Information on the city's charter amendment efforts is available at the website: http://www.marcoislandfl.virtualltownhall.net/MarcoIslandFl_Charter.

D. Elections

1. Single member versus at-large elections

All elections must comply with the federal Voting Rights Act of 1965, as amended.⁸⁷ This complex law and related caselaw can be treacherous ground for newly forming municipalities⁸⁸ There are currently no specific standards or feasibility study elements regarding voting that tie in directly to the establishment of a new municipality. Nonetheless, each municipal charter must contain a provision regarding elections. Elections may be conducted either through an at-large election or by single member districts, depending on the demographic make-up of an area. Where the municipality's population is generally homogeneous, such as in Liberty and Lafayette counties, at-large elections are not problematic. Where, however, a municipality has a sizeable minority and other distinct populations, such as those in Dade County, single member district elections are preferable so as not to block minority group participation. Because voting structure must be determined based on the demographics of the individual local government, it would not be in the state's best interests to mandate one or the other process.

2. Suggested Practice

Charter drafters may wish to declare in the charter itself that the nuances of the specific area have been considered, and that the new municipality shall conform to all state and federal election laws. By inserting this phrase in the charter document, the drafters alert the Legislature that the drafters are cognizant of the law and have integrated the particulars of the new municipality with all legal requirements.

3. Referendum

Even after a special act has been enacted, incorporation rides on the results of a local referendum, assuming that the otherwise non-mandatory provision is included in the special act. The special act will not take effect if the referendum fails. The language regarding the referendum must be crafted very carefully. Lack of clarity invites litigation. For example, when Islamorada sought incorporation, the charter drafters failed to clearly delineate the margin of voters by which incorporation would become effective. A citizens' group filed suit in circuit court arguing that the referendum for incorporation had not passed because a majority of voters in each of two voting precincts did not vote in favor of incorporation. The lower court held that despite the ambiguous language, the Legislature intended that a majority of voters from the total area combined needed to vote in favor of incorporation.⁸⁹ This decision was upheld by the Third District Court of Appeals. The ambiguous language was subsequently corrected through an amendment to the original special act.⁹⁰

4. Suggested Practice

⁸⁷ 42 U.S.C. § 1973. See also, George Waas and Mitchell Franks, *Implications of the Voting Rights Act on Reapportionment and Redistricting of Local Government*, *The Florida Bar Journal*, October, 1991.

⁸⁸ See *Southwest Ranches: OK Town Charter without Districts*, Ft. Lauderdale Sun Editorial, May 31, 2000.

⁸⁹ *Jensen v. Citizens for Village Government, Inc.*, 710 So.2d 13 (Fla. 3rd DCA 1998).

⁹⁰ Ch. 98-518, § 2, L.O.F. (1998).

Ambiguous language, such as that used in the Islamorada charter, should be avoided. In particular, it would behoove drafters to research whether proposed language has been previously used by any other municipality and whether it was the subject of any controversy or subsequent amendment.

E. Planning and Growth Management

1. Background

As discussed previously, the establishment of new municipalities in Areas of Critical State Concern has unique growth management ramifications. Also, a distinction must be made between communities seeking incorporation that are located in charter counties versus non-charter counties. This is so because charter counties have greater authority in certain areas throughout the county. For example, a charter county will generally have charter provisions establishing the primacy of the county's comprehensive plan over that of any new municipality. On the other hand, a non-charter county's ordinance that is in conflict with a municipal ordinance will not prevail within the jurisdiction of the municipality.

When a community incorporates, the comprehensive plan of the county is the controlling document until the municipality adopts its own comprehensive plan pursuant to Ch. 163, Part II, F.S., and it is approved by the state. A new municipality has one year from the date of incorporation to establish a local planning agency under s. 163.3174, F.S., or it may exercise its authority jointly with the county. The Department of Community Affairs has recently taken a more pro-active role in sitting down with officials from the county, the new municipality, the water management district and other relevant entities in an attempt to facilitate better intergovernmental communication, cooperation and coordination. The department also issues to new municipalities a Growth Management Information Package, which contains a copy of Ch. 163, Part II, the Local Government Comprehensive Planning and Development Regulation Act; Rule 9J-5, Florida Administrative Code; copies of publications from the department, and; the Model Local Intergovernmental Coordination Element for Local Governments in Pinellas County. This last document was prepared by the Pinellas Planning Council in December of 1998. It is comprehensive in its approach to intergovernmental relations in Pinellas County, and strives to be used as a resource, not as a mandate. The Model Element offers options to local governments, but within a framework that is consistent with state requirements and the county's vision of growth management.

2. Suggested Practices

Section 163.3177(6)(h), F.S., requires an intergovernmental coordination element (ICE) in each local comprehensive plan. This important requirement goes frequently unobserved, perhaps due to weak or non-existent enforcement mechanisms. Whether there are penalties for non-compliance with this provision or not, it behooves new communities to take advantage of intergovernmental coordination. Discussing and planning development with neighboring or other affected jurisdictions will decrease acrimony and litigation between the stakeholders.

The trend towards improved communication and coordination between new municipalities and their county should be continued. New municipalities may wish to thoroughly review Pinellas County's Model Intergovernmental Coordination Element to cull from it valuable information. Doing so may result in better

compliance with ICE requirements.

The new municipality should also take advantage of the technical assistance that the DCA can provide, and work closely with the county to ensure land use and growth management issues are considered and resolved as early in the process as possible.

There are other examples of intergovernmental coordination that may prove useful, as well. Volusia County, a charter county, took an innovative approach to coordinating growth management issues by creating a Growth Management Commission (GMC). The GMC reviews and must certify every comprehensive plan and plan amendment for each local government in the county. Certification is granted if the plan or plan amendment does not adversely impact an adjacent local government's services or facilities and does not create a land use incompatibility. This approach assures coordination, cooperation and consistency regarding land use decisions.

F. Transition Issues

1. Background

It is critical for new municipalities to have comprehensive transition language in their charters. The transition phase can cover thorny issues such as eligibility for revenue sharing, elections and growth management ordinances. In Lee County, for example, as a result of a charter problem, the newly established city of Bonita Springs was without an acting government for four months. Until such time as the city was legally established, the county had to continue to issue administrative permits to ensure continuation of the construction industry in that area.

Transition provisions must be clear and logical, or citizens will face confusion, frustration, and conflict. For example, citizens must know who will be providing sewer and water services. Developers must know where to go when applying for permits. County sanitation workers must know on what date to cease garbage pick-up for the newly incorporated areas, if appropriate. Transitional issues are challenging because several areas are left up to interlocal agreements between the municipality and the county. However, until the new municipality is incorporated and there is a governing body, there is no entity with whom the county can enter an interlocal agreement.

As mentioned, proposed charters are reviewed by legislative and agency staff. The House Community Affairs staff prepares a bill analysis for each proposed bill and has come across the same areas of concern time and again. Legislative staff has indicated that the transition language used in the proposed charter for the Village of the Lower Keys⁹¹ is comprehensive and clear. This language, which addresses critical issues such as ordinances, resolutions, zoning, and revenue sharing is attached as **Attachment E**.

The value of these provisions is that they allow for an orderly transitional period between the passage of the

⁹¹ Ch. 2000-383, §§ 7 and 8, L.O.F. (2000).

special act, incorporation by referendum, and the actual seating of a governing body. The dates for the referendum, the actual incorporation, the first commission meeting, revenue sharing eligibility dates, and termination of waivers must be consistent with one another, and should be selected in such a way so as to not cause unnecessary administrative challenges for those agencies interacting with the new municipality.

2. Suggested Practice

In general, reviewing prior special acts and bill analyses will help decrease the number of obstacles facing communities when drafting the municipal charter. Currently, chapter laws codifying municipal incorporation bills are not available electronically, which may impede research efforts. The Florida Legislature's Office of Legislative Services Division of Statutory Revision publishes a hard bound Index to Laws of Florida Special and Local Laws. The Index is searchable only by the municipality's name, however. The most recent compilation covers the period between 1971 and 2000.

Specifically, because there is no entity in existence who can speak for, or contract on behalf of, a just forming municipality, it may add legitimacy to the city's proposed budget if the citizen group advocating for incorporation provides some written indication that it is working with the county or any other affected local government to plan for and resolve service delivery issues. This indication could be in the form of a Memorandum of Understanding or perhaps a Letter of Intent between the group and the other local government(s).

VI. CONCLUSION

The Formation of Local Governments Act, Ch. 165, F.S., sets forth the state's interest in the formation of new municipalities. The purpose of the act is to provide standards, direction and procedures for the formation of municipalities in order to ensure that municipalities have fiscal integrity and provide quality public services. The law further specifies that such standards are to ensure that the creation of a new municipality does not create undesirable differentials in fiscal capacity among neighboring local government jurisdictions, nor interfere with orderly patterns of urban growth and land use. Thus, the standards and procedures are set forth.

Nevertheless, the state continues to balance its interests with that of a local community's desire to incorporate. As shown in this report, exemptions to state standards are not uncommon. The frequency of the exemptions affords local groups contemplating incorporation a degree of flexibility when seeking formation of a new local government. Further, municipal incorporations occur by the passage of special acts by the Legislature. Traditionally, most of those special acts provide that a incorporation will only become effective if it is approved by the affected local citizenry. Thus, frequently the Legislature defers the ultimate determination to the local level.

The requisite documents for municipal incorporation are the feasibility study and proposed charter. The feasibility study contains, or should contain, all of the research necessary to assist the Legislature ascertain if the new municipality meets statutory criteria and would be a viable local government. With regard to the feasibility study, the more information the better. A new municipality will benefit from having fully considered and analyzed the breadth of issues that may confront it, whether they are fiscal in nature or otherwise, prior to the date of incorporation. Furthermore, if used wisely, the statutory provisions for the feasibility study can serve as a logical framework for the study.

The charter, which is the blueprint by which the local government must govern itself, should address certain issues that will enable smoother governance. Problems faced by other groups contemplating incorporation have been identified in this report and elsewhere, and should be studied and resolved prior to incorporation. Specifically, it is recommended that the drafters of the charter consider the following suggestions:

- , Place charter provisions in a distinct section of the special act, with non-charter matters in other easily defined sections.

- , Clearly define the form of municipal government, and explicitly state the officials' powers, responsibilities and duties.

- , Be consistent regarding the date on which the municipality is officially established and the date the municipality will be eligible for revenue sharing. Simplify to the extent possible the fiscal administration of the municipality, taking into consideration the state fiscal cycle. State with specificity the formula that will be used to determine the municipality's share of Local Government Infrastructure Surtax of the Small County Surtax revenues. Consider what fiscal resources are genuinely available and avoid the temptation

to paint an unrealistic financial picture.

, State affirmatively that the municipality shall abide by all state and federal election laws, and make sure that proposed referendum language is unambiguous.

, Explore intergovernmental relationships in service delivery and growth management matters, including land use, housing and other aspects that can be coordinated with the county and neighboring jurisdictions. Consider using Letters of Agreement to show a coordinated strategy with other local governments on these issues.

, Research past successes and failures of preceding municipal incorporation efforts, and review existing municipal charters.

The suggestions above do not attempt to address other incorporation issues, such as annexation or whether the standards should be revised. For purposes of this project, discussion is limited to suggestions that will help those proposing incorporation to address legal and other considerations important to a viable municipal government. The suggestions offered are intended to use the existing statutory framework to more meaningfully implement the state's articulated goals for new incorporations.

Community groups contemplating incorporation are encouraged to consider the suggestions above and to explore the variety of resources available, ranging from government publications to private consulting services. Those seeking incorporation would benefit from a review of the steps, and missteps, taken by others who went before them by thoroughly reviewing feasibility studies and draft charters of predecessors, the analyses of each proposed bill and relevant caselaw. Thus, communities seeking incorporation could address legal factors, function more cost effectively, and most importantly, offer a clearer vision of the future to its citizens.

Further, although not required to do so, a new municipality may wish to consider any impact, fiscal, development or otherwise, that its incorporation would have on other municipalities in the area, the county, the region and the state as a whole. Some communities already take this approach, and find that it leads to better cooperation, coordination, and understanding among neighboring jurisdictions.

Attachment A

Florida's Municipalities Year of Incorporation

<u>#</u>	<u>Municipality</u>	<u>County</u>	<u>Year of Incorporation</u>
1	St. Augustine	St. Johns	1822
2	Pensacola	Escambia	1824
3	Fernandina Beach	Nassau	1825
4	Marianna	Jackson	1825
5	Tallahassee	Leon	1825
6	Key West	Monroe	1828
7	Quincy	Gadsden	1828
8	Apalachicola	Franklin	1831
9	Jacksonville	Duval	1832
10	Micanopy	Alachua	1837
11	Milton	Santa Rosa	1844
12	Palatka	Putnam	1853
13	Tampa	Hillsborough	1855
14	Jasper	Hamilton	1858
15	Monticello	Jefferson	1859
16	Ocala	Marion	1868
17	Gainesville	Alachua	1869
18	Hampton	Bradford	1870
19	Starke	Bradford	1870
20	Green Cove Springs	Clay	1874
21	Leesburg	Lake	1875
22	Orlando	Orange	1875
23	Baldwin	Duval	1876
24	Sanford	Seminole	1877
25	Wildwood	Sumter	1877
26	Live Oak	Suwannee	1878
27	Orange Park	Clay	1879
28	Brooksville	Hernando	1880
29	Ormond Beach	Volusia	1880
30	Eustis	Lake	1881
31	Hawthorne	Alachua	1881
32	Apopka	Orange	1882
33	Bartow	Polk	1882
34	DeLand	Volusia	1882
35	Orange City	Volusia	1882
36	Kissimmee	Osceola	1883
37	Fort White	Columbia	1884
38	Belleview	Marion	1885
39	Lakeland	Polk	1885
40	Macclenny	Baker	1885
41	Maitland	Orange	1885
42	Plant City	Hillsborough	1885

Florida's Municipalities

Year of Incorporation

<u>#</u>	<u>Municipality</u>	<u>County</u>	<u>Year of Incorporation</u>
43	White Springs	Hamilton	1885
44	Bonifay	Holmes	1886
45	Fort Myers	Lee	1886
46	Titusville	Brevard	1886
47	Archer	Alachua	1887
48	Eatonville	Orange	1887
49	Oakland	Orange	1887
50	Punta Gorda	Charlotte	1887
51	Rockledge	Brevard	1887
52	Tarpon Springs	Pinellas	1887
53	Winter Park	Orange	1887
54	Interlachen	Putnam	1888
55	Lake Helen	Volusia	1888
56	Melbourne	Brevard	1888
57	Miami-Dade City	Pasco	1889
58	Dunnellion	Marion	1890
59	Saint Leo	Pasco	1891
60	High Springs	Alachua	1892
61	Carrabelle	Franklin	1893
62	Palmetto	Manatee	1894
63	Pomona Park	Putnam	1894
64	Sneads	Jackson	1894
65	West Palm Beach	Palm Beach	1894
66	Cocoa	Brevard	1895
67	Miami	Miami-Dade	1896
68	Lake Butler	Union	1897
69	Dunedin	Pinellas	1899
70	Jennings	Hamilton	1900
71	Webster	Sumter	1900
72	Arcadia	DeSoto	1901
73	Fort Pierce	St.Lucie	1901
74	Mulberry	Polk	1901
75	Graceville	Jackson	1902
76	Holly Hill	Volusia	1902
77	Sarasota	Sarasota	1902
78	Blountstown	Calhoun	1903
79	Bradenton	Manatee	1903
80	Crystal River	Citrus	1903
81	DeFuniak Springs	Walton	1903
82	Mayo	Lafayette	1903
83	Perry	Taylor	1903
84	San Antonio	Pasco	1903
85	St. Petersburg	Pinellas	1903
86	Dania	Broward	1904
87	Umatilla	Lake	1904

Florida's Municipalities

Year of Incorporation

<u>#</u>	<u>Municipality</u>	<u>County</u>	<u>Year of Incorporation</u>
88	Bell	Gilchrist	1905
89	Cottondale	Jackson	1905
90	Largo	Pinellas	1905
91	Lawtey	Bradford	1905
92	Chipley	Washington	1906
93	Bowling Green	Hardee	1907
94	Greenville	Madison	1907
95	Havana	Gadsden	1907
96	Waldo	Alachua	1907
97	Wauchula	Hardee	1907
98	Alachua	Alachua	1908
99	Gretna	Gadsden	1908
100	Winter Garden	Orange	1908
101	Newberry	Alachua	1909
102	Panama City	Bay	1909
103	Gulfport	Pinellas	1910
104	Auburndale	Polk	1911
105	Bushnell	Sumter	1911
106	Callahan	Nassau	1911
107	Crescent City	Putnam	1911
108	Fort Lauderdale	Broward	1911
109	Greensboro	Gadsden	1911
110	Lee	Madison	1911
111	Malone	Jackson	1911
112	Palm Beach	Palm Beach	1911
113	St. Cloud	Osceola	1911
114	Trenton	Gilchrist	1911
115	Mont Dora	Lake	1912
116	Neptune Beach	Duval	1912
117	Avon Park	Highlands	1913
118	Hastings	St. Johns	1913
119	Homestead	Miami-Dade	1913
120	Lake Worth	Palm Beach	1913
121	Lynn Haven	Bay	1913
122	McIntosh	Marion	1913
123	Port St. Joe	Gulf	1913
124	Zolfo Springs	Hardee	1913
125	Florida City	Miami-Dade	1914
126	Haines City	Polk	1914
127	Pinellas Park	Pinellas	1914
128	Stuart	Martin	1914
129	Zephyrhills	Pasco	1914
130	Clearwater	Pinellas	1915
131	Davenport	Polk	1915
132	Fort Meade	Polk	1915

Florida's Municipalities

Year of Incorporation

<u>#</u>	<u>Municipality</u>	<u>County</u>	<u>Year of Incorporation</u>
133	Miami Beach	Miami-Dade	1915
134	Okeechobee	Okeechobee	1915
135	Clermont	Lake	1916
136	Crestview	Okaloosa	1916
137	Lake Wales	Polk	1917
138	Safety Harbor	Pinellas	1917
139	Lake Alfred	Polk	1918
140	Inverness	Citrus	1919
141	Vero Beach	Indian River	1919
142	Altamonte Springs	Seminole	1920
143	Boynton Beach	Palm Beach	1920
144	Chattahoochee	Gadsden	1921
145	Eagle Lake	Polk	1921
146	Frostproof	Polk	1921
147	Lake City	Columbia	1921
148	Lake Park	Palm Beach	1921
149	Lantana	Palm Beach	1921
150	Valparaiso	Okaloosa	1921
151	Cedar Key	Levy	1923
152	Groveland	Lake	1923
153	Hillcrest Heights	Polk	1923
154	Melbourne Beach	Brevard	1923
155	Ocoee	Orange	1923
156	Pahokee	Palm Beach	1923
157	Riviera Beach	Palm Beach	1923
158	Belle Isle	Orange	1924
159	Cross City	Dixie	1924
160	Edgewater	Volusia	1924
161	Edgewood	Orange	1924
162	Longwood	Seminole	1924
163	Moore Haven	Glades	1924
164	New Port Richey	Pasco	1924
165	Sebastian	Indian River	1924
166	Belleair	Pinellas	1925
167	Boca Raton	Palm Beach	1925
168	Campbellton	Jackson	1925
169	Center Hill	Sumter	1925
170	Clewiston	Hendry	1925
171	Cocoa Beach	Brevard	1925
172	Coleman	Sumter	1925
173	Coral Gables	Miami-Dade	1925
174	Deerfield Beach	Broward	1925
175	Dundee	Polk	1925
176	Fellsmere	Indian River	1925
177	Flagler Beach	Flagler	1925

Florida's Municipalities

Year of Incorporation

<u>#</u>	<u>Municipality</u>	<u>County</u>	<u>Year of Incorporation</u>
178	Hialeah	Miami-Dade	1925
179	Hollywood	Broward	1925
180	Howey-In-The-Hills	Lake	1925
181	Jupiter	Palm Beach	1925
182	Keystone Heights	Clay	1925
183	La Belle	Hendry	1925
184	Lady Lake	Lake	1925
185	Lake Hamilton	Polk	1925
186	Mascotte	Lake	1925
187	Minneola	Lake	1925
188	Montverde	Lake	1925
189	Naples	Collier	1925
190	Oviedo	Seminole	1925
191	Polk City	Polk	1925
192	Port Orange	Volusia	1925
193	Port Richey	Pasco	1925
194	Reddick	Marion	1925
195	Tavares	Lake	1925
196	Temple Terrace	Hillsborough	1925
197	Venice	Sarasota	1925
198	Vernon	Washington	1925
199	Windermere	Orange	1925
200	Winter Haven	Polk	1925
201	Yankeetown	Levy	1925
202	Anna Maria	Manatee	1926
203	Daytona Beach	Volusia	1926
204	Fruitland Park	Lake	1926
205	Greenacres	Palm Beach	1926
206	Gulf Stream	Palm Beach	1926
207	Miami Springs	Miami-Dade	1926
208	North Miami Beach	Miami-Dade	1926
209	Opa-Locka	Miami-Dade	1926
210	South Miami	Miami-Dade	1926
211	Astatula	Lake	1927
212	Delray Beach	Palm Beach	1927
213	Hallandale	Broward	1927
214	North Miami	Miami-Dade	1927
215	Penney Farms	Clay	1927
216	Belle Glade	Palm Beach	1928
217	Bunnell	Flagler	1928
218	Chiefland	Levy	1928
219	Highland Park	Polk	1928
220	Lake Placid	Highlands	1928
221	Golden Beach	Miami-Dade	1929
222	Greenwood	Jackson	1929

Florida's Municipalities

Year of Incorporation

#	<u>Municipality</u>	<u>County</u>	<u>Year of Incorporation</u>
223	Oakland Park	Broward	1929
224	Pierson	Volusia	1929
225	Sebring	Highlands	1929
226	Williston	Levy	1929
227	Manalapan	Palm Beach	1931
228	Ocean Ridge	Palm Beach	1931
229	Miami Shores	Miami-Dade	1932
230	Biscayne Park	Miami-Dade	1933
231	Surfside	Miami-Dade	1935
232	Oldsmar	Pinellas	1936
233	El Portal	Miami-Dade	1937
234	Jacksonville Beach	Duval	1937
235	Indian Creek Village	Miami-Dade	1939
236	Jay	Santa Rosa	1939
237	Casselberry	Seminole	1940
238	Fort Walton Beach	Okaloosa	1941
239	Marineland	Flagler/St. Johns	1941
240	South Bay	Palm Beach	1941
241	Sweetwater	Miami-Dade	1941
242	New Smyrna Beach	Volusia	1943
243	Reddington Beach	Pinellas	1944
244	Century	Escambia	1945
245	Madison	Madison	1945
246	North Bay	Miami-Dade	1945
247	Altha	Calhoun	1946
248	Bal Harbour	Miami-Dade	1946
249	Mary Esther	Okaloosa	1946
250	Bay Harbor Islands	Miami-Dade	1947
251	Glen Ridge	Palm Beach	1947
252	Hilliard	Nassau	1947
253	Hillsboro Beach	Broward	1947
254	Mangonia Park	Palm Beach	1947
255	Palm Beach Shores	Palm Beach	1947
256	Pompano Beach	Broward	1947
257	Shalimar	Okaloosa	1947
258	Virginia Gardens	Miami-Dade	1947
259	Welaka	Putnam	1947
260	Wilton Manors	Broward	1947
261	Hialeah Gardens	Miami-Dade	1948
262	Highland Beach	Palm Beach	1949
263	Indian Shores	Pinellas	1949
264	Lauderdale-By-The-Sea	Broward	1949
265	Medley	Miami-Dade	1949
266	West Miami	Miami-Dade	1949
267	Belleair Beach	Pinellas	1950

Florida's Municipalities

Year of Incorporation

<u>#</u>	<u>Municipality</u>	<u>County</u>	<u>Year of Incorporation</u>
268	Cinco Bayou	Okaloosa	1950
269	Haverhill	Palm Beach	1950
270	Holmes Beach	Manatee	1950
271	Bronson	Levy	1951
272	Cedar Grove	Bay	1951
273	Cloud Lake	Palm Beach	1951
274	Grand Ridge	Jackson	1951
275	Madeira Beach	Pinellas	1951
276	South Daytona	Volusia	1951
277	Springfield	Bay	1951
278	Brooker	Bradford	1952
279	Indialantic	Brevard	1952
280	Paxton	Walton	1952
281	Bradenton Beach	Manatee	1953
282	Everglades	Collier	1953
283	Indian River Shores	Indian River	1953
284	Juno Beach	Palm Beach	1953
285	Jupiter Island	Martin	1953
286	Laurel Hill	Okaloosa	1953
287	Lazy Lake Village	Broward	1953
288	North Reddington Beach	Pinellas	1953
289	Plantation	Broward	1953
290	Belleair Shore	Pinellas	1955
291	Beverly Beach	Flagler	1955
292	Indian Harbour Beach	Brevard	1955
293	Longboat Key	Sarasota/Manatee	1955
294	Margate	Broward	1955
295	Miramar	Broward	1955
296	Reddington Shores	Pinellas	1955
297	Sopchoppy	Wakulla	1955
298	South Palm Beach	Palm Beach	1955
299	South Pasadena	Pinellas	1955
300	Treasure Island	Pinellas	1955
301	Indian Rocks Beach	Pinellas	1956
302	Inglis	Levy	1956
303	Lighthouse Point	Broward	1956
304	North Palm Beach	Palm Beach	1956
305	Palm Bay	Brevard	1956
306	Atlantic Beach	Duval	1957
307	Bristol	Liberty	1957
308	Golf Village	Palm Beach	1957
309	Kenneth City	Pinellas	1957
310	Key Colony Beach	Monroe	1957
311	La Crosse	Alachua	1957
312	Lake Clarke Shores	Palm Beach	1957

Florida's Municipalities

Year of Incorporation

<u>#</u>	<u>Municipality</u>	<u>County</u>	<u>Year of Incorporation</u>
313	Melbourne Village	Brevard	1957
314	Niceville	Okaloosa	1957
315	Palm Springs	Palm Beach	1957
316	Satellite Beach	Brevard	1957
317	Sewall's Point	Martin	1957
318	St. Pete Beach	Pinellas	1957
319	Tequesta Village	Palm Beach	1957
320	Glen Saint Mary	Baker	1958
321	Alford	Jackson	1959
322	Atlantis	Palm Beach	1959
323	Cooper City	Broward	1959
324	Jupiter Inlet Colony	Palm Beach	1959
325	Lauderhill	Broward	1959
326	North Port	Sarasota	1959
327	Palm Beach Gardens	Palm Beach	1959
328	Palm Shores	Brevard	1959
329	Panama City Beach	Bay	1959
330	Pembroke Park	Broward	1959
331	Royal Palm Beach	Palm Beach	1959
332	Sea Ranch Lakes	Broward	1959
333	St. Augustine Beach	St. Johns	1959
334	West Melbourne	Brevard	1959
335	Wewahitchka	Gulf	1959
336	Winter Springs	Seminole	1959
337	Davie	Broward	1960
338	Daytona Beach Shores	Volusia	1960
339	Islandia	Miami-Dade	1960
340	Ocean Breeze Park	Martin	1960
341	Pembroke Pines	Broward	1960
342	Branford	Suwanee	1961
343	Gulf Breeze	Santa Rosa	1961
344	Hypoluxo	Palm Beach	1961
345	Lauderdale Lakes	Broward	1961
346	Port St. Lucie	St. Lucie	1961
347	St. Lucie Village	St. Lucie	1961
348	Sunrise	Broward	1961
349	Layton	Monroe	1962
350	Malabar	Brevard	1962
351	Bascom	Jackson	1963
352	Belleair Bluffs	Pinellas	1963
353	Briny Breezes	Palm Beach	1963
354	Callaway	Bay	1963
355	Cape Canaveral	Brevard	1963
356	Coral Springs	Broward	1963
357	Esto	Holmes	1963

Florida's Municipalities

Year of Incorporation

<u>#</u>	<u>Municipality</u>	<u>County</u>	<u>Year of Incorporation</u>
358	Freeport	Walton	1963
359	Horseshoe Beach	Dixie	1963
360	North Lauderdale	Broward	1963
361	Oak Hill	Volusia	1963
362	Parkland	Broward	1963
363	Ponce De Leon	Holmes	1963
364	Ponce Inlet	Volusia	1963
365	St. Marks	Wakulla	1963
366	Tamarac	Broward	1963
367	Wausau	Washington	1963
368	Worthington Springs	Union	1963
369	Caryville	Washington	1965
370	Fanning Springs	Gilchrist/Levy	1965
371	Orchid	Indian River	1965
372	Weeki Wachee	Hernando	1966
373	Bay Lake	Orange	1967
374	Coconut Creek	Broward	1967
375	Ebro	Washington	1967
376	Lake Buena Vista	Orange	1967
377	Mexico Beach	Bay	1967
378	Noma	Holmes	1967
379	Parker	Bay	1967
380	Otter Creek	Levy	1969
381	Cape Coral	Lee	1970
382	Seminole	Pinellas	1970
383	Westville	Holmes	1970
384	Raiford	Union	1971
385	Lake Mary	Seminole	1973
386	Sanibel	Lee	1974
387	Jacob City	Jackson	1983
388	Destin	Okaloosa	1984
389	Midway	Gadsden	1986
390	Key Biscayne	Miami-Dade	1991
391	Debary	Volusia	1993
392	Aventura	Miami-Dade	1995
393	Deltona	Volusia	1995
394	Fort Myers Beach	Lee	1995
395	Pinecrest	Miami-Dade	1995
396	Wellington	Palm Beach	1995
397	Weston	Broward	1996
398	Islamorda	Monroe	1997
399	Marco Island	Lee	1997
400	Sunny Isle Beach	Miami-Dade	1997
401	Bonita Springs	Lee	1999
402	Marathon	Monroe	1999

Florida's Municipalities

Year of Incorporation

<u>#</u>	<u>Municipality</u>	<u>County</u>	<u>Year of Incorporation</u>
403	Palm Coast	Flagler	1999
404	Southwest Ranches	Broward	2000
405	Miami Lakes	Miami-Dade	2000

Note : This list reflects only those municipalities currently in existence. Municipalities that have been dissolved are not included.

Compiled by the Legislative Committee on Intergovernmental Relations (updated Jan. 2001) using information obtained from the Florida League of Cities and the House Committee on Community Affairs.

Attachment B

Municipal Incorporation Standards in Other States⁹²

State standards are broadly defined as requirements specified in state laws or constitutions that must be met as a condition for incorporation. The seven standard categories selected for comparison are identified below. In addition, the review included consideration of the entity authorized to grant incorporations for each state.

1. Minimum population;
2. Limitation of area (maximum or minimum land);
3. Minimum distance from existing cities;
4. Minimum ad valorem tax base;
5. Feasibility study on the proposed incorporation;
6. Multiple classification of cities;
7. Presents of boundary review boards or commissions; and
8. Entity authorized to grant incorporation status.

A. General Overview

Frequency Rates. Overall, 39 states have established one or more standards as a condition for municipal incorporation. The standards most commonly shared among the states are minimum population (36), followed by multiple classification of cities (25), minimum distance from existing cities (24), required feasibility study (20), involvement of a boundary review board (13), and limitation on size of area incorporated (13). Only 2 states impose a minimum ad valorem tax base requirement. Florida imposes four of these seven standards: minimum population; minimum distance from existing cities; required feasibility study; and limitation on size of area incorporated (as a function of population density requirement and required contiguous boundaries).

Number of Standards Per State. The states that impose the greatest number of incorporation standards (6) are Illinois, Ohio, and Washington. States that impose the fewest number of standards (1) are Maryland and Nebraska. On average, states impose between 3 and 4 standards. Florida imposes four standards. The 11 states that do not impose standards are: Connecticut; Delaware; Hawaii; Maine; Massachusetts; New

⁹² Identifying other states=incorporation standards and related information began with a 1993 report by the U. S. Commission on Intergovernmental Relations, State Laws Governing Local Government Structure and Administration, which generated a tentative list of states with standards and related policies governing the formation of local governments. A review of state constitutions and statutes for each state identified on the tentative list was undertaken to eliminate states with standards governing the formation of local governments other than municipalities. This review also provided detailed information relative to the standards included in the study. Where detailed information could not be located in a states= statutes or constitution from available materials or by Internet, a representative of that state, usually legislative staff, were contacted. States identified as having no standards governing the formation of municipal incorporations were contacted to verify this status. Representatives of these states were also asked to provide certain information regarding the designation of municipalities within their state.

Hampshire; New Jersey; Pennsylvania; Rhode Island; Tennessee; and Vermont.

Conditional Standards. A large percentage of the states provide for exceptions or variations in the numerical requirements of their standards. Generally, these exceptions are conditional (i.e., based on local circumstances or other state policies).

! 23 of the 24 states with minimum distance from existing cities standards provide for exceptions.

! 27 of the 36 states with minimum population requirements provide for exceptions.

! 4 of the 13 states with limitations on the area incorporated provide for exceptions.

Florida imposes three conditional standards: minimum population requirement; minimum density requirement; and minimum distance from existing cities.

B. Specific standards

1. Minimum population. Minimum population is the most commonly shared state incorporation standard. Of the 39 states with standards, 36 impose a minimum population standard. Indiana, Iowa, and Wyoming are the only states with incorporation standards that do not require a minimum population for the jurisdiction proposing incorporation.

Minimum population standards range from a low of 75 electors in Arkansas to a high of 2,500 residents in Illinois. Florida, along with Arizona, and Washington impose the next highest minimum population standard at 1,500 residents. Twenty-five states have a minimum population standard of 500 or less residents.

Twenty-seven states provide for exceptions to their minimum population standards. The single most common type of exception to the minimum population standard is the Aclassification of city@(12 states). The exception Aminimum registered voters@is the second most frequent type of exception (5 states), followed by Apopulation of county@(3 states, including Florida), and Acertain density requirements@(3 states).

2. Limitation of area incorporated. Eight states impose an incorporation standard related to the geographical area to be incorporated. The most common standard establishes a cap on the size of the area to be incorporated (7 states). Florida's standard, minimum density, combines size of area with population. Four states provide for an exception to limitation on the area incorporated. Population appears to be the most common factor associated with the exceptions.

3. Minimum distance from existing municipalities. Twenty-four states limit the distance that the boundary of a new municipality may be from the boundary of an existing municipality. There is general agreement that a new municipality may impede the growth of an existing municipality through annexation if it incorporates within a minimum distance. The minimum distance requirements range from 3 miles (3 states) to 20 miles (1 state). The most common minimum distance requirement is 3 miles. Florida, along with Iowa and Missouri impose a minimum distance standard of 2 miles. The minimum distance requirements and the states imposing those requirements are noted below.

Twenty-three of the 24 states that impose a minimum distance standard provide for one or more reasons to except this standard. The types of exceptions most frequently granted include: classification of city/county based on population (10 states); annexation turned down by the neighboring jurisdiction (10 states); and the neighboring jurisdiction has approved the incorporation within the minimum distance of them (9 states). Florida and Minnesota permit an exception to their minimum distance requirement based on the existence of a natural/artificial barrier or the existing city is within the jurisdiction of a neighboring county.

4. Minimum ad valorem tax base. Two states impose a standard requiring that the new municipality have a minimum ad valorem tax base as a condition for incorporation, Illinois and Ohio. Ohio requires a minimum of \$2,000 per capita ad valorem tax base. The minimum tax base for Illinois is unknown.

5. Feasibility study for the proposed incorporation. Nineteen states require that a feasibility study be conducted prior to incorporation of a municipality. The contents of the feasibility studies varied among the states. A Simple studies required basic information suggesting that the proposed incorporation was financially feasible. Eight states require a Simple study. A Comprehensive studies required specific information to be included regarding revenue sources and estimated revenues; expenditure projections; services to be provided, service providers, and their costs; fiscal impacts on neighboring units of local government; method of analysis; and assignment of responsibilities for conducting the study. Twelve states, including Florida require a Comprehensive study. Nineteen states do not require feasibility studies.

6. Multiple classifications of municipalities. Twenty-five of the 39 states with standards, provide for a multiple classification of municipalities. Generally, the classifications are based on the population of the proposed municipality or the county within which the proposed municipality would incorporate. References were made to different levels of authority and responsibility base on a municipality's classification. Further documentation would require an extensive review of the states' statutes. Florida is one of the 14 states with state standards that does not have multiple municipal classifications.

7. Boundary Review Boards/Commissions (BRB). BRBs are entities assigned responsibility for review and study of proposed municipal incorporations in addition to other local government boundary adjustment issues. Thirteen states require that a municipal incorporation proposal be reviewed by a BRB. The role of the BRB in review of the incorporation varies by state. In some cases the BRB simple provides a review of the proposed incorporation and feasibility study, while in other states, the BRB conducts the feasibility study and is authorized to approve the incorporation proposal and designate the community as Incorporated.

There are two types of BRBs: statewide and regional/local. Statewide BRBs are usually responsible for reviewing all local government formation proposals for the state. In contrast, regional/local BRBs are responsible for considering such formation issues only for a designated region of the state. Characteristics of each type of BRBs can be summarized as follows:

Seven states have a single, statewide boundary review/adjustment board. (AK, IA, MI, MN, NC, NM,

VA) Responsibilities of the boards vary, but at a minimum, most include review of proposals for municipal incorporation, annexation, and consolidation. New Mexico's board is limited to review of annexation proposals. Membership primarily consists of gubernatorial appointments. Boards established between 1959 - 1980. Board operations are staffed and funded by the state. Four states include provisions for referenda and all states provide for an appeal to court over board decisions.

Six states have local or regional boundary review/adjustment boards. (CA, MO, NV, OR, UT, WA) All boards are county based. The Missouri board is limited to St. Louis County, the Oregon boards are limited to the two major metropolitan areas in the state, Nevada limits boards to counties with populations between 100,000 - 250,000, and Washington requires boards for all counties with populations over 210,000 and allows them for counties under 210,000 in population. Responsibilities of the boards vary. Nevada and Utah's boards are limited to annexation (Nevada's boards are currently inactive), while boards in California, Oregon, and Washington are authorized to review incorporations, annexations, consolidations, and service delivery issues, including transfers of governing jurisdictions (Missouri) and special districts (California, Oregon, and Washington). Membership varies, but the majority are comprised by local government appointments. Boards established between 1963 - 1989. Boards are primarily staffed and funded by county government. All board decisions are appealable to either local courts, state court of appeals, or both.

8. Entity authorized to grant incorporation status. The type of entity authorized to grant incorporation status to a municipality vary by state. The most common method for granting incorporation is by the Board of County Commissioners (17 states), followed by the state legislature (12 states, including Florida), and the county, circuit, or chancery court (9 states). Five states authorize a BRB to grant incorporation status.

C. Comparison Summary of State Standards

1. Similar state standards indicate a shared agreement among states that certain conditions are necessary for, or essential to a successful incorporation. Similar standards include: minimum population; multiple classification of cities; minimum distance from existing cities; and a required feasibility study. Florida imposes these standards with the exception of multiple classification of cities.

2. Standards not commonly shared among the states may indicate innovative approaches for governing municipal incorporations or reflect unique characteristics of the states that impose them. Standards not commonly shared among the states include: involvement of boundary review boards; limitation on size of area incorporated; and minimum ad valorem tax base. Florida imposes a variation of the limitation on the size of the area to be incorporated based on its density requirement.

3. Twenty states currently require a feasibility study as a condition for incorporation. Feasibility studies are identified as simple or complex, depending upon the type and detail of information it contains and the entity designated to prepare it. Florida's required feasibility study is identified as simple relative to the more comprehensive studies required by nine states.

4. A large percentage of the state standards having numerical requirements include provisions for exceptions to those numerical standards. Florida provides for such exceptions to two standards: minimum population and minimum distance from existing municipalities.

5. Five of the 13 states that require the incorporation proposal to be reviewed by a Boundary Review Board have provided that board with authority to designate the incorporation status for the municipality. In contrast, Boards of County Commissioners are authorized to designate an incorporation in 17 states, while 12 states, including Florida, authorize the state legislature to designate incorporation status.

ATTACHMENT C

CHAPTER 96-542

House Bill No. 2633

An act relating to Broward County; providing for procedures for annexation of unincorporated areas into municipalities throughout Broward County, certain provisions of s. 171.0413, F.S., to the contrary notwithstanding; providing an effective date.

WHEREAS, Broward County is an urbanized county with a population in excess of 1 million residents, with 28 municipalities, and

WHEREAS, Broward County has numerous scattered unincorporated pockets which reflect the haphazard manner in which annexation into municipalities had taken place over the years by the application of general annexation law of the state, and

WHEREAS, the legislative delegation, representing Broward County, had created an Ad Hoc Committee on Annexation Policy composed of legislators, local officials and residents to study the orderly annexation of the remaining unincorporated areas of Broward County, and

WHEREAS, the report of the Ad Hoc Committee on Annexation Policy has made numerous recommendations to aid in the orderly annexation of the remaining unincorporated areas of Broward County, and

WHEREAS, one of the recommendations of the Ad Hoc Committee on Annexation Policy was to discourage dual referenda in annexation within Broward County, and

WHEREAS, one of the recommendations of the Ad Hoc Committee on Annexation Policy was to require the approval of the Broward Legislative Delegation before annexation pursuant to general law becomes effective in Broward County, NOW, THEREFORE

Be It Enacted by the Legislature of the State of Florida:

Section 1. The provision requiring a referendum of the electors of an annexing municipality contained in the second sentence of s. 171.0413(2), F.S., shall not be effective with respect to any proposed annexation pursuant to chapter 171, F.S., in Broward County.

Section 2. Any annexation of unincorporated property within Broward County proposed to be accomplished pursuant to chapter 171, F.S., must be first considered at a public hearing conducted by the Broward Legislative Delegation pursuant to its adopted rules; and thereafter shall not be effective until the first

day of October following adjournment sine die of the next regular legislative session following the accomplishment of all procedures necessary for annexation pursuant to chapter 171, F.S. However, any voluntary annexation ordinance adopted by a municipality prior to January 1, 1996, the subject matter of which has had a public hearing before the Broward County Legislative Delegation, shall be given effect according to its terms.

Section 3. This act shall take effect upon becoming a law.

Became a law without the Governor's approval June 5, 1996.

Filed on Office Secretary of State June 4, 1996

Attachment D

**Summary of General Fiscal Impacts on Units of Local Government Caused by the Creation of a New Municipality:
Select State-Shared Revenues and Local Option Taxes (1)**

Compiled by the Florida Legislative Committee on Intergovernmental Relations, updated January 2001

<u>Revenue / Tax</u>	Fiscal Impacts in the "Parent" County			Fiscal Impacts in All Other Counties	
	<u>The Newly Incorporated Municipality</u>	<u>Other Municipalities Within the "Parent" County</u>	<u>The "Parent" County</u>	<u>All Other Counties</u>	<u>Municipalities in All Other Counties</u>
Local Gov't Half-Cent Sales Tax	Positive Municipalities are only eligible to receive the ordinary distribution. The new municipality's share will be a function of its population as well as the county's total population and incorporated population.	Negative A new municipality will increase the parent county's incorporated population resulting in a decrease among the other municipalities.	Negative A new municipality will decrease the parent county's unincorporated population resulting in a reduction in the county's share.	No Impact Since the distribution factor is applied to the total adjusted sales tax collection for each county, the funds available to all other counties will remain unaffected.	No Impact Since the distribution factor is applied to the total adjusted sales tax collection for each county, the funds available to municipalities in all other counties will remain unaffected.
County Revenue Sharing	Not Applicable Municipalities are not entitled to a distribution from this revenue source.	Not Applicable Municipalities are not entitled to a distribution from this revenue source.	Negative A new municipality will result in a decrease in the unincorporated population of the parent county.	Positive A new municipality will contribute to a decrease in the state's unincorporated population resulting in negligible increases for all other counties.	Not Applicable Municipalities are not entitled to a distribution from this revenue source.
Municipal Revenue Sharing	Positive Municipalities incorporated after 1972 are only entitled to receive a 'growth monies' distribution.	Negative A new municipality will result in another participant being entitled to receive a share of the growth monies.	Not Applicable Counties are not entitled to a distribution from this revenue source.	Not Applicable Counties are not entitled to a distribution from this revenue source.	Negative A new municipality will result in another participant being entitled to receive a share of the growth monies.
Constitutional & County Fuel Taxes	Not Applicable Municipalities are not entitled to a distribution from this revenue source.	Not Applicable Municipalities are not entitled to a distribution from this revenue source.	No Impact The creation of a new municipality will not affect any components of the distribution formula.	No Impact The creation of a new municipality will not affect any components of the distribution formula.	Not Applicable Municipalities are not entitled to a distribution from this revenue source.

Attachment D

**Summary of General Fiscal Impacts on Units of Local Government Caused by the Creation of a New Municipality:
Select State-Shared Revenues and Local Option Taxes (1)**

Compiled by the Florida Legislative Committee on Intergovernmental Relations, updated January 2001

<u>Revenue / Tax</u>	Fiscal Impacts in the "Parent" County			Fiscal Impacts in All Other Counties	
	<u>The Newly Incorporated Municipality</u>	<u>Other Municipalities Within the "Parent" County</u>	<u>The "Parent" County</u>	<u>All Other Counties</u>	<u>Municipalities in All Other Counties</u>
Distribution of Sales and Use Taxes to Counties (Formerly the Pari-mutuel Tax)	Not Applicable Municipalities are not entitled to a distribution from this revenue source.	Not Applicable Municipalities are not entitled to a distribution from this revenue source.	No Impact The distribution is an annual entitlement to counties only.	No Impact The distribution is an annual entitlement to counties only.	Not Applicable Municipalities are not entitled to a distribution from this revenue source.
Local Option Sales Surtaxes	Positive / Indeterminate Positive - if the distribution will be based on the default formula. Indeterminate - if the distribution will be based on an interlocal agreement.	Negative / Indeterminate Negative - if the distribution will be based on the default formula. Indeterminate - if the distribution will be based on an interlocal agreement.	Negative / Indeterminate Negative - if the distribution will be based on the default formula. Indeterminate - if the distribution will be based on an interlocal agreement.	No Impact Since these taxes are locally determined, the distribution of local option sales surtax proceeds to all other counties will not be affected.	No Impact Since these taxes are locally determined, the distribution of local option sales surtax proceeds to municipalities in all other counties will not be affected.
Local Option Fuel Taxes	Positive / Indeterminate Positive - if the distribution will be based on the statutory county per lane mile expenditure methodology. Indeterminate - if the distribution will be based on provisions contained in the local act incorporating the municipality.	No Impact / Indeterminate No Impact - if the distribution will be based on the statutory county per lane mile expenditure methodology. Indeterminate - if the distribution will be based on provisions contained in the local act incorporating the municipality.	Negative / Indeterminate Negative - if the distribution will be based on the statutory county per lane mile expenditure methodology. Indeterminate - if the distribution will be based on provisions contained in the local act incorporating the municipality.	No Impact Since these taxes are locally determined, the distribution of local option fuel tax proceeds in all other counties will not be affected.	No Impact Since these taxes are locally determined, the distribution of local option fuel tax proceeds to municipalities in all other counties will not be affected.

Attachment D

**Summary of General Fiscal Impacts on Units of Local Government Caused by the Creation of a New Municipality:
Select State-Shared Revenues and Local Option Taxes (1)**

Compiled by the Florida Legislative Committee on Intergovernmental Relations, updated January 2001

<u>Revenue / Tax</u>	Fiscal Impacts in the "Parent" County			Fiscal Impacts in All Other Counties	
	<u>The Newly Incorporated Municipality</u>	<u>Other Municipalities Within the "Parent" County</u>	<u>The "Parent" County</u>	<u>All Other Counties</u>	<u>Municipalities in All Other Counties</u>
Local Option Tourist Taxes	<p align="center">Indeterminate</p> <p>The distribution to any municipality will be dependent on the provisions specified in the county's tourist development plan.</p>	<p align="center">Indeterminate</p> <p>The distribution to any municipality will be dependent on the provisions specified in the county's tourist development plan.</p>	<p align="center">Indeterminate</p> <p>The fiscal impact will be dependent on the provisions specified in the county's tourist development plan.</p>	<p align="center">No Impact</p> <p>Since these taxes are locally determined, the distribution of local option tourist tax proceeds in all other counties will not be affected.</p>	<p align="center">No Impact</p> <p>Since these taxes are locally determined, the distribution of local option tourist tax proceeds to municipalities in all other counties will not be affected.</p>

Notes:

- (1) This table assumes the municipality was formed in the unincorporated area and not as the result of a merger between 2 or more local governments.
- (2) The discussion of local option tax fiscal impacts assumes the levy of the tax by the parent county.

ATTACHMENT E

CHAPTER 2000-383

House Bill No. 565

Section 7. TRANSITION SCHEDULE.--

(1) REFERENDUM.--The referendum election called for by this act shall be held on November 7, 2000, at which time the following question shall be placed on the ballot: "SHALL CHAPTER , LAWS OF FLORIDA, CREATING THE VILLAGE OF THE LOWER KEYS AND PROVIDING ITS CHARTER BE APPROVED? YES NO" In the event this question is answered affirmatively by a majority of voters voting in the referendum, the provisions of this charter will take effect as provided in section 5.

(2) INITIAL ELECTION OF MAYOR AND COMMISSIONERS.--

(a) The Monroe County Commission shall call a very special election or include in a general election for the election of four Village commissioners and a mayor to be held on December 19, 2000.

(b) Any individual who wishes to run for one of the four initial seats on the commission or for the office of mayor shall qualify as a candidate with the Monroe County Supervisor of Elections between noon November 13, 2000, and noon November 22, 2000.

(c) Those candidates who are elected December 19, 2000, shall take office at the initial Village commission meeting which shall be held at 7:00 p.m., on December 21, 2000, at the former Barnett Bank Building on Summerland Key.

(3) FIRST YEAR EXPENSES.--The Village commission, in order to provide moneys for the expenses and support of the Village, shall have the power to borrow money necessary for the operation of Village government until such time as a budget is adopted and revenues are raised in accordance with the provisions of this charter.

(4) TRANSITIONAL ORDINANCES AND RESOLUTIONS.--The Village commission shall adopt ordinances and resolutions required to effect the transition. Ordinances adopted within 60 days after the first commission meeting may be passed as emergency ordinances. These transitional ordinances, passed as emergency ordinances, shall be effective for no longer than 90 days after adoption, and thereafter may be readopted, renewed, or otherwise continued only in a manner normally prescribed by law.

(5) TRANSITIONAL COMPREHENSIVE PLAN AND LAND DEVELOPMENT REGULATIONS.--

(a) Until such time as the Village adopts a comprehensive plan and it has been accepted by the appropriate agency of the state, the applicable provisions of the Comprehensive Plan of Monroe County, as the same exists on the day the Village commences corporate existence, November 15, 2000, shall remain in effect as the Village's transitional comprehensive plan. All planning functions, duties, and authority shall remain the responsibility of Monroe County until the Village Commission of the Village of the Lower Keys shall assume the local planning duties or the commission establishes a separate local planning agency. Upon written notification to the Board of County Commissioners for Monroe County, all planning functions, duties, and authority shall immediately vest in the Village commission. Prior to the adoption of a Village comprehensive master plan, any amendment to any zoning as established in the current county land use plan shall only be by

an ordinance adopted by the affirmative vote of not less than three members of the full commission. Any increase in the residential density or intensity, as established in the current county land use plan which is adopted by the Village, shall only be by ordinance adopted by the affirmative vote of not less than three members of the full commission.

(b) All powers and duties of the planning commission, zoning authority, any boards of adjustment, and the County Commission of Monroe County, as set forth in these transitional zoning and land use regulations, shall, as of December 21, 2000, be vested in the Village Commission of the Village of the Lower Keys until such time as the Village commission delegates all or a portion thereof to another entity.

(c) Subsequent to the commencement of the Village's corporate existence, no amendment of the comprehensive plan of land development regulations enacted by the County Commission of Monroe County shall be deemed as an amendment of the Village's transitional comprehensive plan or land development regulations or otherwise take effect within the Village's corporate limits unless approved by the Village commission.

(d) In accordance with s. 403.706(1), Florida Statutes, the board of county commissioners shall have the responsibility to transport municipal solid waste to a solid waste disposal facility of the county or operate a solid waste facility. The municipality must, through September 30, 2004, deliver the solid waste collected within the municipality to either a county solid waste transfer station or a county solid waste disposal facility, as determined by the board. For the remainder of the term of the county's solid waste haulout contract, the board and the municipality shall negotiate in good faith and with primary consideration given to the waste generation guarantees set forth in the county's solid waste haulout contract. However, in no event may the board charge the municipality a tipping fee in excess of the tipping fee established annually and charged to other municipalities and persons delivering solid waste to the county transfer stations or county solid waste disposal facility.

Section 8. REVENUES--

(1) STATE SHARED REVENUES.--The Village of the Lower Keys shall be entitled to participate in all revenue sharing programs of the State of Florida effective January 1, 2001. The provisions of s. 218.23(1), Florida Statutes, shall be waived for the purpose of eligibility to receive revenue sharing funds from January 1, 2001, through the state fiscal year 2002-2003. The provisions of s. 218.26(3), Florida Statutes, shall be waived for fiscal year 2000-2001, and the apportionment factors for the municipalities and counties shall be recalculated pursuant to s. 218.245, Florida Statutes, as of January 1, 2001. For the purposes of meeting the provisions of s. 218.23(1), Florida Statutes, relating to ad valorem taxation, the millage levied by Monroe County Fire and EMS and the Independent Mosquito Control District districts may be used for an indefinite period of time. Initial revised population estimates for calculating eligibility for shared revenues shall be determined by the University of Florida Bureau of Economic and Business Research. Should the Bureau be unable to provide an appropriate population estimate, the Monroe County Planning Division estimate should be utilized.

(2) GAS TAX REVENUES.--Notwithstanding the requirements of s. 336.025, Florida Statutes, to the contrary, the Village of the Lower Keys shall be entitled to receive local option gas tax revenues beginning April 1, 2001, in accord with an interlocal agreement between Monroe County and municipalities representing

a majority of the county's municipal population if such an interlocal agreement is in effect on April 1, 2001, or, if there is no interlocal agreement in effect on that date, then distributions shall be in accord with the lane-mile formula contained in s. 336.025(4)(b)1., Florida Statutes.

(3) **INFRASTRUCTURE SURTAX REVENUES.**--The Village shall be entitled to receive surtax revenues beginning January 1, 2001, in accord with an interlocal agreement between Monroe County and municipalities representing a majority of the county's municipal population if such an interlocal agreement is in effect on January 1, 2001, or, if there is no interlocal agreement in effect on that date, according to the formula in s. 218.62, Florida Statutes.

(4) **CREATION AND ESTABLISHMENT OF THE VILLAGE.**--For the purpose of compliance with s. 200.066, Florida Statutes, relating to assessment and collection of ad valorem taxes, the Village is hereby created and established effective November 15, 2000, notwithstanding anything to the contrary contained herein, the Village although created and established as of November 15, 2000, shall not be operational until April 16, 2001, or as determined by the Village commission.