

STORAGE NAME: h1075.ca

DATE: March 21, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1075

RELATING TO: Municipal Government

SPONSOR(S): Representative Edwards

STATUTE(S) AFFECTED: Creates section 166.0495, Florida Statutes. Affects section 163.01, Florida Statutes.

COMPANION BILL(S): CS/SB 378 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS
- (2) LAW ENFORCEMENT & PUBLIC SAFETY
- (3)
- (4)
- (5)

I. SUMMARY:

This bill authorizes a municipality to enter into an interlocal agreement, pursuant to the Florida Interlocal Cooperation Act of 1969, to provide law enforcement services within the boundaries of an adjoining municipality within the same county.

The bill has no fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Extra-territorial exercise of police powers

Section 2, Article VIII, State Constitution limits the authority of municipalities to exercise their powers outside of their territorial boundaries. Subsection (c) states, "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." (emphasis supplied).

Section 4, Article VIII, State Constitution specifically provides:

Transfer of powers. By law or by resolution of the governing bodies of each of the governments affected, *any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee*, or as otherwise provided by law. (emphasis supplied).

Recent Attorney General Opinions have held that these two provisions of the State Constitution must be read together when a municipality transfers or contracts out municipal functions or powers. The Attorney General has addressed the particular issue of transferring and contracting out police powers.

In 1990, the Attorney General issued an opinion that without general or special law authority, as required by s. 2, Art. VIII, State Const., the City of Hollywood could not exercise police powers and functions within the county-wide jurisdiction of the Port Everglades Authority. 1990 *Fla. Atty. Gen. Op. 77*. This opinion also clarifies that the resolution and dual referenda requirements of s. 4, Art. VIII, State Const., must be followed when a contractual arrangement to provide police services divests the ultimate authority of a municipality to supervise law enforcement services. *Id.* This opinion has been followed by the Attorney General's Office in advising other municipalities. See 1990 *Fla. Atty. Gen. Op. 263* (ss. 2(c) and 4, Art. VIII, State Const., must be read together when a municipality transfers or contracts out municipal functions or powers; however, when two jurisdictions enter into a mutual aid agreement, pursuant to part I, chapter 23, F.S., the resolution and dual referenda requirements of s. 4, Art. VIII, State Const. are not implicated); and 1996 *Fla. Atty. Gen. Op. 78* (there is no statutory authority, as required by s. 2, Art. VIII, State Const., for the City of Edgewood to contract with a small adjoining municipality to provide police services for that municipality; therefore, where a municipality has no police department, it may contract with the sheriff whose jurisdiction includes the municipality).

It is important to note that the 1990 Attorney General's Opinion to the City of Hollywood and the Port Everglades Authority specifically recedes from earlier opinions rendered in conflict with that opinion. 1990 *Fla. Atty. Gen. Op. 77* at 1321. Earlier Attorney General Opinions had interpreted s. 4, Art. VIII, State Const., to authorize the extra-territorial exercise of police functions as an alternative to the

general or special law requirement of s. 2, Art. VIII, State Const. See 1982 *Fla. Atty. Gen. Op.* 52 (the Belleair Police Department could “cross-swear” officers with another municipal police department and exercise authority in both jurisdictions only after compliance with the terms of s. 4, Art. VIII, State Const.); and 1977 *Fla. Atty. Gen. Op.* 36 (the ordinance and dual referenda requirements of s. 4, Art. VIII, State Const., must be followed for the Cities of Melbourne Village and West Melbourne to “cross-swear” officers and exercise their police powers in both jurisdictions).

In sum, current constitutional provisions require general or special law authorization for a municipality to exercise its police powers outside of its territorial boundaries, and, where such an arrangement would divest a municipality of its authority to supervise law enforcement services, the municipalities must adopt a resolution and hold referenda approving the contract or transfer of powers.

General Law Authorization

The Florida Legislature has authorized law enforcement agencies to exercise their powers outside of their territorial boundaries under certain limited circumstances. For example, s. 901.25, F.S., authorizes an officer to make an arrest outside his or her jurisdiction when in fresh pursuit, as defined therein and at common law.

The Legislature has also created part I, chapter 23, F.S., which is known as the “Florida Mutual Aid Act.” The Act creates a state law enforcement mutual aid plan that provides for the coordination of law enforcement planning, operations, and mutual aid. Under the Act, a law enforcement agency may enter into a mutual aid agreement with another law enforcement agency of this state or any other state.

Section 23.1225, F.S., 1996 Supplement, governs mutual aid agreements and particularly provides for voluntary cooperation agreements between two law enforcement agencies to provide routine law enforcement assistance across jurisdictional lines. The written agreement must specify the nature of the law enforcement assistance to be rendered, the agency that shall bear any liability arising from acts undertaken pursuant to the agreement, the procedures for requesting and authorizing assistance, the agency that has command and supervisory responsibility, a time limit for the agreement, the amount of compensation or reimbursement to the assisting agency, and any other terms and conditions necessary.

In response to an inquiry from the Edgewood Police Department, the Attorney General has rendered an opinion that the Florida Mutual Aid Act does not require a transfer of power from one municipality to another, rather it is a contract wherein the municipality receiving assistance still retains ultimate supervision of the law enforcement power remaining in that municipality. 1996 *Fla. Atty. Gen. Op.* 78. The Act does not provide general law authorization for a municipality to assume all law enforcement services for another municipality. *Id.*

The Florida Interlocal Cooperation Act of 1969

Section 163.01, F.S., 1996 Supplement, is the “Florida Interlocal Cooperation Act of 1969.” The purpose is set forth in subsection (2), as follows:

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It is the purpose of this section to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

The Act requires that joint exercise of powers by local governmental units be made by contract in the form of an interlocal agreement and that the agreement be recorded with the clerk of the circuit court in each county where a party to an agreement is located. The Act provides an exhaustive list of provisions which may be included in such an agreement, e.g., the purpose, power, duration and method of termination of the agreement, but does not require that any particular provision be included. Florida local governments have used the authority granted under the Act to enter into interlocal agreements for the provision of all types of utility services, fire services, annexation and joint comprehensive planning areas.

In 1974, the City of Holmes Beach sought to form a consolidated police department with an adjoining municipality under the authority of Florida Interlocal Agreement Act of 1969. The department was to be supervised and administered by an administrative board comprised of the police chiefs of both cities. In advising against the consolidated department, the Attorney General cited subsection (15), now codified as subsection (14), which reads as follows:

This section is intended to authorize the entry into contracts for the performance of service functions of public agencies, but shall not be deemed to authorize the delegation of the constitutional or statutory duties of state, county or city officers.

The Attorney General's objection was based on the use of the agreement to grant extra-territorial law enforcement authority to municipal officers. 1974 *Fla. Atty. Gen. Op.* 220. The opinion states as follows:

The exercise of the law enforcement and arrest powers are clearly essential governmental powers of the city. . . And it seems clear that such an interlocal agreement could not validly create an administrative commission, board or council, composed of persons who were not duly commissioned officers of the cities, to administer on behalf of the two municipalities -- and independently of each -- their law enforcement powers and duties. . . And even assuming that the consolidated police force would be supervised and directed by an administrative board composed of the police chiefs of each city, I have been unable to conceive of any way in which such a coordinated police force could be administered without contravening the provision of the statute, s. 163.01(15), *supra*, respecting the delegation of the constitutional or statutory duties of city officers.

Id. (citations omitted). Therefore, the Act has been interpreted not to provide general law authority for municipalities to jointly exercise law enforcement powers. There are no judicial decisions construing subsection (14) of the Act, and the legislative history

is limited. It is also important to note that the above-cited Attorney General's opinion goes on to conclude that the two municipalities may exercise the provisions of s. 4, Art. VIII, State Const., to contract with one another for the performance of law enforcement duties by the police officers of one city in the other city. That portion of the opinion, which conflicts with the opinion in 1990 *Fla. Atty. Gen. Op. 77*, has been receded from and is no longer valid.

Part 1, Chapter 166, F.S.

Part 1, chapter 166, F.S., contains the general provisions relating to municipalities, including their powers, procedures for adoption of ordinances and resolutions, code enforcement, and sign ordinances. Section 166.021, F.S., provides municipalities with the governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services. This section also authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law.

Section 166.049, F.S., governs municipal law enforcement agencies' communication and assistance. That section requires that at least two law enforcement officers be on duty at all times with the ability to communicate directly with each other, or that there be a means of communication between municipal law enforcement officers and the county sheriff's office, or that a mutual aid agreement be established, pursuant to Chapter 23, F.S. These are the only general provisions addressing municipal law enforcement.

B. EFFECT OF PROPOSED CHANGES:

This bill provides the general law authorization, required by section 2, Article VIII, State Constitution, for the extra-territorial exercise of police powers by municipalities. The bill creates section 166.0495, F.S., to authorize a municipality to enter into an interlocal agreement, pursuant to section 163.01, F.S., with an adjoining municipality or municipalities within the same county to provide law enforcement services within the territorial boundaries of the adjoining municipality or municipalities.

The bill requires that the agreement specify its duration and clarifies that this new authority is an expansion of, rather than a limitation on, a municipality's authority to enter into agreements for law enforcement services or conduct law enforcement services outside its own territorial boundaries.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

Not Applicable (N/A)

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

Not Applicable.

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:
 - (1) parents and guardians?

 - (2) service providers?

 - (3) government employees/agencies?

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates section 166.0495, F.S., to authorize a municipality to enter into an interlocal agreement, pursuant to section 163.01, F.S., with an adjoining municipality or municipalities within the same county to provide law enforcement services within the territorial boundaries of the adjoining municipality or municipalities.

This section requires that the agreement specify its duration and clarifies that this new authority is an expansion of, rather than a limitation on, a municipality's authority to enter into agreements for law enforcement services or conduct law enforcement services outside its own territorial boundaries.

Section 2: Provides that the act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. **Non-recurring Effects:**

None.

2. **Recurring Effects:**

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Municipalities that now have the option of contracting for law enforcement services either with its county sheriff or with an adjoining municipality may have an opportunity to reduce costs through negotiation with the most cost efficient of the various options.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

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A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require the expenditure of funds by counties or municipalities.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the revenue raising authority of counties or municipalities.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. **COMMENTS:**

None.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

One amendment will be offered by the sponsor. The amendment makes a cross-reference to section 112.0515, F.S., to insure that any transfer of functions between municipalities does not affect the rights of law enforcement officers in any retirement or pension fund.

VII. **SIGNATURES:**

COMMITTEE ON COMMUNITY AFFAIRS:

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