

**STORAGE NAME:** h3859z.ca  
**DATE:** June 26, 1998

**\*\*FINAL ACTION\*\***  
**\*\*SEE FINAL ACTION STATUS SECTION\*\***

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMUNITY AFFAIRS  
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

**BILL #:** 1ST ENG/HB 3859  
**RELATING TO:** Lee County and the City of Ft. Myers  
**SPONSOR(S):** Representative Livingston  
**COMPANION BILL(S):** SB 2584 (s)

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

- (1) COMMUNITY AFFAIRS YEAS 7 NAYS 0
- (2)
- (3)
- (4)
- (5)

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**I. FINAL ACTION STATUS:**

House Bill 3859 was referred to the House Committee on Community Affairs on March 10, 1998. The bill was placed on the Community Affairs agenda on March 31, 1998. The bill was favorably voted with one amendment, on April 6, 1998. The bill passed the House on April 24, 1998 with a vote of 120 YEAS and 0 NAYS.

The bill was received in Senate Messages and referred to the Committee on Rules and Calendar on April 29, 1998. The bill was withdrawn from Rules and Calendar on May 1, 1998. The bill passed the Senate on May 1, 1998 with a vote of 40 YEAS and 0 NAYS. The bill became law on May 28, 1998 without the Governor's signature as chapter 98-488, Laws of Florida.

**II. SUMMARY:**

The bill authorizes the City of Fort Myers and Lee County to enter into an interlocal agreement, subject to referendum approval, for the municipal annexation of two unincorporated enclaves commonly known as "Dunbar" and "Belle Vue". The bill provides for the transfer of authority for municipal service duties and infrastructure, subject to the interlocal agreement.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Under Article VIII, Section 2(c), of the Florida Constitution, the Legislature is authorized to annex by special act, and to establish by general law a procedure for local annexations in all Florida counties.

The Legislature established local annexation procedures in 1974 with the creation of chapter 171, Florida Statutes, the "Municipal Annexation or Contraction Act." This Act establishes alternative procedures for adjusting municipal boundaries locally through annexation or contraction, and sets forth criteria for determining when local annexations or deannexations may take place. This law only addresses annexation of unincorporated property into a municipality and deannexation of municipal property into an unincorporated area.

**Annexation**

Before local annexation procedures may begin, the governing body of the annexing municipality must prepare a report containing the city's plans for providing urban services to the proposed area to be annexed. A copy of the report must be filed with the board of county commissioners. This report must include appropriate maps, timetables, and financing methodologies. It must certify that the area proposed to be annexed is appropriate for annexation because it meets the following standards and requirements:

- The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality. This means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. The specified exceptions are where the area is separated from the city's boundary by a publicly owned county park, right-of-way, or body of water.
- The area to be annexed must be reasonably compact.
- No part of the area to be annexed may fall within the boundary of another municipality.
- The majority of the land to be annexed must be developed for urban purposes. Urban purposes are defined as:
  - having a population of at least two persons per acre; or
  - if 60 percent of the subdivided lots are one acre or less, having a density of one person per acre; or
  - having at least 60 percent of the subdivided lots used for urban purposes; or
  - that at least 60 percent of the total urban residential acreage is divided into lots of 5 acres or less.

Alternatively, if the proposed area is not developed for urban purposes, it can either border at least 60 percent of a developed area, or provide a necessary bridge between two urban areas.

Annexed areas are declared to be subject to taxation (and existing indebtedness) for the current year on the effective date of the annexation, unless the annexation takes place following the tax levy for that year. In the case of municipal contractions, the city and county must agree on the transfer of indebtedness or property--the amount to be assumed, its fair value, and the manner of transfer and financing.

Immediately upon being annexed, an area is subject to all laws, ordinances, and regulations applicable to other city residents. An exception is that applicable county land use and zoning regulations continue in effect until the area is rezoned by the annexing municipality. Also, the county land use plan, and zoning or subdivision regulations of the unincorporated area will remain in effect (after the annexation has been approved) until the annexing municipality adopts a local comprehensive plan amendment to include the new area. In contractions, excluded territory is immediately subject to laws, ordinances, and regulations in effect in the county.

### **Judicial Review and Charter Revision**

Affected persons who believe they will suffer material injury because of the failure of the city to comply with annexation or contraction laws as they apply to their property can appeal the ordinance. They may file a petition with the circuit court seeking the court's review. If the appeal is won, the person is entitled to reasonable costs and attorney's fees.

Finally, any changes in municipal boundaries require revision of the boundary article section of the charter. Such changes must be filed as a charter revision with the Department of State within 30 days of the annexation or contraction.

#### **B. EFFECT OF PROPOSED CHANGES:**

The bill authorizes the City of Fort Myers and Lee County to enter into an interlocal agreement, subject to referendum approval, for the municipal annexation of two unincorporated enclaves commonly known as "Dunbar" and "Belle Vue". The bill provides for the transfer of authority for municipal service duties and infrastructure, subject to the interlocal agreement. The referendum is to be held by the city at any regular election following adoption of the interlocal agreement. If approved by the voters the agreement becomes effective as may be provided in the agreement or not more than one year following the referendum.

#### **C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:**

N/A

#### **D. 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?

Yes, the City of Fort Myers will assume the responsibility for providing municipal services for the areas being annexed.

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

No.

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

(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?

Yes. According to the attached Economic Impact Statement the annexation will increase revenues for the City of Fort Myers by an estimated \$2,471,426. While some of the increased revenues are for providing services previously provided by Lee County, citizens will likely incur higher ad valorem taxes as a result of paying both the county and the municipal millage rate.

Furthermore, water and utility customers, within the annexed areas will be subject to a utility tax and a water tax. These taxes are authorized pursuant to section 166.231, Florida Statutes, which provides that municipalities may levy a public service tax (PST), not to exceed 10 percent, on any purchase of metered natural gas, liquefied petroleum gas, manufactured gas, water services, local telephone services and telecommunications services. The Florida Supreme

Court has ruled that charter counties may also impose a public service tax, unless precluded from doing so by general law. Lee County is a charter county, however, they have not imposed a PST to date.

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

Yes. According to the Economic Impact Statement an additional expense will be incurred by residents, currently on wells and septic tanks, that hook up to municipal utilities in the future. Additionally, it is unclear if license and permit fees are comparable to fees charged by Lee County.

- 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?

Yes. (Refer to 2a. and 2b.)

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, Fort Myers will have increased costs related to providing municipal services, however they re-coup the costs through taxes and fees.

4. Individual Freedom:

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

No.

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

No.

5. Family Empowerment:

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

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

N/A

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

E. SECTION-BY-SECTION RESEARCH:

**Section 1:** Provides that the City of Fort Myers and Lee County are authorized to enter into an interlocal agreement subject to referendum approval for the orderly municipal annexation of unincorporated enclaves known as "Dunbar" and "Belle Vue".

**Section 2:** Provides the boundaries of the enclaves being annexed.

**Section 3:** Provides that the interlocal agreement for the proposed annexation of the Dunbar and Belle Vue enclaves is filed with the clerk of the city and the clerk of the courts for the county and a duly noticed public hearing is held both by the city and the county respectively, prior to the adoption of the interlocal agreement.

**Section 4:** Provides that subsequent to an adoption of an interlocal agreement between the City of Fort Myers and Lee County, a dual-referendum is held in the City of Fort Myers for the ratification and approval of the interlocal agreement. A majority of the combined registered electors in the enclaves and within the city limits of Fort Myers must vote affirmatively for the annexation to be valid. The interlocal agreement provides the effective date of the annexation, however, the bill provides that the date be not more than one year following the referendum.

**Section 5:** Provides that the city assumes all of the municipal service duties of Lee County pursuant to the terms and conditions of the approved interlocal agreement.

**Section 6:** Provides this act shall take effect upon becoming a law.

IV. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 23, 1998

WHERE? News Press (Fort Myers)

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN? Subsequent to the adoption of an interlocal agreement between the city and the county.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

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V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Community Affairs, at its meeting on April 6, 1998, adopted an amendment to clarify that the referendum is approved by a majority of those voting rather than a majority of the registered voters in the city and residents of the areas to be annexed.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

Lisa C. Cervenka

Joan Highsmith-Smith

**FINAL RESEARCH PREPARED BY COMMITTEE ON COMMUNITY AFFAIRS:**

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