

STORAGE NAME: h1561.ca

DATE: March 16, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS - LOCAL LEGISLATION**

BILL #: HB 1561

RELATING TO: Broward County/Intracoastal-Beach Area

SPONSOR(S): Representative Wasserman Schultz

COMPANION BILL(S): None.

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

(1) COMMUNITY AFFAIRS

(2)

(3)

(4)

(5)

I. SUMMARY:

The bill provides for a study to be performed in Broward County, in an area commonly known as the "Intracoastal/Beach Area." The purpose of the study is to determine the effects of annexation of the area into any municipality proposing annexation or the incorporation of the studied area into a new municipality.

The bill also provides for a referendum which shall allow the voters to choose a municipality in which to annex or choose to incorporate as a new municipality.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida Annexation Law

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.

Requirements for 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.

Voluntary Annexation

If the property owners of a particular unincorporated area desire annexation into a contiguous municipality, they can initiate voluntary annexation proceedings. The following procedures govern *voluntary annexations* in every county, except those counties with charters providing an exclusive method for municipal annexation:

- Submission to the municipal governing body of a petition seeking the annexation, signed by all property owners in the area proposed to be annexed.
- Adoption of an ordinance by the governing body of the annexing municipality to annex the property after publication of notice at least once a week for 2 consecutive weeks, setting forth the proposed ordinance in full.
- A restriction against the creation of enclaves.

Involuntary Annexation

A municipality may annex property where the property owners have not petitioned for annexation. This process is called *involuntary annexation*. In general, the requirements for an involuntary annexation are:

- Adoption of an annexing ordinance by the governing body of the annexation of one "reasonably compact" area.
- Submittal of the ordinance to a vote of the registered electors of the area proposed to be annexed once the ordinance has been adopted by the governing body.
- Submittal of the ordinance to a separate vote of the registered electors of the annexing municipality and of the area proposed to be annexed. This dual referendum is required if the proposed ordinance would cause the total area annexed by a municipality during any one calendar year period to cumulatively exceed more than 5 percent of the total land area of the municipality, or cumulatively to exceed more than 5 percent of the municipal population. (Broward County is exempt from this provision. See Broward County Annexations below for details)

If there is a majority vote in favor of annexation in the area proposed to be annexed, and a majority in favor in cases where a referendum must be held in the annexing city, the area becomes a part of the city. If, however, there is a majority vote against annexation in either the annexing municipality or the area proposed to be annexed, the annexation does not happen. That area cannot be made the subject of another annexation proposal for 2 years from the date of the referendum.

Judicial Review of Annexations or Contractions

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.

Broward County Annexations

Broward County is located on Florida's South Atlantic coast and consists of nearly 1,200 square miles and a population of approximately 1.3 million residents. Broward County currently contains 29 municipalities, the majority of which achieved their current corporate boundaries through a multitude of annexations.

In 1996, in cooperation with the Broward County Commission, the Broward County Legislative Delegation created the Ad Hoc Committee on Annexation Policy. The delegation charged the committee with the responsibility of developing and recommending policy to the Broward Legislative Delegation regarding the terms under which it would consider future annexations. The committee recommended that annexation of all the remaining unincorporated areas of Broward County should

be encouraged to occur by the year 2010 and unincorporated areas remaining after 2010 will be subject to required annexation by the Florida Legislature.

The 1996 Florida Legislature adopted a special act (chapter 96-542, Laws of Florida) which exempts Broward County from the following general law provision in chapter 171, Florida Statutes. This provision requires a referendum of the electors of an annexing municipality where the total area annexed by a municipality during a calendar year cumulatively exceeds more than 5 percent of the total land area of the municipality or cumulatively exceeds more than 5 percent of the municipal population.

In addition, the special act requires that any annexation of unincorporated property within Broward County proposed to be accomplished pursuant to general law first must be considered at a public hearing conducted by the Broward County Legislative Delegation, pursuant to its adopted rules. The annexation is not 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.

Annexations may also occur by special act of the Legislature. The Broward County Legislative Delegation sponsors several local bills each year to accomplish some annexations.

Florida Incorporation Law

Florida law governing the formation and dissolution of municipal governments is found in chapter 165, Florida Statutes, the "Formation of Municipalities Act." The stated purpose of the "Formation of Municipalities Act" is to provide standards, direction, and procedures for the incorporation of municipalities, and to achieve the following goals:

- Orderly patterns of growth and land use;
- Adequate public services;
- Financial integrity in government;
- Equity in fiscal capacity; and
- Fair cost distribution for municipal services.

Under Florida law, there is only one way to establish a city government where no such government existed before: the Legislature must pass a special act enacting the city's charter. The special act must include a proposed municipal charter that prescribes the form of government and clearly defines the legislative and executive functions of city government, and cannot prohibit tax levies authorized by law.

The 1996 Legislature revised section 165.041, Florida Statutes, to require completion of a feasibility study for any area requesting incorporation. The purpose of the study is to enable the Legislature to determine whether or not the area: 1) meets the statutory requirements for incorporation, and 2) is financially feasible. Specifically, the study must include:

- Data and analysis to support the conclusions that incorporation is necessary and financially feasible.
- Population projections and population density calculations and an explanation concerning methodologies used for such analysis.
- Evaluation of the alternatives available to the area to address its policy concerns.
- Evidence that the proposed municipality meets the standards for incorporation of section 165.061, Florida Statutes. These standards are:

The area to be incorporated must be compact and contiguous and amenable to separate municipal government.

The area must have a total population of at least 1,500 persons in counties with a population of less than 50,000, as determined in the latest official state census, special census, or estimate of population in the area proposed to be incorporated, and of at least 5,000 population in counties with a population of more than 50,000.

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The area 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.

The area 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.

B. EFFECT OF PROPOSED CHANGES:

The bill provides for a study to be performed in Broward County, in an area commonly known as the "Intracoastal/Beach Area" to determine the effects of annexation of the area into any municipality proposing annexation or the incorporation of the studied area into a new municipality.

The bill also provides for a referendum which shall allow the voters to choose a municipality in which to annex or choose to incorporate as a new municipality. Furthermore, the bill provides for an effective date of October 1, 2001 if the voters choose to annex into one of the municipalities proposing annexation. However, if the voters elect to become a municipality, the Broward County Legislative Delegation shall direct the drafting of a charter to be submitted for enactment during the next legislative session.

The bill provides conditions for annexing into any existing municipality, or becoming a new municipality.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Creates a new special act.

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?

N/A

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

Requires the Broward County Supervisor of Elections to conduct a referendum.

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

N/A

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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

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?

N/A

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 ANALYSIS:

Section 1: Provides that the Cities of Ft. Lauderdale and Pompano Beach and the Town of Lauderdale-by-the-Sea have enacted resolutions submitted to the Broward County Legislative Delegation, setting forth their intent to prepare proposals for annexation of the "Intracoastal/Beach Area."

Section 2: The Broward County Legislative Delegation has directed a study of the area east of the Intracoastal Waterway, west of the Atlantic Ocean, south of the corporate limits of the Town of Lauderdale-by-the-Sea and the Village of Sea Ranch Lakes. The study shall determine the effects of annexation into any municipality proposing an annexation in the studied areas or the incorporation of the studied area into a new municipality. The study shall determine the effects of the annexation/incorporation on the employees of Broward County and how to ameliorate the same. The study shall be performed by an independent agency or educational institution not affected or associated with the proposed annexation as determined by the Broward County Legislative Delegation. The cost of the study shall be borne by Broward County.

The residents of the "Intracoastal/Beach Area" shall have input as to who does the study and the parameters of the study. Broward County is responsible for the printing and distribution of the study and meetings related to the study. This act does not affect the Village of Sea Ranch Lakes as an independent municipality.

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- Section 3: Provides deadline of October 1, 1999, from which proposed annexation notices from municipalities may be received by Broward County.
- Section 4: Provides boundaries of "Intracoastal/Beach Area."
- Section 5: Provides that the Broward County Board of County Commissioners shall schedule an election at a time certain related to annexation or incorporation of the area known as the "Intracoastal/Beach Area."
- Section 6: Provides that if the voters choose a municipality into which to annex, said annexation is effective on October 1, 2001. Provides for a charter to be drafted for incorporation as a new municipality, if the voters choose that option in lieu of annexation.
- Section 7: Provides if no entity receives a majority vote, there shall be a runoff election between the two entities that received the highest number of votes.
- Section 8: Provides, if a runoff is necessary, and if the voters choose to annex, the annexation is valid as provided in Section 6(1) of the bill. Provides, if the voters choose to incorporate as a new municipality, a charter shall be drafted as provided in Section 6(2) of the bill.
- Section 9: Authorizes the Board of County Commissioners to set the elections, to be paid by Broward County. Prohibits a mail ballot for the referendum.
- Section 10: In the event the area is annexed or incorporated as a new municipality, the present land use designation and zoning remains. Preserves vested property use rights as long as the use is not voluntarily abandoned.
- Section 11: Subsequent to the effective date of this act, no annexation by any municipality, nor change of land use designation, nor change of zoning is effective in the "Intracoastal/Beach Area" unless and until the area has been either annexed or incorporated as a new municipality.
- Section 12: Provides for transfer of roads and rights-of-way to either the annexing municipality or to the newly incorporated municipality.
- Section 13: Provides this act takes effect upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

- A. NOTICE PUBLISHED? Yes No
IF YES, WHEN? January 31, 1999
WHERE? The Miami Herald
- B. REFERENDUM(S) REQUIRED? Yes No
IF YES, WHEN? November 7, 2000
- C. LOCAL BILL CERTIFICATION FILED? Yes, attached No
- D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

None.

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V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Lisa C. Cervenka

Joan Highsmith-Smith