

STORAGE NAME: h1699a.ca
DATE: April 16, 2000

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

BILL #: HB 1699
RELATING TO: Port Jurisdictional Area/Everglades
SPONSOR(S): Representative Wasserman Schultz
TIED BILL(S): None

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

- (1) COMMUNITY AFFAIRS (PRC)
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill transfers the authority of all powers, duties, responsibilities, obligations and functions for fire protection in the Port Jurisdictional Area (Port) from Broward County to the City of Hollywood.

This bill requires Broward County to transfer all fire protection books, records, funds and monies to the City of Hollywood.

This bill imposes all liability for fire protection services on the City of Hollywood.

This bill provides for the continuation of all existing contracts and provides that all employees supplying fire protection services to the Port will remain employed by the City of Hollywood.

This bill enables the City of Hollywood with certain extra-jurisdictional powers to provide fire protection services to the Port.

This bill clarifies that Broward County will continue to supply Emergency Medical Services to the Port.

This bill requires a referendum.

Although the Economic Impact Statement states that this bill does not appear to contain a fiscal impact, an interoffice Broward County memorandum indicates otherwise. **See IV. COMMENTS, C. OTHER COMMENTS section.**

It does not appear that House Rule 44 (a) applies. **See II. SUBSTANTIVE ANALYSIS, B. PRESENT SITUATION section.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill creates new responsibilities for the City of Hollywood, as it requires the city to provide fire protection services for the Port.

B. PRESENT SITUATION:

Port Everglades Authority

Chapter 59-1157, L.O.F., creates the Broward County Port Authority and the Broward County Port District through special act.

Chapter 65-1318, L.O.F., changes the names of the Broward County Port Authority and the Broward County Port District to the Port Everglades Authority and the Port Everglades District, respectively.

Chapter 89-427, L.O.F., amends ch. 59-1157, L.O.F. as amended. This special act authorizes the following:

Part III. Port Everglades Authority

Section 2 -- The Port Authority shall have full power and authority:

- (5) -- To provide for the protection of persons and property within the Port Jurisdictional Area by establishing and maintaining a police force and a fire department or any combination thereof, as hereinafter provided, or by contracting with another governmental entity to provide police and fire protection within the Port Jurisdictional Area.

Chapter 91-346, L.O.F., provides in part, the following:

Section 5. The Port Everglades District and the Port Everglades Authority created pursuant to chapter 59-1157, Laws of Florida, as amended, and chapter 89-427, L.O.F., is dissolved on November 22, 1994.

Section 6. Upon dissolution, all powers, duties, responsibilities, obligations, and functions of the Port Everglades District and the Port Everglades Authority shall be performed by Broward County and the county shall assume all indebtedness of the Port Everglades District and the Port Everglades Authority.

Section 14. This act shall take effect only upon approval by a majority vote of the electors of Broward County voting in a referendum to be called and held by the Board of County Commissioners of Broward County . . . on the second Tuesday in March 1992 . . .

At the referendum, Broward County residents voted in favor of dissolving the District and Authority.

Current Situation

Currently, Broward County provides fire protection services to the Port, through the Port Everglades Firefighting Unit. To date, the Port Everglades Firefighting Unit has been an operational part of Broward County for the past five years.

In September, 1999, the County Administrator authorized an interdepartmental organizational change within two existing County departments. The result was the merger of the firefighting functions of the Port Everglades Department, Public Safety Division into the Department of Safety and Emergency Service's Fire Rescue Division.

Twenty members of the Board of Directors of the Port Everglades Association, Inc., signed a petition opposing the City of Hollywood's takeover of the Port Everglades Fire Department.

The Port boundaries include parts of the cities of Hollywood, Fort Lauderdale, and Dania.

At the Local Legislative Delegation meeting held on February 1, 2000, members voted 11-4 in favor of this bill.

House Rule 44 (a)

House Rule 44 (a) provides as follows:

If a committee determines that the substance of a local bill may be enacted into law by ordinance of a local governing body, that committee shall not report the bill to the Clerk. However, if a local governing body would be required to call a referendum to enact the substance of a local bill into law, the committee may report the local bill.

Broward County Charter

The Broward County Charter contains, in part, the following provisions:

Section 1.03 -- GENERAL POWERS OF THE COUNTY

- A. Unless otherwise provided to the contrary in this Charter, Broward County "shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors".
- B. All powers of the County shall be carried into execution as provided by this Charter or, if the Charter makes no provision, as provided by ordinance, resolution of the County Commission, or by Constitution and Laws of Florida.

Section 8.01 -- CHARTER AMENDMENT BY COUNTY COMMISSION

The Commission by a vote of five (5) members shall have the authority to propose amendments to this Charter subject to referendum of the general electorate.

Section 8.11 -- FIRE PROTECTION

- A. There shall be a system of fire protection and emergency medical service established to serve the entire area of Broward County not protected by municipal fire departments or other appropriate service.
- B. It shall be the duty of the County Commission to charter fire departments in the unincorporated areas of the County. It shall further be the duty of the County Commission to provide for the methods of funding for fire departments in the unincorporated areas of the County and areas not otherwise protected.

Section 8.11 of the Charter was amended by referendum on November 8, 1988, to establish a system of emergency medical service for those areas of Broward County not served by a municipality.

Article VIII, Section 4, Florida Constitution

Article VIII, Section 4 provides as follows:

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.

Florida Interlocal Agreement Act

Section 163.01, F.S., the Florida Interlocal Cooperation Act, authorizes municipalities to engage in interlocal agreements for mutual benefit. This section further provides:

- (4) A public agency of this state may exercise jointly with any other public agency of the state, of any other state, or of the United States Government any power, privilege, or authority which such agencies share in common and which each might exercise separately.

Public agency, as defined, includes state government, county, city, school district, etc.

Section 125.86 (7), Florida Statutes

Section 125.86, F.S., addresses county charter powers and duties. It provides, in part, that the legislature vests the board of county commissioners with the following powers and duties:

- (7) Adopt, pursuant to the provisions of the charter, such ordinances of countywide force and effect as are necessary for the health, safety, and welfare of the residents. It is the specific legislative intent to recognize that a county charter may properly determine that certain governmental areas are more conducive to uniform countywide enforcement and may provide the county government powers in

relation to those areas as recognized and as may be amended from time to time by the people of that county....

Case Law

A transfer of county functions or powers typically requires a dual referendum, pursuant to Article 8, Section 4 of the Florida Constitution. Broward County v. City of Fort Lauderdale, 480 So.2d 631 (Fla.1985). Here, the Court carved a narrow exception to the referendum requirement for regulatory preemptions, distinguishing between regulations and services.

The Article 8, Section 4 referendum provision does not automatically attach where a transfer of services exists, however. City of Palm Beach Gardens v. Barnes, 390 So.2d 1188 (Fla.1980). In this case, the city contracted with the county to provide police services on behalf of the city. Critical to the Court's reasoning was the finding of an incomplete divestment of authority. As the city did not relinquish total control and authority, the Court determined, there is no transfer of power requiring referendum under the state constitution.

The Attorney General issued an opinion on the question of whether the Port Everglades Authority can assign its police duties to the City of Hollywood, to provide service for the entire Port area, absent a referendum (Op. Atty.Gen. 90-77). The Attorney General broadened the inquiry to two issues. First, does this transfer effect a complete divestment of authority? Equally germane, the Attorney General posited, is whether the City of Hollywood can exercise extraterritorial law enforcement, as the Port extends beyond the City of Hollywood to Fort Lauderdale, Dania and unincorporated Broward County. The Attorney General concluded that where the City of Hollywood does not have a general or special law grant of extra-jurisdictional power, the City cannot provide services beyond its own municipal boundaries.

The Florida Supreme Court has held that a county ordinance transferring responsibility for performing certain government services from cities to a county is invalid under Article 8, Section 4, as it is not initiated by law or by resolution of governing bodies of each government affected. Sarasota County v. Town of Longboat Key, 355 So.2d 1197 (Fla.1978). Additionally, the Court defines "by law", as contained in Art. 8, S. 4, as applies to Section 125.86 (7), F.S., as follows:

A plain reading of Article VIII, Section 4 reflects that a transfer of governmental powers requires distinctive procedures for the initiation of a transfer, that is, "by law or by resolution of the governing bodies of each of the governments affected." We think it clear from the specificity of the procedure in Section 4 that the "by law" reference connotes the need for a separate legislative act addressed to a specific transfer, in the same manner that two or more resolutions of the affected governments would address a specific transfer. Section 125.86 (7), in contrast, does no more than provide general authority for county commissions to exercise police powers. (Emphasis added)

Legal Analysis

The Port Everglades Authority was created through special act. Likewise, the Port Everglades Authority was dissolved by special act, and voter approval (Chapter 91-346, L.O.F.) Chapter 94-429, Laws of Florida, is a special act adopted by the Legislature without referendum. Chapter 94-429 contains the following legislative intent:

The Legislature, when enacting chapter 91-346, Laws of Florida, provided for the transfer of Port Everglades to Broward County. As a result of the above intent, and in order to clarify the operational powers, rights, and privileges transferred to Broward County and to assure an orderly transition of the business operations of the port, the Legislature finds and determines that it is necessary to specify herein certain operational powers, duties and obligations of the county.

Chapter 91-346, L.O.F., already provided for the dissolution and transfer of the Port to the County. Without Chapter 94-429, L.O.F., the Port would still be transferred to the County. It appears that the Legislature enacted this later act to ensure that the intent of the first act take effect. As such, Chapter 94-429, L.O.F., illustrates that Port issues have traditionally been addressed through special act and not through local action. As this special act relates to the provision of services for the Port, subject to referendum, accomplishing this transfer through special act is appropriate, provided that it is not unconstitutional or inconsistent with general law.

Additionally, Attorney General opinion 90-77 speaks directly to this point. That issue, containing an almost identical set of facts, involved a transfer of Port jurisdiction powers to the City of Hollywood. As is the case here, the transfer of powers in question provides the City with extraterritorial authority. As the Attorney General reasoned, the City cannot work beyond its own municipal boundaries without authority through general or special law. Short of general law providing this authority, the proper vehicle for this transfer of fire powers is through special legislative act.

Art. VIII, S. 4, authorizes a transfer of powers by law. The Court in Sarasota County interpreted "by law" to mean through legislative act. The Court expressly rendered Section 125.86 (7) inapplicable, as it is of a general, rather than a specific application. Arguably, the County and City may accomplish the transfer of fire services through Section 163.01, F.S. However, as there is no agreement between the two entities, the provisions of the Interlocal Cooperation Act do not apply in satisfaction of Art. VIII, S.4.

Article VIII, S. 4 of the Florida Constitution also authorizes a transfer by resolution and referendum. In this case, the governing bodies of the City and County have not agreed to this transfer. Art. VIII, S. 4 requires a dual consensus. As the County and City are not in consensus regarding this transfer, the only remaining option is through special act. The language in 44 (a) appears to contemplate action by a single entity, such as a local governing body. Art. VIII, S. 4, as interpreted by the Sarasota County court, requires action by both entities affected. This constitutional requirement of dual consensus, in effect, removes the local bill entirely from House Rule 44 (a) consideration.

Under the unlikely assumption that House Rule 44 (a) analysis is triggered, however, and the facts indicate that there is no interlocal agreement, dual resolution and/or ordinance, the issue then turns to whether a referendum is required. Assuming that Art. VIII, S. 4 applies, a referendum is required to effectuate a transfer of powers in the absence of law, as is the case here, providing such transfer. The Court in City of Palm Beach Gardens recognized an exception to the referendum requirement where a contract was involved,

with an incomplete divestment of authority. Here, there clearly is no contract. Further, this local bill provides for a transfer from the County to the City of all powers, duties, responsibilities, obligations and functions for fire protection of the Port, including a transfer of assets, production of books and monies, and assignment of liability to the City. As this transfer certainly effectuates a total divestment of power, a referendum is required.

Summary

House Rule 44 (a) does not apply to HB 1699 because:

- House Rule 44 (a) contemplates one local governing body. In this bill there are at least two governing bodies. The bill requires a transfer of powers. Art. VIII, S. 4 **requires** either a transfer of powers "by law" (interpreted by the Sarasota County Court to mean legislative act), or by dual resolution and referendum. As far as general law is concerned, Section 125.86 (7), authorizing county charter power, does not apply as the County is opposed to this transfer. Section 163.01, Interlocal Agreement Act, likewise does not apply as there is no agreement. As only one governing body supports this transfer, the dual resolution requirement is not satisfied at the local level, **thereby requiring legislative authority through special act.**
- Should the first part of House Rule 44 (a) apply, the issue turns to whether a referendum is required. Per Art. VIII, S.4, to have a transfer of powers, a dual referendum is required, when there is a complete divestment of control and authority, under the City of Palm Beach Gardens test. The language in the bill does provide for a complete transfer, so that **a referendum is mandatory.** This authorizes the House committee to report the bill under House Rule 44 (a).
- According to Attorney General opinion (90-77), the City would have extra-territorial powers over Fort Lauderdale and Dania, therefore **a special act is required.**

C. EFFECT OF PROPOSED CHANGES:

The duty to provide Port fire protection services, currently provided by Broward County through the Port Fire Fighting Unit, is transferred, in its entirety, to the City of Hollywood.

All Broward County employees supplying fire protection services remain employed by the City of Hollywood. Likewise, all existing contracts remain in effect.

Broward County will continue to supply Emergency Medical Services to the Port.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Provides for a transfer from Broward County (as contained in the County Charter) to the City of Hollywood, Florida of all powers, duties, responsibilities, obligations and functions for fire protection in the Port Jurisdictional Area (originally Port Everglades Authority, Chapter 89-427, L.O.F.); provides for an effective date of November 22, 2000.

Section 2 -- Requires Broward County Charter government (County) to produce all books, records, funds and moneys, relating to fire protection functions to the City of Hollywood (City) before effective date.

STORAGE NAME: h1699a.ca

DATE: April 16, 2000

PAGE 8

Section 3 -- Assigns all liability for fire protection services to Hollywood and transfers assets, such as real, personal and intangible properties relating to fire protection from the County to the City on effective date.

Section 4 -- Honors existing contracts, including collective bargaining; provides that where there is no collective bargaining agreement on the day of transfer, the City shall honor all prior provisions of the agreement which had expired immediately before the transfer until a new agreement is enacted, pursuant to chapter 447, F.S., which addresses labor unions.

Section 5 -- Provides that all employees performing fire protection duties as of September 6, 1999 shall become employees of the city.

Section 6 -- Endows the City with extra-territorial power to perform all fire protection functions within the Port Jurisdictional Area (Port), to include the ability to enter into interlocal, shared services, and automatic response agreements with surrounding municipalities for fire services in the Port.

Section 7 -- Expressly provides that the County shall continue to provide Emergency Medical Services within the Port.

Section 8 -- Describes fire protection transfer language, to appear on a ballot November 7, 2000, the day of the general election.

Section 9 -- Provides that this act shall take effect contingent upon a Broward County majority vote; precludes the use of mail-in ballots.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 26, 2000

WHERE? The Sun-Sentinel

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

STORAGE NAME: h1699a.ca

DATE: April 16, 2000

PAGE 9

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The Economic Impact Statement indicates the following estimated expenditures:

Fiscal Year 00-01 -- \$3,321,716

Fiscal Year 01-02 -- \$3,487,802

Due to budget cutbacks in recent years, maintenance items need to be updated. This increase also reflects a five percent salary increase. Budget projections show these items as an overall five percent increase. This budget increase is needed irrespective of the transfer to the City of Hollywood. Therefore, this bill does not contain a fiscal impact.

Positions For And Against The Bill:

A representative with Broward County states that they **oppose** this bill for the following reasons:

They feel that this is a local issue that has already been decided through the 1992 vote to dissolve the Authority and transfer Port Everglades operations to the Broward County Government. This will interfere with local government's jurisdiction and home rule authority, pursuant to its charter.

Broward County Fire Rescue is the largest and best resourced fire rescue organization in the county, and contains within its ranks specialized units such as the Airport, Hazmat, TRT and Air Rescue.

The real issue behind the proposed legislation is an attempt by the Port Everglades Firefighting Unit labor unions to gain leverage for contract renewal negotiations, which are quickly approaching. The labor union is attempting to protect existing terms such as the one day on and three days off work schedule, where one day on and two days off is standard operating procedure.

A memorandum dated April 10, 2000, drafted by the Director of the Broward County Office of Budget Services to the Director of the Broward County Office of Public and Governmental Relations states the following regarding fiscal impact:

HB 1699 has a significant negative impact on Broward County. If approved by the voters, the bill requires the transfer of all assets used in the fire protection function to the City of Hollywood. The Fire/Rescue Division values these assets at \$10 million for the building and land and \$5 million for the equipment. The bill does not provide for any compensation to the County for these costs in the event that the voters approve the transfer.

HB 1699 does not include any restrictions on how much the City may charge the County for fire protection at the Port. The City would have a "blank check" in terms of how much they spend on the service. The County would have no recourse on this issue.

A representative from the Port Everglades Fire Fighters expresses the following in **support** of this bill:

In 1993, the Broward County Commissioners committed that they would maintain the Port Fire Department as a stand-alone fire delivery service because of their specialized, dissimilar and unique fire fighting service. On September 6, 1999, the Broward County Administrator dissolved the Department, removed its experienced fire chief, and merged its fire fighters into the Broward County Fire-Rescue System.

The Port budget has been cut by nearly one million dollars over the last four years.

Over eighty percent of the Port's jurisdiction area lies within the City of Hollywood.

The Port Fire Fighters are a specialized fire fighting unit with years of specialized training and experience in the mitigation of ship fires and petroleum emergencies. They are trained to deal with environmentally sensitive pollution control.

The Director of the Port Everglades Cleanup Committee represents the eleven oil companies, as well as Florida Power and Light, which are all located in the jurisdiction of the Port. The Director expresses **opposition** to this bill. Over half of the oil companies are not located in the City of Hollywood. Oil companies have paid a substantial portion of the special tariff for fire companies for many years. In Fiscal Year 1999 alone, oil companies paid \$2.1 million of the \$3.5 million in fire services taxes. They do not want to pay taxes to the City of Hollywood. The oil companies are also concerned about safety. If this legislation passes, the nearest fire station is over fifteen minutes away.

House Rule 44 (a):

The Broward Legislative Delegation's General Counsel provided staff with a legal analysis regarding the applicability of House Rule 44 (a). General Counsel takes the following position:

The provisions in the local bill **cannot be achieved through local ordinance, so that House Rule 44 (a) does not apply.**

As fire protection functions relate to services, Article VIII, Section 4, of the Florida Constitution does apply, under Broward County, and this provision precludes the County from unilaterally effecting a transfer without a transferee resolution.

Florida Statutes 163.01 and 125.86 do not apply. Section 125.86 (7) does not apply, pursuant to the Sarasota County case.

Broward County does not have the power to transfer fire protection functions/services within Port Everglades, as it would in effect repeal the special act transferring all Port functions to Broward County approved by vote of the electors (Ch. 91-346) in 1992. In essence, Ch. 91-346 amended the Charter of Broward County by providing the County with powers it did not have. The powers over Port Everglades were added to County powers as contemplated by Article VIII, section 1 (g) of the Florida Constitution. Broward County does not have the home rule power to act inconsistently with special law.

The City Attorney of Hollywood expresses the following regarding House Bill 44 (a):

Since the transfer of responsibilities in Port Everglades would require, at a minimum, action by both the County and the City, **Rule 44 (a) does not apply.**

Article VIII, Section 4 requires a joint resolution, subject to referenda, to effectuate a transfer of powers. Assuming that a transfer of powers could be accomplished by an interlocal agreement pursuant to 163.01, the agreement would still have to be reached by both involved governments.

House Rule 44 (a) is clearly written in the singular. It was never intended to preclude House consideration of a local bill that could, hypothetically be addressed by interlocal agreement where, as here, the involved units of local government do not agree on the substance of the local bill. Indeed, if this is the case, the House should never have considered Ch. 91-346 because Port Everglades and Broward County could have hypothetically accomplished the transfer by interlocal agreement.

The state legislature has assigned responsibilities in the Port to Broward County. (Ch. 91-346). Neither Hollywood nor Broward County has the power to repeal the effect of this special act.

The County Attorney for Broward County offers the following position regarding House Rule 44 (a):

It is my opinion that the substance of HB 1699 may be enacted into law by ordinance of Broward County, a local governing body, **without referendum.** As a charter government, the County has the constitutional authority to do so.

Furthermore, the substance of the bill may be accomplished by agreement through Interlocal Agreement, such as the one that provided for fire protection services for the Port supplied by the County.

Fire Safety:

An aide to the State Fire Chief declined comment on the issue of fire safety and the Port.

A representative from the City of Hollywood has, to date, not provided an opinion regarding the issue of fire safety and the Port.

The Broward County Safety Chief provided the following information regarding fire safety and the Port:

The Port fire station personnel, due to their number, are incapable of handling any major incident by themselves at Port Everglades, and have traditionally depended on Mutual Aid for all incidents of any significance at Port Everglades.

The Broward County Fire Rescue Division adds to the Port station thirty members fully trained and experienced on shipboard and petroleum-based fire fighting.

Currently, the Port Fire station is dispatched by a regional dispatch center with a state of the art computer-assisted dispatch system that has county-wide communications capabilities. All paid fire and rescue units south of Broward Boulevard are dispatched through this County system, except for Hollywood and Dania Beach, which are on a separate system. The lack of having Hollywood and Dania Beach accessible to this system poses an obvious safety concern for the emergency responders and the public.

STORAGE NAME: h1699a.ca

DATE: April 16, 2000

PAGE 12

One of the most significant impacts would be on response times for additional units from Hollywood backing up the five personnel on duty at the Port. Currently Engine 10 and Medical 10 from the airport arrive within six minutes or less after the call. Hollywood units take in excess of twelve minutes, possibly more with heavy traffic.

In addition to the significant travel time, the number of chief officers that can be put on the scene by Hollywood Fire Rescue is only one battalion chief during most hours of the day and night. This would leave the City without a chief officer until one can be called in from home.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Sponsor proposes an amendment which identifies and provides a funding source for the City of Hollywood and authorizes the City of Hollywood to adopt necessary regulations to provide fire protection services.

It does not appear that this amendment is outside the scope of the notice.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Cindy M. Brown, J.D.

Joan Highsmith-Smith