

STORAGE NAME: h1015.lgva.doc

DATE: February 15, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 1015

RELATING TO: Deerfield Beach & Pompano Beach

SPONSOR(S): Representative Ritter

TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
- (2) FISCAL POLICY & RESOURCES (FRC)
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

The bill provides authorization for the Broward County Board of Commissioners to hold an election November 5, 2002 for registered voters residing in several areas described in the bill as “Bonnie Loch,” “Tallman Pines,” “Tedder,” “Woodsetter,” “Pompano Beach Highlands,” “Kendall Green,” “Leisureville,” and “Loch Lomond.” Purportedly, these areas are candidates for annexation into either Deerfield Beach or Pompano. However, the ballot question is not clearly stated in the bill.

The bill makes other provisions for the orderly transfer of these areas from Broward County to either of these municipalities once approved by the voters of the areas.

The bill does not impact the state budget. The 2002 Economic Impact Statement indicates that it will cost \$11,405,000 to provide municipal-level services to the neighborhoods based on the County’s costs to provide municipal-level services. Estimated revenues approximate the same amount as the estimated costs.

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 type="checkbox"/> * |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

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

1. The areas in the bill will become part of an existing municipality subject to its governing ordinances, regulations and taxing requirements.

*2. It is unclear that the residents of the areas will experience any change in taxes. See the Economic Impact Statement filed with the bill.

B. PRESENT SITUATION:

**CHAPTER 171, FLORIDA STATUTES,
MUNICIPAL ANNEXATION AND CONTRACTION PROCEDURES**

Constitutional/Statutory Provisions

Section 2(c), Art. VIII of the State Constitution authorizes the Legislature to annex unincorporated property into a municipality by special act. It also authorizes the Legislature to establish procedures in general law for the annexation of property by local action. Miami-Dade County, however, has exclusive jurisdiction over its municipal annexations under sections 11(1)(c), article VIII, (5), and (6), of the 1885 State Constitution, as adopted by reference in s. 6(e), Article VIII of the State Constitution.

The Legislature established local annexation procedures by general law in 1974, with the enactment of chapter 171, Florida Statutes. Chapter 171, Florida Statutes, named the "Municipal Annexation or Contraction Act," describes the ways that property can be annexed or deannexed by cities without passage of an act by the Legislature. There are two types of annexations in Florida, voluntary and involuntary. With voluntary annexations, all property owners in the area proposed for annexation formally seek the annexation by petition. For an involuntary annexation to occur, at least a majority of the electors in the area proposed for annexation must vote in favor of the annexation. In addition, for the annexation to be valid under Chapter 171, Florida Statutes, the annexation must take place within the boundaries of a single county.

There is a twofold purpose of the Florida annexation laws: 1) to set forth local annexation/contraction procedures, and 2) to establish prerequisites for achieving the legislative goals of sound urban development, uniform legislative standards, and efficient provision of urban services.

Statutory Requirements That Must Be Met Before Annexation May Occur

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 where the municipality is located. 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:

- (1) 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.
- (2) The area to be annexed must be reasonably compact.
- (3) No part of the area to be annexed may fall within the boundary of another municipality.
- (4) The majority of the land to be annexed must be developed for urban purposes. Urban purposes are defined as:
 - having a resident population of at least two persons per acre;
 - if 60 percent of the subdivided lots are one acre or less, having a density of one person (resident) per acre;
 - having at least 60 percent of the subdivided lots used for urban purposes; or
 - having at least 60 percent of the total urban residential acreage divided into lots of 5 acres or less.
- (5) 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 after the municipal governing body levies such tax for that year. In the case of municipal contractions, the city and county must reach agreement on the transfer of indebtedness or property--the amount to be assumed, its fair value, and the manner of transfer and financing.

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 for those counties with charters providing an exclusive method for municipal annexation:

- (1) Submission to the municipal governing body of a petition seeking annexation, signed by all property owners in the area proposed to be annexed.
- (2) 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.

In addition, the annexation must not create enclaves. An enclave is:

- (a) any unincorporated, improved or developed area that is enclosed within and bounded on all sides by a single municipality; or
- (b) any unincorporated, improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.

Upon publishing notice of the ordinance, the governing body of the municipality must provide a copy to the board of county commissioners of the county where the municipality is located.

Involuntary Annexations

A municipality may annex property where the property owners have not petitioned for annexation pursuant to section 171.0413, Florida Statutes. This process is called involuntary annexation. In general, the requirements for an involuntary annexation are:

- (1) The adoption of an annexation ordinance of a "reasonably compact" area by the annexing municipality's governing body.
- (2) Prior to the adoption of an annexation ordinance, the governing body of the municipality must hold at least two advertised public hearings, with the first meeting being held on a weekday at least seven days after the first advertisement and the second meeting being held on a weekday at least five days after the first advertisement. (This new requirement was passed by the 1999 Legislature).
- (3) Submission of the ordinance to a vote of the registered electors of the area proposed to be annexed once the governing body has adopted the ordinance. The registered electors of the annexing municipality may vote on the annexation if the governing body chooses to submit it to a vote. However, this vote is not required.

In 1999, the Florida Legislature removed the requirement of a dual referendum in specific circumstances. Previously, in addition to a vote by the electors in the proposed annexed area, the annexation ordinance was submitted to a separate vote of the registered electors of the annexing municipality if the total area annexed by a municipality during any one calendar year period cumulatively exceeded more than five percent of the total land area of the municipality or cumulatively exceeded more than five percent of the municipal population. The holding of a dual referendum is now at the discretion of the governing body of the annexing municipality. There is no requirement that the electors in the municipality approve an annexation ordinance regardless of the cumulative effect of such annexation.

If there is a majority vote in favor of annexation in the area proposed to be annexed, the area becomes a part of the city. If there is no majority vote, that area cannot be made the subject of another annexation proposal for two years from the date of the referendum.

Annexation of Areas With No Registered Voters

If an area proposed to be annexed does not have any registered electors on the date a local government adopts an annexation ordinance, obviously an election within the area cannot take place. In this case, the area may not be annexed unless the owners of more than 50 percent of the parcels of land consent to the annexation. The required property owner approval must be obtained by the parties proposing the annexation prior to the final adoption of the ordinance. In addition, the annexing municipality may submit the ordinance to a vote of the registered electors of the annexing municipality. The annexation ordinance is effective upon becoming a law or as otherwise provided in the ordinance.

If more than 70 percent of the land in an area proposed to be annexed is owned by individuals, corporations, or legal entities that are not registered electors, the area may not be annexed unless the owners of more than 50 percent of the land in the area consent to such annexation. The parties proposing the annexation prior to the referendum to be held on the annexation must obtain such consent.

Annexation of Enclaves

With the passage of chapter 93-206, Laws of Florida, (now found in section 171.046, Florida Statutes), the Legislature recognized that enclaves can create significant problems in planning, growth management, and service delivery. An enclave is (a) any unincorporated, improved or developed area that is enclosed within and bounded on all sides by a single municipality; or (b) any unincorporated, improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.

In 1993, the Legislature recognized that enclaves can create significant problems in planning, growth management, and service delivery. The intent of the legislation was to make it easier to eliminate enclaves of small land areas. A separate process for annexing enclaves of 10 acres or less was created. Using this process, a municipality may annex an enclave by interlocal agreement with the county having jurisdiction of the enclave. It may also annex an enclave with fewer than 25 registered voters by municipal ordinance, when the annexation is approved in a referendum by at least 60 percent of the voters in the enclave. These procedures do not apply to undeveloped or unimproved real property.

Annexation by Special Act

Subsection 171.044(4), Florida Statutes, provides that the procedures for voluntary annexation shall be "supplemental to any other procedure provided by general law or special law." There are a number of special annexation laws that exist in Florida, and hence special laws should always be checked prior to beginning annexation procedures. The Legislature may allow municipalities to annex property by passage of a special act and are empowered to waive any and all statutory requirements.

Annexation by Charter

Also provided in subsection 171.044(4), Florida Statutes, voluntary annexation procedures do not apply to municipalities and counties with charters that provide for an exclusive method of municipal annexation.

Effect of Annexation on an Area

Immediately upon being annexed, an area becomes 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 annexing municipality rezones the area. Also, the county land use plan, and zoning or subdivision regulations of the unincorporated area 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.

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 annexation ordinance. They may file a petition within 30 days following the passage of the

ordinance with the circuit court for the county in which the municipality is located seeking the court's review by certiorari. If the appeal is won, the petitioner is entitled to reasonable costs and attorney's fees.

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

Solid Waste Collection

Florida law provides for continuing any exclusive franchised solid waste collection services that have been in effect for six months or longer. They are to continue to the newly annexed area for either 5 years or for the remainder of the franchise term, whichever is shorter. The municipality may allow the franchisee to continue servicing the area under the present franchise agreements, or the city may terminate the agreements if the franchisee does not agree to comply with certain statutory provisions relating to the quality of services or the costs of providing such services. In 2000, the Legislature adopted a provision which provides that a solid waste collection contract in effect at least 6 months prior to the annexation, may continue to provide services to the annexed area for 5 years or the remainder of the contract, whichever is shorter. The solid waste collection provider must provide written evidence of the contract duration, excluding any automatic renewals or "ever-green" provisions, within a reasonable time of a written request. This does not apply to single-family residential properties in specified enclaves.

Independent Special Districts

In 2000, the Legislature created section 171.093, Florida Statutes, to address municipal annexation of property within the boundary of an independent special district that levies ad valorem taxes. It is an effort to isolate and provide certain limited protections to independent special districts from annexation activity in areas affecting them. Oftentimes, independent special districts receive no financial protection from annexing municipalities, even though the district continues to be liable for its debts. As an independent special district's tax base continues to decrease due to annexations and abundant loss of territory, the district may become economically inefficient and unstable. A situation may arise where an independent special district no longer has any property within its boundaries due to annexations. This law now provides a method to allow independent special districts to factor the decreased property base into its budget, while at the same time not restricting municipalities' ability to annex.

An orderly transition of special district service responsibilities to an annexing municipality in an equitable manner is provided for. Upon annexation of property within a special district's boundaries, a municipality has the option to elect the assumption of the special service responsibilities. If the municipality elects to assume the responsibilities, the municipality and special district may enter into an interlocal agreement to address the transition. If no interlocal agreement can be reached, then the district remains the service provider in the annexed area for a period of four years. During this time, the municipality pays the district an amount equal to the ad valorem taxes or assessment that would have been collected had the property remained in the district. At the end of the four years, or other agreed upon extension, the municipality and district must enter into an agreement regarding the transfer of district property located within the municipality. If no agreement is reached, then the parties proceed to circuit court. District service and capital expenditures within the annexed area must be rationally related to the annexed area's service needs and that service and capital expenditure must also be related to received revenues. In addition, a district is prohibited from having a capital expenditure of more than \$25,000 for use primarily within the annexed area without the express consent of the municipality.

If the municipality does not elect to assume district responsibilities, the district continues providing service to the annexed area. In addition, the annexed area remains within the district's boundaries. Finally, the district is allowed to continue assessing user charges and impact fees within the annexed area while it remains the service provider.

However, these annexation provisions do not apply to community development districts and water management districts.

Municipal Contraction

In addition to adding land, municipalities may also redraw their boundaries to remove an area from the city through the contraction process. Contraction, also referred to as deannexation, is the reversion or removal of real property from municipal boundaries so that the removed section becomes an unincorporated area and is governed by the county. In contractions, excluded territory is immediately subject to laws, ordinances, and regulations in effect in the county. The deannexation process is described in section 171.051, Florida Statutes.

The city may propose an area for exclusion, or 15 percent of the qualified voters residing in an area may petition the municipal governing body to exclude that area from the city limits. If the contraction proposal is initiated by petition of the area residents, the governing body must conduct a feasibility study of the proposal and, within 6 months, decide to initiate contraction procedures or reject the petition and state the factual basis for such rejection.

Regardless of how the proposal is initiated, if the decision is made to seek contraction of the city's boundaries, the governing body must publish notice of the proposed contraction ordinance in a local newspaper once per week for 2 consecutive weeks. This notice must:

- 1) describe the area to be excluded in the form of a map clearly showing the area to be excluded;
- 2) show that the area fails to meet the general standards for annexation;
- 3) set the time and place for consideration of the contracting ordinance; and
- 4) advise that all affected persons may be heard.

Voter approval of the contraction may be required in two ways:

(1) The city governing body may simply call for a referendum election on the question in the area proposed for exclusion.

(2) The residents of the area proposed for exclusion may submit a petition to the city governing body, signed by at least 15 percent of the area's qualified voters, requesting a referendum on the question. If, at this point, the city governing body does not wish to hold a referendum it may simply vote not to contract the municipal boundaries.

If a referendum election is to be held in the area proposed for exclusion, the city governing body must set the date for the election and publish notice of the referendum at least once each week for the 2 weeks prior to the election.

If a majority of the voters in the referendum election vote in favor of contraction, the area will be removed from the city's jurisdiction on the date established in the contraction ordinance. If, however, the vote is against contraction, the area will remain within the city's jurisdiction. No part of that area may become the subject of another contraction proposal for 2 years from the date of the referendum.

For an area to be removed from a municipality, it must meet the following criteria:

- (1) The area must fail to meet the criteria for annexation.
- (2) The results of the contraction must not separate any portion of the municipality from the rest of the municipality.
- (3) The contracting ordinance must provide for apportionment of any prior existing debt and property.

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 31 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, as amended by chapter 99-447, Laws of Florida), which exempts Broward County from the 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 fifteenth day of September 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.

2001 Broward County Legislative Delegation's Ad Hoc Committee on Annexation

House Bill 907 (2001 Session), introduced by Representative Stacy Ritter, died in the House Committee on State Administration, and Senate Bill 2338 (2001 Session), introduced by Senator M. Mandy Dawson, died in the Senate Committee on Rules and Calendar. These bills required the City of Pembroke Park, located in Broward County with a population of approximately 5000 people, to annex unincorporated areas in South Central Broward County, including the areas of Carver Ranches, Miami Gardens, Utopia, and Lake Forest. These areas have a population of approximately 15,000 people, and if added to Pembroke Park, would have quadrupled the city's population.

As a result of the opposition of the citizens of Pembroke Park to these annexation bills and the eventual disposition of the bills, the Broward County Legislative Delegation initiated a review of the remaining Broward annexations by establishing the 2001 Ad Hoc Committee on Annexation.

Their stated mission was:

“...to facilitate the fair and comprehensive continuation of the 1995 Annexation Policy with Broward County with special consideration being given to each neighborhood and the responsibilities assumed by the annexing municipality with the cooperation of Broward County.”

The Commission met six times during the summer of 2001.

The Commission agreed to the following 18 guidelines:

1. The annexation of all unincorporated areas in Broward County should take place by October 1, 2005. Any areas left unincorporated after that date would be subject to required annexation by the State Legislature.
2. All annexation bills for Broward County should be combined into one comprehensive or omnibus bills in order to streamline the process.
3. An official unincorporated partnership committee shall be established to identify community projects or issues of interest that can be collaboratively achieved. These projects or issues shall become part of any interlocal agreement prior to annexation. This committee would be responsible for communications between the annexing city and the unincorporated area.
4. The geographic integrity, character, and unique lifestyle of the different neighborhoods should be preserved.
5. Any new taxes or fees imposed on new residents of the annexing cities should be informed of the changes and compared to their previous tax and fee situations.
6. Cities should be creative in providing incentives to unincorporated areas to encourage them to be annexed
7. Unincorporated area residents should be given the right whenever possible and reasonable to choose which municipality to join and the right to vote on annexation by referendum.
8. Discontinue the practice of dual referenda
9. Existing regional County facilities should remain unincorporated, unless the County and municipality in question agree to annexation.
10. A transition plan will be established to assist those County employees displaced by reason of annexation.
11. Infrastructure projects should be completed by the County as scheduled in the County's Five Year Capital Improvement Program.
12. The County and prospecting annexing municipalities will execute interlocal agreements in regards to incomplete County infrastructure projects.
13. The practice of “cherry-picking” will be ended. Cherry-picking is the act of cities only selecting areas that are to produce a positive tax cash flow to the city.
14. Commercial properties should not be stripped from neighborhoods from which they would logically or geographically belong.
15. Nothing should preclude the use of deannexation, consolidation, or incorporation as a means to ameliorate past actions.

16. All future legislative bills may include phase in dates for both infrastructure improvements as well as the communities to be annexed.

17. Whenever possible, annexation should achieve revenue neutrality for the annexing municipality.

18. With respect to municipal protocol, all correspondence regarding annexation must be directed to the mayor, elected officials and city managers

The Broward County Legislative Delegation approved these recommendations /guidelines at their final public hearing held on August 23, 2001 at the Broward Government Center. As a result, the delegation has come to the 2002 Legislature with a request to consider either an omnibus bill, (House Bill 1027 by Representative Ritter) or individual "stand-alone" bills addressing each individual annexation separately.

C. EFFECT OF PROPOSED CHANGES:

The bill provides that an election be scheduled by the Broward County Board of County Commissioners on November 5, 2002 for registered voters residing in unincorporated areas described in sections 1, 7 and 13 of the bill. Purportedly, these areas known as "Bonnie Loch," "Tallman Pines," "Tedder," and "Woodsetter" (section 1 of the bill), "Pompano Beach Highlands" (section 7 of the bill), "Kendall Green," "Leisureville," and "Loch Lomond," (section 13 of the bill) are candidates for annexation. Sections 2, 8 and 14 of the bill, authorizing the election does not clearly state the question that voters are expected to vote on. It appears the intent is to have the registered voters residing in these areas vote on the specified date on whether they choose to go into the City of Deerfield Beach or the City of Pompano.

Mail ballots are prohibited in this election. The municipality receiving the majority of votes in this election will govern these areas. The bill provides that any use, building or structure legally in existence at the time a portion of the area(s) becomes part of a municipality, shall continue and not be prohibited by the municipality as long as the use continues and is not abandoned.

No changes in land use designations or zoning may be made in any of the areas described in sections 1, 7 and 13 of the bill after the effective date of this act. Public roads and rights-of-way are transferred from Broward County to the annexing municipality. The act takes precedence over any other law.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? December 20, 2001

WHERE? Ft. Lauderdale, Broward County, FL – *Sun-Sentinal*

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 ☐

III. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

IV. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor may want to consider amending sections 2, 8 and 14 of the bill to clarify the ballot question.

V. SIGNATURES:

COMMITTEE ON COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Joan Highsmith-Smith

Joan Highsmith-Smith