

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1091
SPONSOR(S): Russell
TIED BILLS:

City of Weeki Wachee
IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government & Veterans' Affairs	18 Y, 0 N	Nelson	Cutchins
2) Transportation			
3) Finance and Tax			
4)			
5)			

SUMMARY ANALYSIS

This bill prohibits the City of Weeki Wachee from exercising the right of eminent domain or annexing property. It also provides that the city cannot levy ad valorem taxes exceeding three mills; that the city's elections will be conducted and supervised by the Hernando County supervisor of elections; and that the county clerk of the circuit court act as ex officio clerk and treasurer for the city.

According to the Economic Impact Statement, the bill has no fiscal impact except to the extent that it establishes a cap on ad valorem taxation.

This bill contains a provision which appears to be in conflict with art. VII, s. 9 of the State Constitution, which provides that municipalities may be authorized to levy up to 10 mills in ad valorem taxes.

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to several such exemptions.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

Background

City of Weeki Wachee

The City of Weeki Wachee (and its charter) was created pursuant to special act of the Legislature in 1965.¹ The city charter provides for a city commission, and provides that the city shall have the powers, functions and immunities granted to municipal corporations by the constitution and general laws of this state. The charter specifically expresses that the city has the power to:

- purchase, lease, receive and hold property and to sell, lease or otherwise dispose of the same;
- pass ordinances;
- exercise the power of condemnation;
- levy, assess and collect taxes;
- invest surplus city funds;
- borrow money and to issue bonds;
- license professions, business and occupations; impose excise taxes;
- furnish local public services and utilities;
- purchase, hire, construct, own and maintain local public utilities excepting public utilities for the sale, delivery or transportation of water;
- grant public utility franchises, except franchises pertaining to the sale, delivery or transportation of water;
- define, prevent and abate nuisances;
- exercise all police powers;
- own, establish and operate hospitals, libraries, etc.
- construct, operate and maintain streets, etc.
- regulate encroachments;
- provide police, fire, sanitary and similar protections and services;
- drain swamp and overflow lands;
- establish and regulate a uniform system of employment;
- own and maintain cemeteries;
- regulate building and density of population, and the height and use of buildings;
- make local improvements;
- advertise and promote the interest of the municipality; and
- borrow money.

¹ Chapter 65-2378, L.O.F. This act has not been subsequently amended.

The charter further provides for a city commission, consisting of three electors of the city; provides that the city commission has various powers, including the power to appoint a city manager, city attorney, municipal judge, city prosecutor, city auditor, city clerk and city tax assessor; and that the city commission shall elect a mayor. The charter provides for the election of city's commissioners, and provides for the manner in which these elections are to be conducted.

By some accounts, the main reason for the incorporation of the city was to put the location of the roadside attraction Weeki Wachee Springs, a 27-acre park built around a natural spring which features live "mermaid" shows, on official state highway maps. This property is owned by the Southwest Florida Water Management District and leased to the attraction.

The city is located in Hernando County, and has a population of nine. Weeki Wachee supplies no municipal services to its residents: police protection, fire protection and emergency medical care, water and sewer service, building inspections and permitting, and code enforcement and inspections are provided by the county. The city has one employee, a part-time city clerk.

Weeki Wachee has been embroiled in a number of controversies as of late which include: the donation of the tourist attraction to the city by its corporate owners; the city's attempt to condemn assets of the Florida Water Services Corporation; the maintenance of the attraction's facilities; and various complaints regarding the management of the city.

In June 2002, the Legislative Auditing Committee took action against Weeki Wachee for failing to file its financial reports for the fiscal year ending September 30, 2000. The committee adopted a motion that resulted in the city losing its guaranteed entitlement from the municipal revenue sharing program. According to the Legislative Auditing Committee, Weeki Wachee is the only municipality within the last 10-15 years to have had its distributions withheld as a result of a failure to file financial reports. Since the time of the committee's action, the city also has failed to file its financial reports with the state for the fiscal years ending September 30, 2001, and September 30, 2002.

Constitutional Provisions

Article VIII, s. 2 of the State Constitution authorizes the Legislature to establish or abolish municipalities or amend their charters pursuant to general or special law. If a municipality is abolished, the Constitution requires that provision be made for the protection of its creditors. The Constitution provides that municipalities are granted all governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services. Municipalities may exercise any power for municipal purposes except as otherwise provided by law.

Article VII, s. 4 provides that by law or by resolution of the governing bodies or each of the governments affected, any function or power of a county or municipality may be transferred to or contracted to be performed by another county or municipality 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.

Article VII, s. 9(a) of the State Constitution provides that municipalities may be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes; 9(b) provides that a municipality may not levy ad valorem taxes in excess of 10 mills.

Statutory Provisions

The Municipal Home Rule Powers Act, ch. 166, F.S., grants a municipality governmental, corporate and proprietary power in order for them to conduct municipal government, functions and services, and exercise any power for municipal purposes, except when expressly prohibited by law.

Eminent Domain

Section 166.401(1), F.S., provides that “[a]ll municipalities in the state may exercise the right and power of eminent domain; that is, the right to appropriate property within the state, except state or federal property, for the uses or purposes authorized pursuant to this part.”

Municipal Annexation

Chapter 171, F.S., provides municipalities with general law standards by which they may annex property. (Article VIII, s.2(c) of the State Constitution provides that municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be provided by general or special law.)

Ad Valorem Taxes

Section 166.211, F.S., provides that a municipality is authorized to levy ad valorem taxes on real and tangible personal property within the municipality in an amount not to exceed 10 mills.

Municipal Elections

Section 100.3605, F.S., provides that the Florida Election Code shall govern the conduct of a municipality's election in the absence of an applicable special act, charter or ordinance provision. No charter or ordinance provision may be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.

HB 1091

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C. SECTION DIRECTORY:

Section 1: Provides that the city may not exercise the right of eminent domain, notwithstanding the provisions of ch.166, F.S.

Section 2: Provides that the city may not annex property, notwithstanding the provisions of ch. 171, F.S.

Section 3: Provides that the amount of ad valorem taxes levied by the city on real and personal property may not exceed three mills.

Section 4: Provides that all municipal elections in the city be conducted and supervised by the county supervisor of elections.

Section 5: Provides that the county clerk of the circuit court act as ex officio clerk and treasurer for the city, and be responsible for the city's financial transactions.

Section 6: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 22, 2003

WHERE? The *Hernando Times*, a daily newspaper, Hernando County, Florida

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

According to the Economic Impact Statement, the bill will have no fiscal impact except to the extent that it establishes a cap on ad valorem taxation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

This bill puts a cap of three mills on the amount of ad valorem taxes that the city may levy. This provision appears to be in conflict with art. 7, s. 9 of the State Constitution which provides that municipalities may be authorized to levy up to 10 mills in ad valorem taxes.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to create several such exemptions. Section 1 of the bill provides that the city may not exercise the power of eminent domain, thus providing an exemption to s. 166.401(1), F.S. Section 2 of the bill provides that the city may not engage in annexation, notwithstanding the provisions of ch. 171, F.S. Section 3, which limits the city's ability to levy ad valorem taxes to no more than three mills, is an exemption to s. 166.211, F.S., which authorizes a municipality to levy ad valorem taxes on real and tangible personal property in an amount not to exceed 10 mills.

Although the Economic Impact Statement indicates that the bill has no fiscal impact except to the extent that it establishes a cap on ad valorem taxes, there may be costs associated with the county conducting the city's elections and the county clerk of the circuit court assuming responsibility for the city's financial transactions.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The Sponsor of the bill has indicated that he intends to amend the bill to remove section 5 of the bill which provides that the clerk of the circuit court be responsible for all financial transactions of the city.