

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1485 North Andrews Garden/Broward County
SPONSOR(S): Gottlieb
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	_____	<u>Nelson</u>	<u>Cutchins</u>
2) <u>Local Government & Veterans' Affairs</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill provides for the annexation of the unincorporated Broward County property known as the "North Andrews Gardens Area" by either the City of Fort Lauderdale or the City of Oakland Park.

This bill does not impact the state budget. According to the Economic Impact Statement, it will cost \$5,558,000 to provide municipal-level services within the North Andrews Gardens neighborhood.

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 may create such an exemption.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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

Constitutional/Statutory Provisions Relating to Annexation¹

Article VIII, s.2 (c), State Constitution, provides that "[m]unicipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law." This provision 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.

The Legislature established local annexation procedures by general law in 1974, with the enactment of ch. 171, F. S., the "Municipal Annexation or Contraction Act." Chapter 171, F. S., describes the ways that property can be annexed or de-annexed 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 must formally seek the annexation by petition to the governing body of a municipality. 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 an annexation to be valid under ch. 171, F. S., 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 criteria 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 municipality must prepare a report containing plans for providing urban services to any 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, plans for extending municipal services, 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 term "annexation" is defined in the Florida Statutes to mean "the adding of real property to the boundaries of an incorporated municipality, such addition making such real property in every way a part of the municipality." See, s. 171.031(1), F.S.

- 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 an 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 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; or
 - having at least 60 percent of the subdivided lots used for urban purposes, and having at least 60 percent of the total urban residential acreage divided into lots of five 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 for the extension of municipal services.

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.

Types of Annexations

Voluntary Annexation

If the property owners of a particular unincorporated area desire annexation into a contiguous municipality, they can initiate voluntary annexation proceedings. Section.171.044 (4), F. S., provides that the procedures for voluntary annexation are “supplemental to any other procedure provided by general law or special law.” The following procedures govern voluntary annexations in every county, except for those counties with charters providing an exclusive method for municipal annexation:

- Submission to the municipal governing body of a petition seeking annexation, signed by all property owners in the area proposed to be annexed.
- Adoption of an ordinance by the governing body of the municipality to annex the property after publication of notice at least once a week for two 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 s. 171.0413, F. S. This process is called involuntary annexation. In general, the

requirements for an involuntary annexation are:

- The adoption of an annexation ordinance by the annexing municipality's governing body.
- Prior to the adoption of the ordinance, the governing body of the municipality must hold at least two advertised public hearings, with the first meeting held on a weekday at least seven days after the first advertisement and the second meeting held on a weekday at least five days after the first advertisement.²
- 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.

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.

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 Enclaves

With the passage of ch. 93-206, L.O.F.,³ 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.

Effect of Annexation on an Area

Upon the effective date of an annexation, the area becomes subject to all laws, ordinances and regulations applicable to other city residents. An exception occurs pursuant to s. 171.062(2), F.S., in that if the area annexed was subject to a county land use plan and county zoning or subdivision regulations, these regulations remain in effect until the municipality adopts a comprehensive plan amendment that includes the annexed 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 applied 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.

² (This new requirement was passed by the 1999 Legislature.)

³ Section 171.046, F.S.

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 would be subject to required annexation by the Florida Legislature. (As of 2001, this goal was changed to year 2005.)

The 1996 Florida Legislature adopted a special act (ch. 96-542, L.O.F, as amended by ch. 99-447, L.O.F.), which 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 15th day of September following adjournment sine die of the next regular legislative session following the completion of all necessary procedures for annexation.

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

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

House Bill 907 (2001 Session) died in the House Committee on State Administration, and Senate Bill 2338 (2001 Session) 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 5,000 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 City 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 Committee met six times during the summer of 2001, and 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 bill 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 the 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. Residents of areas being proposed for annexation should be informed of any new taxes or fees which would be imposed by the annexing municipality.
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. The practice of dual referenda should be discontinued.
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. A city engages in cherry-picking when it seeks to annex only areas that will produce a positive tax cash flow.
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. As a result, the delegation came to the 2002 Legislature with a request to consider either an omnibus bill (HB 1027) or individual "stand-alone" bills addressing each individual annexation separately. The omnibus bill died in committee.

HB 1485

This bill provides for the annexation of unincorporated Broward County property known as the "North Andrews Gardens Area." This neighborhood is approximately 691 acres, with a population of 9,656. According to the sponsor, this bill was requested by the homeowners' association and is in compliance with the Broward Legislative Delegation Annexation Policy. The bill requires the cities of Fort Lauderdale and Oakland Park to inform the Broward Delegation and the board of county commissioners as to whether they desire to appear on the ballot to determine the annexation of the unincorporated area. If at least one of the cities decides in the affirmative, the board will schedule an election on November 2, 2004. The voters residing in the North Andrews Gardens Area will choose one municipality for annexation by majority vote; if only one city appears on the ballot, the voters will decide the effective date of the annexation.

C. SECTION DIRECTORY:

Section 1: Provides that no later than July 1, 2004, the governing bodies of the City of Fort Lauderdale and the City of Oakland Park shall inform the Broward Delegation and the board of county commissioners as to whether they desire to appear on the ballot provided for in the act.

Section 2: Provides that if at least one of the above-listed municipalities informs the Delegation or the board that it desires to appear on the ballot, that the board shall schedule an election on November 2, 2004, the subject of which shall be the annexation of the North Andrews Gardens Area. Registered voters who are residents of the North Andrews Gardens Area may choose one municipality for annexation by majority vote. If only one municipality appears on the ballot, the voters will decide the

effective date of the annexation (September 15 of 2005 or 2006). The use of a mail ballot in the election is prohibited.

Section 3: Provides a legal description for the North Andrews Gardens Area.

Section 4: Provides that the board of county commissioners shall schedule an election on November 2, 2004, the subject of which is the annexation of the North Andrews Gardens area.

Section 5: Provides that upon the majority of the voters residing in the North Andrews Gardens Area voting to be annexed into either the City of Fort Lauderdale or the City of Oakland Park, the area will be deemed to be a part of the municipality on September 15, 2005, pursuant to s. 171.062, F.S., except as provided in the act.

Section 6: Provides for an interlocal agreement to be developed between the governing bodies of the county and the annexing municipality to address infrastructure improvement projects and a financially feasible plan for transition county services infrastructure, etc., and executed prior to the date of the annexation.

Section 7: Provides that the board of county commissioners is authorized to set the election at the cost of Broward County. Provides that a mail ballot not be used in the election.

Section 8: Provides that upon annexation:

- the present land use designations and zoning districts provided for under the county comprehensive plan and code of ordinances will remain the law in the annexed area, despite the fact that the area is now part of a municipality;
- the land use designations and zoning of Broward County shall be deemed the conforming laws of the annexing municipality;
- any change of zoning districts or land use designations may only be accomplished by super majority vote of the governing body of the municipality; and
- any currently legal use or building may not be prohibited by the city as long as such use continues.

Section 9: Provides that there will be no change in land use designations or zoning between the effective date of the act and the date the annexation is effective. Provides that no municipality shall annex property within the North Andrews Gardens Area between the effective date of the act and the date of annexation.

Section 10: Provides that after the effective date of the annexation, any resident in the annexed area is deemed to have met city residency requirements for candidacy.

Section 11: Provides that nothing in the act shall affect or abrogate the rights of parties to any contracts which are in effect prior to the effective date of annexation.

Section 12: Provides for the transfer to the city of all county public roads and rights-of-way within the annexed area upon the effective date of the annexation.

Section 13: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 25, 2004

WHERE? The *Sun Sentinel*, a daily newspaper published in Broward County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? November 2, 2004

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

According to the Economic Impact Statement, it will cost \$5,558,000 to provide municipal-level services within the North Andrews Gardens neighborhood.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Sponsor of the bill should consider offering an amendment which deletes Section 4 of the bill as it contains repetitive language. He also should consider amendments which delete repetitive language regarding mail ballots from Section 7, and "conforming laws" language in Section 8.

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 may create an exemption to s. 171.062(1), F.S., which provides that an area annexed to a municipality shall be subject to all laws, ordinances and regulations in force in that municipality, via the "continued use" provisions of Section 8. It may also create an exemption to s. 171.062(2), F.S., (which provides that an area annexed will remain subject to a county land use plan and zoning regulations until the municipality adopts a comprehensive plan amendment that includes the annexed area), in Section 8 of the bill in that it requires that the county comprehensive plan and code of ordinances remain the law governing the annexed area, until amended by a supermajority vote of the governing body of the city. The bill additionally may create an exemption to s. 125.01, F.S., which gives counties the authority to establish and enforce zoning ordinances and the Local Government Comprehensive Planning and Land Development Regulation Act (contained in ch. 163, F.S.), which gives counties the authority to amend comprehensive plans, as Section 9 prohibits a county from changing land use designations or zoning after the effective date of the act.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The Sponsor has indicated that he intends to offer an amendment which changes the date of the referendum proposed in the bill to August 31, 2004, (rather than the date of the General Election) in order to allow the voters to focus on the issue of annexation.