

**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 1335  
**SPONSOR(S):** Needelman  
**TIED BILLS:**

City of Melbourne, Brevard County

**IDEN./SIM. BILLS:** SB 2662

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) <u>Local Government Council</u>	<u>6 Y, 0 N</u>	<u>Nelson</u>	<u>Hamby</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

This bill provides for the annexation of two unincorporated areas known as Aurora Road Area A and Aurora Road Area B by the City of Melbourne. The bill provides for elections, for effective dates of annexation, for the effects of annexation, and for the transfer of public roads and rights-of-way.

According to the Economic Impact Statement, this bill will have a minimal fiscal impact on local government. See, "Economic Impact Statement" section for further detail.

**Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

##### **Provide Limited Government**

This bill will transfer responsibilities relating to the annexed property from Brevard County to the City of Melbourne.

##### **Ensure Lower Taxes**

The bill may cause property owners in annexed areas to pay slightly higher taxes. See, discussion under "Economic Impact Statement" section.

#### B. EFFECT OF PROPOSED CHANGES:

##### **PRESENT SITUATION**

##### ***Constitutional/Statutory Provisions Relating to Annexation<sup>1</sup>***

Article VIII, s.2 (c), of the 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." This act describes the ways that property can be annexed or de-annexed by cities without legislative action. The purpose of the act is to set forth procedures for adjusting the boundaries of municipalities through annexations or contractions of corporate limits, and criteria for determining when annexations or contractions may take place so as to:

- ensure sound urban development and accommodation to growth;
- establish uniform legislative standards throughout the state for the adjustment of municipal boundaries;
- ensure the efficient provision of urban services to areas that become urban in character; and
- ensure that areas are not annexed unless municipal services can be provided to those areas.

##### ***Statutory Requirements That Must Be Met Before Annexation***

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:

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<sup>1</sup> 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. For an annexation to be valid under ch. 171, F. S., the annexation must take place within the boundaries of a single county.

- The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality.<sup>2</sup>
- 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.<sup>3</sup>
- 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 an 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 procedure governs voluntary annexations in every county, except for those counties with charters providing an exclusive method for municipal annexation:

- submission of a petition—signed by all property owners in the area proposed to be annexed—to the municipal governing body; and
- adoption of an ordinance by the governing body of the municipality to annex the property after publication of a notice—which sets forth the proposed ordinance in full—at least once a week for two consecutive weeks.

The governing body of the municipality also must provide a copy of the notice to the board of county commissioners of the county where the municipality is located.

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.

#### 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;

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<sup>2</sup>This means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. There are specified exceptions a case in which an area is separated from the city's boundary by a publicly owned county park, right-of-way or body of water.

<sup>3</sup> An area developed for urban purposes is defined as an area which meets any one of the following standards: a resident population of at least two persons per acre; 60 percent of the subdivided lots are one acre or less, and have a density of one person (resident) per acre; or at least 60 percent of the subdivided lots are used for urban purposes, and at least 60 percent of the total urban residential acreage is divided into lots of five acres or less.

- at least two advertised public hearings held by the governing body of the municipality prior to the adoption of the ordinance, with the first hearing on a weekday at least seven days after the first advertisement and the second hearing held on a weekday at least five days after the first advertisement;<sup>4</sup> and
- submission of the ordinance to a vote of the registered electors of the area proposed for annexation 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 part of the city. If there is no majority vote, the area cannot be made the subject of another annexation proposal for two years from the date of the referendum.

If more than 70 percent of the land in an area proposed to be annexed is owned by individuals, corporations or legal entities which are not registered electors, the area cannot be annexed unless the owners of more than 50 percent of the land area consent. Such consent must be obtained by the parties proposing the annexation prior to the referendum.

### ***Annexation of Enclaves***

With the passage of ch. 93-206, L.O.F.,<sup>5</sup> the Legislature recognized that enclaves can create significant problems in planning, growth management and service delivery, and declared that it was the policy of the state to eliminate enclaves. This legislation provided a separate process for annexing enclaves of 10 acres or less. Using this process, a municipality may annex an enclave by interlocal agreement with the county having jurisdiction of the enclave. It also may 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 county laws, ordinances and regulations.

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 an appeal is won, the petitioner is entitled to reasonable costs and attorney's fees.

<sup>4</sup> This new requirement was passed by the 1999 Legislature.

<sup>5</sup> Section 171.046, F.S.

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.

## HB 1335

This bill provides that, no later than June 30, 2007, the governing body of the City of Melbourne may inform the Brevard County Supervisor of Elections of its desire to hold elections to determine whether the Aurora Road Area A<sup>6</sup> and the Aurora Road Area B<sup>7</sup> should be annexed into the city.<sup>8</sup>

Both areas are located near the geographical center of the city. Elections may be held any time prior to December 31, 2007. If the referenda fail to receive a majority vote of the registered electors voting, the city will not be barred from holding other elections at a later date (provided that the first election is held no later than December 31, 2007.) The city may hold mail ballot elections, and voters may vote in the elections by absentee ballot. Only registered voters residing in the area to be annexed may participate in the elections. If an annexation is approved, it will become effective 30 days after the referendum.

The bill further provides that:

- the act will not affect or abrogate the rights of parties to any contracts which are in effect prior to the annexation;
- residents of an annexed area will be considered to have met residency requirements for municipal office candidacy subsequent to the annexation;
- all Brevard County public roads and rights-of-way in the annexed area, with a specified exception, will be transferred to the City of Melbourne upon annexation.

### C. SECTION DIRECTORY:

**Section 1:** Provides for the annexation of the Aurora Road Area A by the City of Melbourne.

- (1) Provides parameters for an election to determine whether Aurora Road Area A should be annexed.
- (2) Provides for election date and method.
- (3) Provides for ballot wording.
- (4) Provides for copy of act and map of proposed area to be annexed at polling place.
- (5) Provides for election by majority vote of registered electors residing in area.
- (6) Provides a legal description.
- (7) Provides that the act will not affect the rights of parties to prior contracts.
- (8) Provides that annexed residents will meet residency requirements for municipal candidacy.
- (9) Provides for the transfer of public roads and rights-of-way.

**Section 2:** Provides for the annexation of the Aurora Road Area B by the City of Melbourne.

- (1) Provides parameters for an election to determine whether Aurora Road Area B should be annexed.

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<sup>6</sup> Area A consists of 53.52 acres of non-residential property and 5.74 acres of residentially used land. It has 31 residents. The city's millage is 4.7856, and income from this area would result in an annual receipt to the city of \$19,264.

<sup>7</sup> Area B consists of 24.78 acres of non-residential property, and 7.63 acres of residentially used land. The population of Area B is 155. Income from this area would result in an annual receipt to the city of \$17,993.

<sup>8</sup> According to the city attorney, both unincorporated areas are difficult to service. Neither Area A or B will satisfy the requirements for a voluntary annexation pursuant to s. 171.0413, F.S. Also, a simple referendum is not possible because, in both areas, more than 70 percent of the land by area and more than 70 percent of the real estate parcels are owned by persons who are not registered voters. While s. 171.0413, F.S., contemplates such a situation, a majority of the property owners must consent to the election. To date, a majority of the owners have either not responded to a city survey inquiring about annexation or have responded that they do not wish to be annexed.

- (2) Provides for election date and method.
- (3) Provides for ballot wording.
- (4) Provides for copy of act and map of proposed area to be annexed at polling place.
- (5) Provides for election by majority vote of registered electors residing in area.
- (6) Provides a legal description.
- (7) Provides that the act will not affect the rights of parties to prior contracts.
- (8) Provides that annexed residents will meet residency requirements for municipal candidacy.
- (9) Provides for the transfer of public roads and rights-of-way.

**Section 3:** Provides an effective date of upon becoming law.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 26, 2005

WHERE? *Florida Today*, a newspaper published in Brevard County.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN? Prior to December 31, 2007.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

According to the Economic Impact Statement, the cost of the election will be \$2,000. The cost of provision of municipal services is undetermined but will likely be more than ad valorem revenues. Anticipated ad valorem revenues are as follows:

	FY 05-06	FY 06-07
Aurora Road Area A	\$19,265	\$19,265
Aurora Road Area B	\$17, 993	\$17,993

Taxes for property owners will be slightly higher, but this may amount to only a few dollars. For example, a home assessed at \$46,620 (after homestead exemption) would pay \$880.95 in taxes and MSTU fees in the unincorporated area and would pay \$923.12 in the City of Melbourne for a difference of \$42.17 per year. Fees such as solid waste and storm water assessments are less in the city than the county, so the difference is insignificant.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. By barring the City of Melbourne from annexing the property at issue if it does not hold an election by December 31, 2007, this bill is, in effect, revoking the city's ability to annex property pursuant to ch. s.171.0413, F.S, thereby creating an exemption to general law.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.