

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1127 CS Broward County

SPONSOR(S): Sobel

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	7 Y, 0 N, w/CS	Nelson	Hamby
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The CS for HB 1127 requires the Broward County Board of County Commissioners to schedule an election on November 7, 2006, if the Board and the Town of Davie enter into an interlocal agreement by a date certain agreeing to the annexation of an unincorporated area known as Broadview Park. This referendum will allow the electors residing in the Broadview Park Area the opportunity to choose whether to be annexed by the Town of Davie on September 15, 2008.

The bill also provides for the continuation of certain Broward County regulations, and the transfer of public roads and rights-of-way upon annexation.

According to the Economic Impact Statement, the estimated cost to provide municipal-level services within the Broadview Park neighborhood in FY 2006 dollars is \$1,678,100.

The act is effective upon becoming law.

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 certain responsibilities relating to the annexed property from Broward County to the Town of Davie.

Ensure Lower Taxes

The Economic Impact Statement indicates that the effect of the bill on the individual taxpayers in the annexed area is unknown.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Constitutional/Statutory Provisions Relating to Annexation¹

Section 2 (c), Art. VIII 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 way in which property may 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 for Annexation

Before local annexation procedures may begin, pursuant to s. 171.042, F.S., 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

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. For an annexation to be valid under ch. 171, F. S., the annexation must take place within the boundaries of a single county. See, s. 171.045, F.S.

is appropriate for annexation because it meets the following standards and requirements described by s. 171.043, F.S.:

- The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality.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 incorporated municipality.
- Part or all of the land to be annexed must be developed for urban purposes.⁴
- 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.⁵

Types of Annexations

Voluntary Annexation

If the property owners of a reasonably compact, 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 process 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.⁶

Involuntary Annexation

²This 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 for cases in which an area is separated from the city's boundary by a publicly owned county park, right-of-way or body of water.

³ Section 171.031(12), F.S., defines “compactness” as concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state is required to be designed in such a manner as to ensure that the area will be reasonably compact.

⁴ An area developed for urban purposes is defined as an area which meets any one of the following standards: (a) a total resident population equal to at least two persons per acre; (b) a total resident population equal to at least one person per acre, with at least 60 percent of subdivided lots one acre or less; or (c) at least 60 percent of the total lots used for urban purposes, with at least 60 percent of the total urban residential acreage divided into lots of five acres or less.

⁵ See, s. 171.061, F.S.

⁶ Section 171.031(13), F.S.

A municipality may annex property where the property owners have not petitioned for annexation pursuant to s. 171.0413, F. S. This process is referred to as “involuntary” annexation. In general, the requirements for an involuntary annexation are:

- the adoption of an annexation ordinance by the annexing municipality's governing body;
- 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;⁷ 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.⁸

Any parcel of land which is owned by one individual, corporation or legal entity, or owned collectively by one or more individuals, corporations or legal entities, proposed to be annexed can not be severed, separated, divided or partitioned by the provisions of the ordinance, unless the owner of such property waives this requirement.

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 of such area, the area can not be annexed unless the owners of more than 50 percent of the land in such area consent to the annexation. This consent must be obtained by the parties proposing the annexation prior to the referendum.

If the area proposed to be annexed does not have any registered electors on the date the ordinance is finally adopted, a vote of electors of the area proposed to be annexed is not required. The area may not be annexed unless the owners of more than 50 percent of the parcels of land in the area proposed to be annexed consent to the annexation. If the governing body does not choose to hold a referendum of the annexing municipality, then the property owner consents must be obtained by the parties proposing the annexation prior to the final adoption of the ordinance.

Effect of Annexation on an Area

Upon the effective date of an annexation, the area becomes subject to all laws, ordinances and regulations in force in the annexing municipality. 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.

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.⁹

Appeal of Annexation or Contraction

⁷ This new requirement was passed by the 1999 Legislature.

⁸ 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.

⁹ Section 171.091, F.S.

Affected persons who believe they will suffer material injury because of the failure of a 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.¹⁰

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 this 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 the annexation of all the remaining unincorporated areas of Broward County should be encouraged by the year 2010, and that unincorporated areas remaining after 2010 would be subject to annexation by the Florida Legislature. In 2001, this goal was changed to the year 2005.

The 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

During the 2001 Legislative Session, House Bill 907 died in the House Committee on State Administration, and Senate Bill 2338 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 of 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 Florida Legislature.

¹⁰ Section 171.081, F.S.

2. All Broward county annexation bills should be combined into one comprehensive or omnibus bill in order to streamline the process.
3. An official unincorporated partnership committee would be established to identify community projects or issues of interest that could be collaboratively achieved. These projects or issues would 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. 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 annexation.
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 would 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 would execute interlocal agreements in regards to incomplete county infrastructure projects.
13. The practice of "cherry-picking" would end.¹¹
14. Commercial properties should not be stripped from neighborhoods from which they 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 could include phase-in dates for infrastructure improvements and 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 would 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.

Broadview Park

Broadview Park is an unincorporated area of approximately 1.4 miles in Broward County. The area has a population of approximately 6,974, and includes 2,278 housing units. According to Broward Legislative Delegation staff, the residents of this area have actively sought annexation for some time. Legislation was filed in the year 2000 and again in 2002, but both bills died. In 2004, HB 1393 (ch. 2004-441, L.O.F.) passed and was signed by the Governor. However, this legislation offered Plantation, Fort Lauderdale and the Town of Davie the option of choosing whether or not they wanted be considered for annexation by Broadview Park, and no municipality pursued this possibility. A straw ballot was held in Broadview Park on March 10, 2005, to allow the residents to express their choice for annexation between Plantation and the Town of Davie. The vote was 120 for Plantation and 338 for the Town of Davie.

EFFECT OF PROPOSED CHANGES

¹¹ A city engages in cherry-picking when it seeks to annex only areas that will produce a positive tax cash flow.

The CS for HB 1127 requires the Broward County Board of County Commissioners to schedule an election on November 7, 2006, if the Board and the Town of Davie enter into an interlocal agreement by September 1, 2006, agreeing to the transition of the annexation of an unincorporated area known as Broadview Park. This referendum will allow the voters residing in the Broadview Park Area the opportunity to choose, by majority vote of the voters participating in the election, whether to join the Town of Davie on September 15, 2008. Although a mail ballot is prohibited in this election, voters may vote by absentee ballot.

The bill provides that upon annexation into the Town of Davie, the following provisions will govern the Broadview Park Area:

- (1) the present land use designations and zoning districts provided for under the Broward County Comprehensive Plan and Code of Ordinances of Broward County will remain the law governing the Broadview Park Area;
- (2) any change of zoning districts or land use designations may only be accomplished by a supermajority vote of the full governing body of the Town of Davie; and
- (3) any use, building or structure that is legally in existence at the time that the Broadview Park Area is annexed may not be made a prohibited use by the Town of Davie, on the property of said use, for as long as the use continues and is not voluntarily abandoned.

Subsequent to the effective date of the act, no change in land use designation or zoning is effective within the limits of the Broadview Park area, and no city may annex this property.

Subsequent to the effective date of the annexation, any resident in the area to be annexed by the act is deemed to have met residency requirements for candidacy for municipal office.

Nothing in the act is to be construed to affect or abrogate the rights of parties to any contracts, including contracts between nongovernmental entities, that are in effect prior to the effective date of the annexation.

All public roads and the public rights-of-way of the Broward County Road System, lying within the limits of the Broadview Park Area, are transferred from Broward County jurisdiction to the jurisdiction of the City of Davie except for portions of specified roads. All rights, title, interests and responsibilities (including, but not limited to, the ownership, operation, maintenance, planning, design and construction) are transferred from Broward County jurisdiction and ownership to the jurisdiction and ownership of the City of Davie upon the effective date of the annexation.

The act takes effect upon becoming a law

C. SECTION DIRECTORY:

Section 1: Provides that the Town of Davie and the Broward County Board of County Commissioners may enter into an interlocal agreement.

Section 2: Provides for an election.

Section 3: Provides a legal description.

Section 4: Provides for the continuation of certain Broward County regulations.

Section 5: Provides for continuation of land use designations and zoning, and suspension of annexation.

Section 6: Provides for residency requirements for candidacy for municipal office.

Section 7: Provides that the act will not affect the rights of parties to prior contracts.

Section 8: Provides for transfer of public roads and the public rights-of-way.

Section 9: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 31, 2005

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

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? November 7, 2006.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

According to the Economic Impact Statement, the estimated cost to provide municipal-level services within the Broadview Park neighborhood in FY 2006 dollars is \$1,678,100 based on the estimated county cost to provide these services in the unincorporated area. The Economic Impact Statement provides anticipated sources of funding include:

State: Sales Tax, State Revenue Sharing, Franchise Fees, Utility Taxes, Communications Services Tax and Beverage Tax.

Local: Ad Valorem Tax, Non-Ad Valorem Assessments, Local Option Gas Tax, Mobile Home License Fees, Occupational License Fees, Permit Fees, Fire Rescue Fees and other miscellaneous fees.

The impact of this annexation on each individual taxpayer is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

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 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 4. The bill additionally may create an exemption to s. 125.01, F.S., which gives counties the authority to prepare and enforce comprehensive plans, and establish and enforce zoning ordinances, as well as the Local Government Comprehensive Planning and Land Development Regulation Act found at part II of ch. 163, F.S., in that section 5 prohibits a county from changing land use designations or zoning in the area proposed for annexation after the effective date of the act.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its meeting on April 11, 2006, the Local Government Council adopted a strike-all amendment which:

- corrects the legal description of the property to be annexed;
- provides for the referendum to be scheduled if the Town of Davie and the Broward County Board of County Commissioners enter into a interlocal agreement; and
- allows the voters residing in the Broadview Park Area to choose whether or not to be annexed into the Town of Davie on September 15, 2008.