

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

The bill increases the law enforcement authority of the City of Bradenton Beach beyond its current corporate boundaries.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Municipal Annexation and Exercise of Extraterritorial Powers

Section 2(c) of Art. VIII of the State Constitution, provides in pertinent part that "[m]unicipal annexation of unincorporated territory . . . and exercise of extra-territorial powers by municipalities shall be as provided by general or special law." Thus, any annexation or exercise of extraterritorial power must be effected either directly by the Legislature by special law or by a municipality in accordance with the authorization and procedures provided by a general law. Section 166.021, F.S., reflects this provision. The statute in subsection (3)(a) sets forth the home rule powers of municipalities and recognizes the authority of municipalities to enact legislation on any subject matter upon which the Legislature may act except "[t]he subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution."

City of Bradenton Beach

The City of Bradenton Beach, located on Anna Maria Island in Manatee County, was created by HB 561 in 1953 (ch. 28915, L.O.F.). The boundaries of the city were established in that special act, which became law without the Governor's approval and was filed with the Secretary of State on May 14, 1953. The act has never been amended.

On October 13, 1953, the City Commission of the City of Bradenton Beach adopted Ordinance 37. This ordinance proposed to change the territorial boundaries of the city by annexing a portion of the "Ilexhurst Subdivision," after submitting the question of annexation separately to the registered voters of the subdivision and the registered voters of the City of Bradenton Beach. A referendum was held on November 17, 1953. According to the minutes of a November 19, 1953, meeting where "all members of the city government were present," a total of 90 votes were cast in Ilexhurst: 72 approved the annexation while 18 votes disapproved the action. The total number of votes cast in the City of Bradenton Beach was 163 of which 149 votes approved and 14 votes disapproved the annexation.¹

Effect of Proposed Changes

This bill changes the boundaries of the City of Bradenton Beach, in Manatee County, to reflect the 1953 annexation of the Ilexhurst Subdivision.²

Additionally, the bill provides that, upon approval by the city commission, the municipal boundary of the city is expanded to include an area adjacent and contiguous to the current city boundary within Sarasota Bay. The city has indicated that it intends to create a mooring field within this area in order to

¹ According to the attorney representing the city, the Manatee County Supervisor of Elections did not keep records of county or local elections until the year 1958.

² The attorney representing the city has verified in a letter dated March 30, 2006, that the legal description of the land in the proposed bill reflects the addition of this annexed land to the boundaries of the City of Bradenton Beach. This correspondence is on file with the Local Government Council.

protect and enhance the environmental resources and water quality within Sarasota Bay and to create an area for the public to safely secure their boats. Currently, there are no mooring fields within the nearby vicinity of Anna Maria Island. Consequently, boaters are “dropping their anchors all along Sarasota Bay.” The city has observed boaters dragging their anchors along the seagrass beds, disposing of engine blocks on the floor of the Bay, abandoning vessels, polluting the waterways, dumping human waste into the water, positioning boats in unsafe locations, and operating vessels under the influence of alcohol.

The city has indicated that the expansion of its boundaries to include the submerged lands where it intends to construct the mooring field will allow it to adopt ordinances which apply to that area. It is anticipated that the city will enter into a “sovereignty submerged lands lease” with the Board of Trustees of the Internal Improvement Trust Fund,³ and acquire the necessary permits for the mooring field.⁴

The bill also authorizes the city to exercise its law enforcement authority 500 feet into the waters of the Gulf of Mexico adjacent to its established corporate limits and within Sarasota Bay from the eastern municipal boundary of the city to the west right-of-way line of the Intracoastal Waterway. The city currently may exercise its police powers and jurisdiction only within its territorial limits pursuant to ch. 166, F.S.⁵ The city has indicated that Manatee County shares concurrent jurisdiction with the State of Florida over the waters at issue, and that the city has presented problems with regard to these waters to Manatee County law enforcement and the Board of County Commissioners which remain unresolved.

The Manatee County Board of County Commissioners has stated in a letter dated January 5, 2006, that it has no objection to the city exercising extraterritorial law enforcement powers “over those waters east of the city to the Intracoastal Waterway (specifically the anchorage area south of the city’s pier) and those out to 500 feet into the Gulf of Mexico,” or to the expansion of the city’s boundaries “over only those waters to be included within the proposed mooring field.”⁶

Finally, the bill amends original charter language in a section which provided that the city had the power to change its boundaries “in the manner hereinafter” or as authorized otherwise by the laws of the State of Florida provided, to state that such boundary changes will be in accordance with Florida law.

The act takes effect upon becoming a law.

³ The Governor and the Cabinet sit as the Board of Trustees of the Internal Improvement Trust Fund. Pursuant to s. 253.03, F.S., the Board is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection and disposition of all lands owned by, or which may hereafter inure to, the state or any of its agencies, departments, boards or commissions, excluding certain properties. State lands include all tidal lands and all lands covered by shallow waters of the ocean or gulf, or the bays or lagoons thereof. See, s. 253.03(1)(d) and (e), F.S. Pursuant to s. 253.12, F.S., the title to all sovereignty tidal and submerged bottom lands, including all islands, sandbars, shallow banks, and small islands made by the process of dredging any channel by the United States Government and similar or other islands, sandbars, and shallow banks located in the navigable waters, and including all coastal and intracoastal waters of the state and all submerged lands owned by the state by right of its sovereignty in navigable freshwater lakes, rivers, and streams, is vested in the Board.

⁴ Section 373.118, F.S., provides that the Department of Environmental Protection shall adopt by rule one or more general permits for local governments to construct, operate and maintain...public mooring fields.... A facility authorized under such general permits is exempt from review as a development of regional impact if the facility complies with the comprehensive plan of the applicable local government. Such facilities are required to be consistent with the local government manatee protection plan required pursuant to ch. 370, F.S., and must obtain Clean Marina Program status prior to opening for operation and maintain that status for the life of the facility. Marinas and mooring fields authorized under any such general permit may not exceed an area of 50,000 square feet over wetlands and other surface waters. All facilities permitted under this section must be constructed, maintained and operated in perpetuity for the exclusive use of the general public.

⁵ The Legislature previously has authorized the exercise of limited extraterritorial police powers and jurisdiction (the abatement of nuisances, the enforcement of sanitary laws and regulations, the regulation of zoning laws, and the suppression of crime) into the adjacent waters of at least five municipalities:

- City of Key West, Monroe County; extending 600 feet into adjacent tidal waters; ch. 78-540, L.O.F.
- City of Key Colony Beach, Monroe County; extending 600 feet into adjacent tidal waters; ch. 85-464, L.O.F.
- Islamorada, Village of Islands, Monroe County; extending 1,200 feet into adjacent tidal waters; ch. 2000-408, L. O.F.
- City of Marathon, Monroe County; extending 1,200 feet into adjacent tidal waters; ch. 2001-292, L.O.F.
- Town of Palm Beach Shores, Palm Beach County, extending 1,200 feet into adjacent tidal waters; ch. 2002-336, L.O.F.

⁶ An Assistant County Attorney has confirmed via e-mail on April 5, 2006, that the bill, as drafted, addresses the concerns of the Manatee County Board of County Commissioners.

C. SECTION DIRECTORY:

Section 1: Amends s. 6 of Art. I of ch. 28915, L.O.F.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 19, 2006

WHERE? *The Herald*, a daily newspaper published in Manatee 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. The chief of police for the city has indicated in correspondence dated April 5, 2006, that the city has been planning for the mooring field for the past five years. Over the course of this time, the city has acquired all necessary personnel training and equipment for policing the water surrounding the city.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill should be amended to remove the language on Line 62 which requires city commission approval of the legislative expansion of boundaries.

Also, the term "automatically" on Line 63 of the bill is unnecessary and should be deleted.

The language on Line 94 "law enforcement authority" should be changed to "police powers." The Sponsor may want to limit this granting of powers, as in previous special acts, to "the abatement of nuisances, the enforcement of sanitary laws and regulations, the regulation of zoning laws, and the suppression of crime."

Other Comments

Staff of the Department of Environmental Protection, Division of State Lands, has indicated that the agency has no objection to the provisions of this bill.

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. Section 166.021, F.S., provides:

The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution.... However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality or any changes in a special law or municipal charter which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.