SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL:	SB 1608
INTRODUCER:	Senator Bennett
SUBJECT:	Land Use Decisions
DATE:	March 15, 2006
REVISED:	03/21/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CA	**Fav/2 amendments**
2.			JU	
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

- [X] Technical amendments were recommended
- [ ] Amendments were recommended
- [ ] Significant amendments were recommended

I. Summary:

This bill limits the applicability of a county charter, county ordinance, county land development regulation, or countywide special act that governs the use, development, or redevelopment of land or which provides an exclusive method of municipal annexation. These charter provisions, ordinances, land development regulations, and special acts are not applicable to a municipality within such county unless approved by a majority vote of the electors within the municipality or the municipal governing board. This bill is retroactive.

This bill creates section 163.3172 of the Florida Statutes.

II. Present Situation:

Growth Management and Land Use

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985 (AAct@), ss. 163.3161-163.3246, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements element; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, the Department of Community Affairs adopted by rule

minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan.

Annexation

The "Municipal Annexation or Contraction Act", ch. 171, F.S., codifies the State's annexation procedures and was enacted in 1974 to ensure sound urban development, establish uniform methods for the adjustment of municipal boundaries, provide for efficient service delivery in areas that become urban, and limit annexation to areas where municipal services can be provided.[1] At the time ch. 171, F.S., was created, the prevailing policy focused on the strength of county governments and regional planning agencies. Consequently, Florida's annexation statutes concentrate on the expansion and contraction of municipal boundaries.[2]

Current annexation policy in Florida has given rise to a number of issues: difficulty in planning to meet future service needs, confusion over logical service areas and maintenance of infrastructure, duplication of essential services, and zoning efforts thwarted by landowners shopping for the best development climate. While existing annexation procedures may adequately address the concerns of landowners within a proposed annex area, the residents of remaining unincorporated areas or residents of the municipality proposing the annexation may also be significantly affected by the potential loss of revenue or inefficiencies in service delivery.

Section (2)(c), Art. VIII of the State Constitution, provides authority for the Legislature to establish annexation procedures for all counties except Miami-Dade. Annexation can occur using several methods: special act, charter, interlocal agreement, voluntary annexation, or involuntary annexation. Annexation through a special act must meet the notice and referendum requirements of section 10, Art. III of the State Constitution, applicable to all special acts.

An area proposed for annexation must be unincorporated, contiguous, and reasonably compact.[3] For a proposed annexation area to be contiguous under ch. 171, F.S., a substantial portion of the annexed area's boundary must be coterminus with the municipality's boundary.[4] "Compactness," for purposes of annexation, is defined as the concentration of property in a single area and does not allow for any action that results in an enclave, pocket, or fingers in serpentine patterns.[5]

A newly annexed area comes under the city's jurisdiction on the effective date of the annexation. Following annexation, a municipality must apply the county's land use plan and zoning regulations until a comprehensive plan amendment is adopted that includes the annexed area in the municipalities' Future Land Use Map. It is possible for the city to adopt the comprehensive

[1] Section 171.021, F.S.
[2] *See* Lance deHaven-Smith, Ph.D., *FCCMA Policy Statement on Annexation*, Oct. 12, 2002, at 16-17, http://www.fccma.org/pdf/FCCMA_Paper_Final_Draft.pdf.
[3] Sections 171.0413-.043, F.S.
[4] Section 171.031(11), F.S.
[5] Section 171.031(12), F.S.

plan amendment simultaneously with the approval of the annexation. However, there is no requirement that a city amend its comprehensive plan prior to annexation.[6] In the interim, a city must apply county regulations or wait to apply its own rules.

Cities may annex enclaves of 10 acres or less by interlocal agreement with the county under the provisions of s. 171.046, F.S. An enclave is defined in s. 171.031(13), F.S., as any unincorporated improved or developed area lying within a single municipality or surrounded by a single municipality and a manmade or natural obstacle that permits traffic to enter the unincorporated area only through the municipality. Enclaves of 10 acres or less can also be annexed by municipal ordinance when there are fewer than 25 registered voters living in the enclave and at least 60 percent of those voters approve the annexation in a referendum. In a similar process, s. 163.3171, F.S., allows for a joint planning agreement between a municipality and county to allow annexation of unincorporated areas adjacent to a municipality.

Section 171.044, F.S., provides the procedures for a voluntary annexation which occurs when 100 percent of the landowners in an area petition a municipality. In addition to the annexing municipality enacting an ordinance allowing for the annexation to occur, there are certain notice requirements that must be met. This section does not apply where a municipal or county charter provides the exclusive method for voluntary annexation.[7] Also, the voluntary annexation procedures in this section are considered supplemental to any other procedure contained in general or special law.[8]

Sections 171.0413 and 171.042, F.S., establish an electoral procedure for involuntary annexation that allows for separate approval of a proposed annexation in the existing city, at the city's option, and in the area to be annexed. The owners of more than 50 percent of the land in an area proposed for annexation must consent if more than 70 percent of the property in that area is owned by persons that are not registered electors. Also, the governing body of the annexing municipality must prepare a report on the provision of urban services to the area being annexed as well as adopt an ordinance allowing for the annexation and meet certain notice requirements.

A municipality may annex within an independent special district pursuant to s. 171.093, F.S. The municipality, after electing to assume the district's responsibilities and adopting a resolution, may enter into an interlocal agreement to address responsibility for service provision, real estate assets, equipment and personnel. Absent an interlocal agreement, the district continues as the service provider in the annexed area for a period of 4 years and receives an amount from the city equal to the ad valorem taxes or assessments that would have been collected on the property. Following the 4 years and any mutually agreed upon extension, the municipality and district must reach agreement on the equitable distribution of property and indebtedness or the matter will proceed in circuit court.

County and Municipal Governments

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by

[6] *See 1000 Friends of Fla., Inc. v. Florida Dep't of Community Affairs*, 824 So. 2d 989 (Fla. 4th DCA 2002).
[7] Section 171.044(4), F.S.
[8] Section 171.044(4), F.S.

general or special law.[9] Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.[10] There are 19 charter counties in Florida and over 75 percent of the state's residents live in a charter county. Section 125.01, F.S., enumerates the powers and duties of county government, unless preempted on a particular subject by general or special law. Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.[11]

Sections 125.60-125.64, F.S., provide procedures for the adoption of a county charter. These provisions allow for a charter commission to conduct a comprehensive study of the operation of county government and of the ways it could be improved or reorganized. Following the commission's submission of a charter to the board of county commissioners, the board shall call a special election within a specified time frame to determine whether the proposed charter is adopted. Alternatively, the board of county commissioners may propose by ordinance a charter that is consistent with Part IV of ch. 125, F.S., the "Optional Charter County Law." Under this law, s. 125.86, F.S., specifies the powers and duties of the charter county, which include all powers of local self-government "not inconsistent with general law as recognized by the Constitution and laws of the state and which have not been limited by the charter."

In recent years, some charter counties have amended their charter to provide an exclusive method for annexation. Some counties have also enacted building height limitations that apply in municipal jurisdictions that are within the county. In addition, some counties exercise land use planning responsibility, in varying degrees, for municipalities located within the county and certain land use decisions within such municipalities may require county approval. These types of charter provisions or ordinances have the effect of preempting municipal authority with respect to land use planning.

For example, voters in Palm Beach and Seminole counties approved charter provisions relating to annexation in 2004. The Palm Beach county provision gave county commissioners the ability to set annexation guidelines by ordinance. Several municipalities challenged the charter amendment in circuit court.[12] The circuit court held, in part, that the provisions allowing the county to define the exclusive method for voluntary annexation, by ordinance, violates the requirement in s. 171.044(4), F.S., that an exclusive method of annexation be contained in the charter itself.[13] Seminole County voters approved a charter amendment that would give the county final authority over land-use changes and development densities in certain portions of east Seminole County. This provision is currently on appeal.

[9] Art. VIII, § 1(f), Fla. Const.
[10] Art. VIII, § 1(g), Fla. Const.
[11] Art. VIII, § 2(b), Fla. Const.
[12] *See* Village of Wellington v. Palm Beach County, No. 502004CA009387XXXXMB (Fla. 15th Cir. Ct. June 6, 2005).
[13] *See id.* at 4-7.

III. Effect of Proposed Changes:

Section 1 creates s. 163.3172, F.S., to provide legislative findings regarding the role of municipalities and preemptions by other forms of local government. It limits the applicability of a county charter, ordinance, land development regulation, or countywide special act that governs the use, development, or redevelopment of land or which provides an exclusive method of municipal annexation. These charter provisions, ordinances, land development regulations, and special acts are not applicable to a municipality within such county unless approved by a majority vote of the electors within the county and a majority vote of the electors within the municipality voting in a municipal election or is approved by a majority vote of the municipal governing board. The provisions of this section are retroactive.

Section 2 provides the act shall take effect July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill would require a county to amend or repeal a charter, ordinance, or land development regulation that preempts municipalities within the county with regard to land use, development, or redevelopment, or that provides an exclusive method for annexation unless the preemption is approved by the municipality. This may be a Type A mandate because the provision requires counties to expend funds and is subject to analysis under Article VII, Section 18 of the Florida Constitution. There are several exemptions and exceptions in Article VII, Section 18.

One of the exemptions under Article VII, Section 18 covers a bill that has an insignificant fiscal impact.[14] Although the fiscal impact has not been determined, this bill may require an expenditure of funds that exceeds $1.9 million. This bill does not appear to meet any other exemption or one of the exceptions. Therefore, the Legislature must find an important state interest and the bill must pass by a two-thirds vote of each house to effectively bind the counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. None. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

[14] The term “insignificant fiscal impact” means an amount no greater than the average statewide population for the applicable fiscal year times ten cents. The applicable threshold for this bill is $1.9 million.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The provisions of this bill are retroactive. A county that has a charter, ordinance, or land development regulation that preempts municipalities within the county with regard to land use, development, or redevelopment, or that provides an exclusive method for annexation must be repealed or amended unless it is approved by a municipality as provided for in this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 162684 by Community Affairs:
Technical amendment.

Barcode 703424 by Community Affairs:
Title amendment.