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: Judiciary Committee

BILL:	SB 1608
INTRODUCER:	Senator Bennett
SUBJECT:	Land Use Decisions
DATE:	April 18, 2006
REVISED:	4/25/06

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

Please see last section for Summary of Amendments

[X] Technical amendments were recommended

[ ] Amendments were recommended

[X] 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 (Act), 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; a 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.

Article VIII, section (2)(c) of the Florida Constitution, provides authority for the Legislature to establish annexation procedures for all counties except Miami-Dade.[3] 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 article III, section 10 of the Florida Constitution, applicable to all special acts.

An area proposed for annexation must be unincorporated, contiguous, and reasonably compact.[4] 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.[5] "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.[6]

[1] Section 171.021, F.S.
[2] *See* Lance deHaven-Smith, Ph.D., The Fla. City & County Mgmt. Ass'n, *FCCMA Policy Statement on Annexation* 16-17 (2002), http://www.fccma.org/pdf/FCCMA_Paper_Final_Draft.pdf.
[3] *See* Art. VIII, § 6(e), Fla. Const.; *Chase v. Cowart*, 102 So. 2d 147, 153 (Fla. 1958).
[4] Sections 171.0413, -043, F.S.
[5] Section 171.031(11), F.S.
[6] Section 171.031(12), F.S.

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 plan amendment simultaneously with the approval of the annexation. However, there is no requirement that a city amend its comprehensive plan prior to annexation.[7] 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.[8] Also, the voluntary annexation procedures in this section are considered supplemental to any other procedure contained in general or special law.[9]

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 four 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 four 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.

[7] *See 1000 Friends of Fla., Inc. v. Florida Dep't of Community Affairs*, 824 So. 2d 989, 991 (Fla. 4th DCA 2002).
[8] Section 171.044(4), F.S.
[9] *Id.*

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 general or special law.[10] 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.[11] 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.[12]

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 county charter."

In recent years, some charter counties have amended their charters 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.[13] 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.[14] Seminole County voters approved a charter amendment that would give the

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

county final authority over land-use changes and development densities in certain portions of east Seminole County. This provision is currently on appeal.

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. This bill does not apply to a county as defined in s. 125.011(1), F.S., (Miami-Dade County).[15]

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 majority vote of the electors of the county and the municipality. Alternatively, although the wording of the provision is somewhat unclear, the preemption may be approved by the majority vote of the electors of the county and the governing board of the municipality. This may be a Type A mandate[16] because the provision requires counties and arguably municipalities to expend funds (See Economic Impact and Fiscal Note section for additional details.) 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.[17] Although the fiscal impact has not been determined, this bill may require an expenditure of funds that exceeds the threshold for the insignificant impact threshold of $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.

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[15] The bill as originally filed provided that it would not apply to a county as defined in s. 125.011, F.S. However, traveling amendment, barcode 162684, is a technical amendment that clarifies that the precise reference is s. 125.011(1), F.S.

[16] Art. VII, § 18(a), Fla. Const.

[17] Fla. Legislative Comm. on Intergovernmental Relations, *2005 Intergovernmental Impact Report – Mandates and Measures Affecting Local Government Fiscal Capacity*, App. 2 (2006), http://fcn.state.fl.us/lcir/reports/impact05.pdf (defining "insignificant fiscal impact" as an amount no greater than the average statewide population for the applicable fiscal year times 10 cents).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other:

Constitutional Question

The bill makes ineffective any county charter, county ordinance, county land development regulation, or countywide special act governing the use, development, or redevelopment of land, or providing an exclusive method of municipal annexation 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 governing board of the municipality. Article VIII, section 1(g) of the Florida Constitution provides that a charter county may enact county ordinances not inconsistent with general law. In the event of a conflict between a charter county ordinance and municipal ordinance, the charter will provide which will prevail.

On the one hand, it could be argued that the bill would create a general law for which certain county charters, ordinances, and regulations are inconsistent. Under this scenario, the county charters, ordinances, and regulations (whether non-charter or charter county ordinances) at issue in the bill would be inconsistent with general law and thus ineffective.

On the other hand, it could be argued that the bill is unconstitutional as it relates to charters, ordinances, and regulations of charter counties. The bill does not preempt the law making authority of charter counties or cause a conflict by creating general laws concerning the subject matter of the bill. Instead, the bill arguably creates a situation where the procedures for the creation of laws governing the use, development, or redevelopment of land, or providing an exclusive method of municipal annexation ordinances under general law conflict with charter county constitutional provisions on the same subject. Thus, to the extent that the bill makes ineffective a county charter, ordinance, or regulation that operates as a regulatory preemption over a municipal charter or ordinance, it may violate article VIII, section 1(g) of the Florida Constitution. In *Broward County v. City of Fort Lauderdale*, the Florida Supreme Court held that "section 1(g) permits *regulatory* preemption by counties." [18] If the preemption goes beyond regulation and intrudes upon a municipality's provision of services, the dual referenda requirement of article VIII, section 4 of the Florida Constitution already applies, and arguably, the similar requirement of the bill would be redundant.[19]

[18] 480 So. 2d 631, 635 (Fla. 1985).
[19] *Id*.

Finally, to the extent that a non-charter county ordinance conflicts with a municipal ordinance, article VIII, section 1(f) of the Florida Constitution provides that the non-charter county ordinance is ineffective within the municipality, and the language of the bill declaring it ineffective is arguably superfluous. Furthermore, in this last situation, if the county ordinance preempts the provision of services, the dual-referenda type requirements of the bill are unnecessary because article VIII, section 4 of the Florida Constitution already requires a dual referenda in order for a charter or non-charter county to transfer government powers related to the provision of services from a municipality to a county.[20]

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The provisions of this bill are retroactive. A county that has a charter, ordinance, land development regulation, or countywide special act 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. The fiscal impact is indeterminate, but may be significant. The language of the bill "the use, development, or redevelopment of land" is arguably broad and the breadth of the county laws that it could impact is subject to interpretation. It may, but not necessarily, include one or more of the following substantive areas:

- Land use regulations, including height and density;
- Zoning regulations;
- Comprehensive planning standards;
- Community redevelopment agencies;
- Interlocal programs and governance structures created under chs. 125 or 163, F.S.;
- Methods of municipal annexation under s. 171.044(4), F.S.;
- Countywide building codes;
- Environmental protection;
- Wetlands land use regulation;
- Water quality;
- Beach use and access;

[20] *See Sarasota County v. Town of Longboat Key*, 355 So. 2d 1197, 1201 (Fla. 1978).

An illustration may be useful to demonstrate the scope of what the bill appears to require. For example, on the effective date of the bill, a charter that provides that the county has the power to protect the environment within the county and by ordinance to prevent the development or use of land or the commission of other acts which will tend to destroy or have a substantially adverse effect on the environment of the county would be ineffective as to all the municipalities within the county. Likewise, any related ordinances would be ineffective as to all the municipalities. Arguably, there may be no local law protecting the environment within the county from the time this bill would be enacted until the time that the county and the municipalities approved or disapproved the charter provision and related ordinances. Because all the municipalities in the county could disapprove the charter provision and related ordinances, the county would likely wait until for the provision and ordinances to be voted on at a vote of the electors of each municipality or by the governing board of each municipality. If one or more but not all of the municipalities approved the charter provision and related ordinances, the county would need to amend the charter provision and the ordinances to reflect their limited applicability within the county. Next, the county would be required to put the amended charter provision and ordinances to a vote of the electors of the county. If a majority of the county electors approved them, among other things, the county would be required to file the amended ordinances with the custodian of state records and republish its amended charter and ordinances. Presumably, the one or more municipalities that did not approve the charter provision and ordinances would need to adopt ordinances and perhaps enforcement mechanisms to provide for the same environment protection. A substantial number or charter provisions, ordinances, and land development regulations would be subject to a similar process in counties and municipalities throughout the state at an indeterminate but arguably substantial cost to counties and municipalities.

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.

Barcode 281366 by Judiciary:
Replaces the original bill in its entirety. The amendment provides that in a charter county created after July 1, 2006, any charter provision governing the use, development, or redevelopment of land is not effective in any municipality within the county unless certain requirements are met. Such a charter provision will be effective if approved by the majority of the electors of the municipality or the charter may provide for the coordinated use, development, or redevelopment of land through a land use council. Such a land use council would be comprised of county and municipal elected official and other residents of the county and the municipalities.

The amendment also provides for the creation of a land use governance review commission upon the petition of at least 15 percent of the electors of the county. If established, the commission would study the use, development, or redevelopment of land within the county and may propose a charter amendment related thereto that may be adopted by a majority vote of the county electors.

The amendment is not effective in a county that adopted a charter prior to July 1, 2006, and does not apply to any county as defined in s. 125.011(1), F.S., (Miami-Dade County). (WITH TITLE AMENDMENT)