

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1069 Broward County

SPONSOR(S): Seiler

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Urban & Local Affairs</u>	_____	<u>Nelson</u>	<u>Kruse</u>
2) <u>Government Efficiency & Accountability Council</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill repeals a 1974 special act which prohibits the governing body of a municipality from annexing any property lying within Broward County unless the municipality has adopted a land use plan. This special act previously has been repealed by general law.

The act provides an effective date of upon becoming law.

According to the Economic Impact Statement, the bill will have no fiscal effect.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Constitutional/Statutory Provisions Relating to Annexation¹

Section 2 (c), of 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.² 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.” Chapter 171, F. S., describes the ways that property can be annexed or deannexed by cities without passage of an act by the Legislature. In 2006, this chapter was expanded to provide an alternative process for annexation that allows counties and municipalities to jointly determine how services are provided to residents and property.³

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 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.⁴
- The area to be annexed must be reasonably compact.⁵
- 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.⁶

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.

² Miami-Dade County, however, has exclusive jurisdiction over its municipal annexations under ss. 11(1)(c), (5) and (6), Art. VIII of the 1885 State Constitution, as adopted by reference in s. 6(e), Art. VIII of the State Constitution.

³ See, part II of ch. 171, F.S., the “Interlocal Service Boundary Agreement Act.”

⁴ 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 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.

⁵ 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.

⁶ 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

- 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.⁷

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.⁸

Involuntary Annexation

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;⁹ 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.¹⁰

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.

⁷ See, s. 171.061, F.S.

⁸ 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. Section 171.031(13), F.S.

⁹ This new requirement was passed by the 1999 Legislature.

¹⁰ 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.

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 cannot 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 cannot 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.¹¹

Appeal of Annexation or Contraction

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.¹²

Broward County Annexations

Broward County is located on Florida's South Atlantic coast and consists of nearly 1,200 square miles with a population of approximately 1.8 million residents.¹³ Broward County currently contains 31 municipalities, the majority of which achieved their current corporate boundaries through a multitude of annexations.

¹¹ Section 171.091, F.S.

¹² Section 171.081, F.S.

¹³ Florida Estimates of Population 2006, Bureau of Economic and Business Research, University of Florida.

The 1996 Florida Legislature adopted a special act¹⁴ which describes Broward County has having “numerous scattered unincorporated pockets which reflect the haphazard manner in which annexation into municipalities has taken place over the years by the application of general annexation laws of the state....” This law requires that any annexation of unincorporated property within Broward County proposed to be accomplished pursuant to ch. 171, F.S., 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.

That same year, in cooperation with the Broward County Board of County Commissioners, the Broward County Legislative Delegation created the “Ad Hoc Committee on Annexation Policy.” The delegation charged the committee with the responsibility of developing and recommending policy regarding future annexations. The committee recommended that annexation of all unincorporated areas of Broward County be encouraged to occur by the year 2010, and that any remaining unincorporated areas would be subject to annexation by the Florida Legislature. In 2001, this goal was changed to the year 2005.

Effect of Proposed Changes

This bill repeals ch. 74-442, L.O.F., a special act which prohibited the governing body of a municipality from annexing any property lying within Broward County unless the municipality had adopted a land use plan. The Broward Delegation has indicated that the 1974 special act “is now obsolete because all county and municipal governments are required by the Local Government Comprehensive Planning and Development Regulation Act to have in place a comprehensive land use plan.”¹⁵

Section 171.022(2), F.S., provides:

The provisions of any special act or municipal charter relating to the adjusting of municipal boundaries in effect on October 1, 1974, are repealed except as otherwise provided herein.

This general law was passed in the same year as the special act at issue, and became effective on October 1, 1974. The 1974 special act was filed with the Secretary of State on June 26, 1974, and became effective on the 60th day after adjournment *sine die*¹⁶ of that year’s legislative session. Thus, the special act which this bill seeks to repeal previously has been repealed by s. 171.022(2), F.S., and there is no need for the proposed law, except perhaps for clarification purposes.

SECTION DIRECTORY:

Section 1: Repeals ch. 74-442, L.O.F.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 30, 2007

¹⁴ Chapter 96-542, L.O.F, as amended by ch. 99-447, L.O.F.

¹⁵ Section 163.3167(4), F.S., requires a municipality to adopt a comprehensive plan including a land use plan within three years of incorporation. The Broward County City of West Park, incorporated pursuant to ch. 2004-454, L.O.F., has not adopted a land use plan to date, according to the Department of Community Affairs.

¹⁶ The 1974 Legislature adjourned *sine die* on May 31 at 11:01 p.m.

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

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, this bill will have no fiscal effect.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

Section 171.062(2), F.S., provides that if an area annexed was subject to a county land use plan and county zoning or subdivision regulations, these regulations remain in full force and effect until the municipality adopts a comprehensive plan amendment that includes the annexed area.

D. STATEMENT OF THE SPONSOR

No sponsor statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES