

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1375 Tierra Verde Community, Pinellas County
SPONSOR(S): Military & Local Affairs Policy Committee, Frishe
TIED BILLS: **IDEN./SIM. BILLS:** SB 2712

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Military & Local Affairs Policy Committee</u>	<u>14 Y, 0 N, As CS</u>	<u>Nelson</u>	<u>Hoagland</u>
2)	<u>Economic Development & Community Affairs Policy Council</u>	<u></u>	<u></u>	<u></u>
3)	<u>Finance & Tax Council</u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill provides, notwithstanding any other provision of law, that a Pinellas County municipality may not annex unincorporated territory situated within the defined boundaries of the Tierra Verde Community on the effective date of the act unless the annexation of the entire community is approved by a majority vote of resident electors. The bill further provides that existing or future annexation ordinances which are not adopted in the manner required by the act are invalid.

The act takes effect upon becoming a law.

See, the "Comments" section of this analysis for a discussion of the constitutional notice requirement for special acts, and why this bill may not be in compliance.

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.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives:

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. 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

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.⁴

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 Pursuant to Sec. 2.07 of the Pinellas County Charter, the county has established an exclusive manner of voluntary annexation in Article VII of its ordinances.

- 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.⁵

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;⁶ 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.⁷

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.

⁵ 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.

⁶ This new requirement was passed by the 1999 Legislature.

⁷ 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.

The Tierra Verde Community

Tierra Verde is a group of small barrier islands situated in the southern area of unincorporated Pinellas County, served by a single two-lane bridge crossing the Intracoastal Waterway from St. Petersburg, and surrounded by navigable state waters. It was developed as a predominantly residential community, with most of the residents residing within the deed-restricted community of the Tierra Verde Community Association, which includes the designated neighborhoods of Entrada, Monte Cristo, Pinellas Bayway, Sands Point, East Shore and West Shore.

The majority of the neighborhoods of Tierra Verde are part of a master community association that provides and maintains services, functions and amenities for the residents of Tierra Verde. The residents of Tierra Verde have developed a common vision of Tierra Verde's future as a family-oriented, residential island community where small businesses and commercial uses serve to complement and support island residents. Pinellas County has adopted a Tierra Verde Community Overlay within the Pinellas County Comprehensive Plan that reflects the community's vision.⁸

Late last year, the City of St. Petersburg annexed 28.32 acres on the northern tip of the Tierra Verde Community pursuant to Ordinance No. 867-G. According to the Mayor of St. Petersburg, the annexation was initiated at the request of the area's commercial property owners.⁹ The City took the position that the annexation did not require a referendum as there were no registered voters living on the land to be annexed.

According to a Petition for Writ of Certiorari filed in the circuit court for the Sixth Judicial Circuit, *Tierra Verde Community Association, Inc, v. the City of St. Petersburg*, dated December 22, 2008, the city failed to meet the requirements of ch. 171, F.S., when it proceeded with the annexation.¹⁰ The status of the annexation at issue is uncertain pending the resolution of this case.

Effect of Proposed Changes

HB 1375 provides that, notwithstanding any other provision of law, a municipality within Pinellas County may not annex any unincorporated territory situated within the defined boundaries of the Tierra Verde Community on the effective date of the act unless the annexation of the entire community is approved by a majority vote of resident electors.

This language would prevent the annexation of property within the Tierra Verde Community on the effective date of the act unless the entire community was annexed following a referendum. The bill further provides that existing or future annexation ordinances which are not adopted in the manner required by the act are invalid. This language purposes to invalidate the ordinance at issue in the event that the litigation is resolved in favor of the City of St. Petersburg, thus intending a retroactive application of the bill's annexation process.

The act takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Provides for annexation within the boundaries of the Tierra Verde Community

Section 2: Provides a legal description for the Tierra Verde Community.

Section 3: Provides for invalidation of existing or future annexation ordinances.

Section 4: Provides an effective date.

⁸ HB 1375 (2009).

⁹ Major Rick Baker, Special to the St. Petersburg Times, January 15, 2009.

¹⁰ Pursuant to s. 171.081, 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.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 30, 2009

WHERE? *The Gulf Coast Business Review*

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Constitutional Notice Requirement for Local Bills

Section 10, Art. III of the State Constitution provides that:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law.

Section 11.02, F.S., implements the constitutional notice requirement, and requires that such notice "...state the substance of the contemplated law as required by s. 10, Art III of the State Constitution." The amendment language which provides that the act invalidates existing annexation ordinances was not included in the notice for the bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill prevents "piece-meal" annexation of the Tierra Verde Community on the effective date of the act. The Sponsor may wish to amend this language to prevent such annexation "after" the effective date of the act.

The Sponsor should consider amending the language in the bill which reads "notwithstanding any provision of law" to read "notwithstanding any provision of ch. 171, F.S." As written, the language is overly broad.

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 appears to provide exemptions to ch. 171, F.S.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

At its meeting on March 26, 2009, the Military & Local Affairs Policy Committee adopted an amendment providing that an existing or future annexation ordinance which is not adopted in the manner required by the act is invalid. This analysis has been drafted to the Committee Substitute.