

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1431

City of Pensacola, Town of Century, and Escambia

County

SPONSOR(S): Evers

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF
DIRECTOR				
1)	Military & Local Affairs Policy Committee		Nelson	Hoagland
2)	Economic Development & Community Affairs Policy Council			
3)	Finance & Tax Council			
4)				
5)				

SUMMARY ANALYSIS

Section 3, Art. VIII of the State Constitution provides that city/county consolidations may take place pursuant to a "consolidation plan...proposed only by special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected...."

This bill creates a commission for the purpose of developing a consolidation plan for the City of Pensacola, Town of Century, and Escambia County. The bill provides for: the membership of the commission; special advisory committees and membership; meetings; sources of funding; private contributions; clerical, technical, and legal assistance; and dissolution of the commission and reversion of commission property to the county.

While the Economic Impact Statement does not describe a fiscal impact, it indicates that the proposed consolidation would provide for lower taxes, and have a positive impact on economic development.

The bill is effective upon becoming law.

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

History of City/County Consolidations

Consolidation involves combining city and county governments so that the boundaries of the county and an affected city or cities become the same. Consolidation can be total or partial. Total consolidation occurs where all independent governmental units within a county are assimilated into the consolidated government. When some of the governmental units remain independent, the consolidation is partial.

All jurisdictions need not participate in a consolidation effort, and consolidation does not automatically preclude the later formation of new cities or special districts. When the consolidated government of Jacksonville/Duval County was formed, for example, four cities retained their identity (Neptune Beach, Baldwin, Atlantic Beach and Jacksonville Beach), but four special districts were eliminated and 12 more were consolidated into two dependent districts. Since that time, at least one new independent special district has been created within the geographic boundaries of the consolidated government.

Few successful city-county consolidations have occurred in the United States. Of the nearly 3,066 county governments in the United States, only 36 are combined city/county governments.¹

The Florida Constitution & Consolidation

Prior to 1934, the 1885 State Constitution was silent on the subject of consolidation. This lack of constitutional direction left many questions unanswered about the authority of the Legislature to enact statutes consolidating city and county governments. Consequently, to avoid potential legal challenges, the Legislature began specifically authorizing consolidation efforts by proposing constitutional amendments.

The 1933 Legislature passed a joint resolution to amend the Constitution declaring its own power to establish a municipal corporation consolidating the governments of Duval County and any of the municipalities within its boundaries, subject to referendum approval of the

¹ Research Division, National Association of Counties, Washington, D.C.

affected voters.² The electorate of Florida adopted this amendment in 1934. However, the voters of the City of Jacksonville and Duval County did not adopt a municipal charter pursuant to this constitutional provision until 1967.³

In 1935, the Legislature enacted a joint resolution to amend the Constitution, adopted by the Florida electorate in 1936, establishing similar legislative authority, subject to voter approval, with respect to Key West and Monroe County.⁴ The citizens of Key West and Monroe County have not voted to utilize this authority and enact consolidated government.

In 1965, the Legislature passed a constitutional amendment, adopted by the Florida electorate in 1966, authorizing consolidation in Hillsborough County in a slightly different manner. This constitutional provision directly authorizes the electors of Hillsborough County to adopt a county charter, conditioned upon the consolidation of the governments of the City of Tampa and the county.⁵ This authority has not been utilized. Hillsborough County, however, became a charter county pursuant to general law in 1983.⁶

Presently, only Duval County and the City of Jacksonville have taken advantage of the specific constitutional authority to consolidate. However, the enabling amendments to the 1885 Constitution for the consolidation of the City of Key West and Monroe County, and the consolidation of the City of Tampa and Hillsborough County, remain a part of the State Constitution, adopted by reference in Article VIII, section 6(e) of the State Constitution.

The 1955 Legislature authorized the voters of Dade County to enact a home rule charter through an amendment to the 1885 State Constitution.⁷ This constitutional provision did not authorize consolidation as authorized for the other three counties. It did empower the electors of Miami-Dade County through their charter to: 1) create a central metropolitan government; 2) merge, consolidate and abolish all municipal corporations, county, or district governments in the county; and 3) provide a method by which any and all of the functions or powers of any municipal corporation or other governmental entity in Miami-Dade County may be transferred to the board of county commissioners.

General authority for consolidation is provided in Article VIII, section 3 of the State Constitution. Under this section, city/county consolidations may only occur through a consolidation plan passed by special act of the Legislature and subject to approval of the electorate. Voter approval may be obtained via a single countywide referendum or through a separate referendum election held in each affected political jurisdiction. The consolidation plan cannot require new residents to be responsible for old debts, unless they benefit from the facility or service for which the indebtedness was incurred.

Florida Statutes Specifically Addressing Consolidated Governments

Several general laws uniquely affect consolidated governments. These statutes fall into three broad categories: retirement and pension rights, taxation and finance, and export trade. These statutes apply to the consolidated government of Jacksonville/Duval County and, in some cases, Miami-Dade County. However, these provisions could apply to any other governments that consolidate.

² Section 9, Art. VIII of the State Constitution of 1885 as referenced in s. 6, Art. VIII of the State Constitution.

³ Jacksonville Ordinance Code, Volume III (containing the Charter and Related Laws of the City of Jacksonville, Florida), (Tallahassee, Florida: Municipal Code Corporation, 1991), C-1.

⁴ Section 10, Art. VIII of the State Constitution of 1885, as referenced in s. 6, Art. VIII of the State Constitution. .

⁵ Section 24, Art. VIII of the State Constitution of 1885 as referenced s. 6, Art. VIII of the State Constitution.

⁶ Home Rule Charter for Hillsborough County Florida, (Tampa, Florida: Hillsborough County Board of County Commissioners, September 1983), Introduction.

⁷ Section 11, Art. VIII of the State Constitution of 1885 as referenced in s. 6, Art. VIII of the State Constitution.

Retirement and Pension Rights

Section 112.0515, F.S., protects the rights of all public employees in any retirement or pension fund. Public employees' benefits or other pension rights may not be diminished, impaired or reduced by reason of city/county consolidation or other types of governmental reorganization.

In addition to protecting pension and retirement benefits, the law in ss.121.081 (f) and (g), F.S., details the conditions under which past service or prior service may be claimed and credited for purposes of calculating retirement benefits. For officers and employees of any county or city involved in a consolidation, the following conditions apply:

- Employees participating in a local retirement system of any county or city involved in a consolidation may, if eligible, elect to switch over to the Florida Retirement System. Employer contributions must continue at required rates.
- Past-service credit must be given.
- Membership in a state retirement system will be protected for officers or employees of a consolidated government enrolled in the system on May 15, 1976.

Taxation and Finance

There are several statutes that financially affect consolidated governments. These laws relate generally to:

- millage determination;
- local option taxes; and
- revenue sharing.

For purposes of the determination of their millage rates for ad valorem taxing purposes, the governments of Miami-Dade County and the consolidated government of Jacksonville/Duval County are defined as county governments.⁸ Except for voted levies, cities and counties are constitutionally limited to a millage cap of 10 mills for municipal purposes and 10 mills for county purposes. However, since consolidated governments provide both municipal and county services, s. 200.141, F.S, grants Miami-Dade and consolidated Jacksonville/Duval Counties the right to levy a millage up to 20 mills on the dollar of assessed valuation. When these counties consider their assessed millage rates based upon city and county services, they must balance their tax levies so that the millage rate for city/county services taken together is no more than 20 mills.

In terms of local option taxes, consolidated governments may levy most taxes other local governments are authorized to levy. They also are specifically authorized to levy a convention development tax on transient rentals by passage of an ordinance. Revenues generated by such a tax must be used to build or improve/enlarge publicly owned convention centers, including stadiums, exhibition halls, arenas, coliseums or auditoriums. Also, the 1985 Legislature authorized the transit system surtax subject to voter referendum or charter amendment for counties which adopted a charter prior to January 1, 1984.

Export Trade

Section 125.025, F.S., provides that each county that operates under a government consolidated with one or more municipalities in the county has the power to:

- own, maintain, operate and control export trading companies and foreign sales corporations as provided by the laws of the United States;

⁸ See, s. 200.001(8), F.S.

- own, maintain, operate and control cargo clearance centers and customs clearance facilities and corporations established for the purpose of providing or operating such facilities;
- maintain the confidentiality of trade information to the degree provided by the Export Trading Company Act of 1982, Pub. L. No. 97-290, as it is amended from time to time;
- maintain the confidentiality of trade information and data pursuant to the patent laws of the United States, the patent laws of foreign nations (to the extent that they are enforced by the courts of the United States), the copyright laws of the United States, the copyright laws of foreign nations (to the extent that they are enforced by the courts of the United States), and the trade secrets doctrine; and
- authorize airport and port employees to serve as officers and directors of export trading companies, foreign sales corporations, and customs and cargo clearance corporations.

Florida Consolidation Activity

No successful consolidation activity in Florida has occurred since the consolidation of Duval County and the City of Jacksonville in 1967. Despite the perceived benefits of streamlining governmental processes, and the Legislature's attempts to simplify the process, Floridians have consistently rejected consolidation proposals at the polls. Below is a list of failed attempts at consolidation in Florida since 1967, along with a vote count, where data is available.

- 1967 Tampa/Hillsborough County
(County: 11,400 for/28,800 against)
- 1970 Pensacola/Escambia County
(County: 4,550 for/22,600 against; City: 5,350 for/7,700 against)
- 1970 Tampa/Hillsborough County
(County: 37,250 for/51,550 against)
- 1971 Tallahassee/Leon County
(County: 10,400 for/14,750 against)
- 1972 Ft. Pierce/St. Lucie County
(County: 3,000 for/6,500 against; City: 2,050 for/2,250 against)
- 1972 Tampa/Hillsborough County
(County: 54,700 for/74,900 against)
- 1973 Tallahassee/Leon County
(County: 11,050 for/12,850 against)
- 1975 Gainesville/Alachua County
(County: 5,100 for/15,100 against)
- 1976 Gainesville/Alachua County
(County: 6,300 for/13,250 against)
- 1976 Tallahassee/Leon County
(County: 20,350 for/24,850 against)

- 1979 Okeechobee/Okeechobee County
(County: 1,150 for/2,350 against)
- 1985 Halifax area/Volusia County
(County: 19,050 for/23,450 against)
- 1989 Okeechobee/Okeechobee County
(County: 1,350 for/3,100 against)
- 1990 Gainesville/Alachua County
(County: 11,000 for/21,800 against)
- 1991 Tallahassee/Leon County
(County: 36,800 for/55,800 against)

In addition to the consolidation attempts that went to referendum, there have been efforts that stopped short of the ballot in Brevard, Charlotte, Columbia, Hardee, Highlands and St. Lucie Counties.

Effect of Proposed Changes

HB 1431 creates the Escambia County Consolidation Study Commission to develop a consolidation plan or a plan for unification of administrative services for the City of Pensacola, Town of Century, and Escambia County, in whole or in part.

The bill provides for submission of a consolidation plan to the local legislative delegation by January 15, 2010, to seek support for a special act that would be submitted to the 2010 Legislature. If approved, the plan will be submitted to the qualified electors of Escambia County.

The membership of the commission may not exceed 25 persons, and must be appointed by July 1, 2009, as follows:

- The Escambia County Commission appoints five members. Each commissioner appoints one member who is required to reside, work, or own property in the appointing commissioner's district.
- The Mayor and the Town Council of the Town of Century appoint one member who is required to be a resident of the Town of Century.
- The Pensacola City Council appoints two members who are residents of the City of Pensacola.
- The following organizations each appoint one member:
 - Escambia County branch of the NAACP;
 - Escambia County Taxpayers' Association;
 - League of Women Voters of Pensacola Bay Area;
 - Pensacola Young Professionals;
 - Pensacola Ministerial Alliance;
 - Escambia County Farm Bureau; and
 - Home Builders Association of West Florida.
- The President of the University of West Florida appoints one member who has expertise in local government matters.
- Each of the following Escambia County constitutional officers appoints one member:

- sheriff;
 - tax collector;
 - property appraiser;
 - clerk of court and
 - supervisor of elections.
- The Chief Judge of the First Judicial Circuit appoints two members who are members of the Florida Bar with legal expertise in local government matters.
 - The Escambia County School Board appoints one member by a majority vote of the board.
 - The Emerald Coast Utilities Authority appoints one member.

The bill also creates several advisory committees, as follows:

A Special Advisory Committee on Public Safety to provide advice and counsel to the commission on the integration of public safety services in the consolidation plan. This committee is required to meet no later than 30 days after the effective date of the act. The committee must elect a chairperson and report to the chairperson of the commission. Each of the following may serve as a member of the committee or appoint a representative:

- The Sheriff of Escambia County.
- The Chief of Police of the City of Pensacola.
- The Escambia County Community Corrections Bureau.
- The Escambia County Public Safety Bureau Chief.
- The Fire Chief of the City of Pensacola.
- The Fire Chief of Escambia County.
- The Escambia County Medical Director.
- The chairperson of the Escambia County Fire Services Advisory Board.
- The Police Benevolent Association of the City of Pensacola.
- The Police Benevolent Association of Escambia County.
- The Chapter of the International Association of Firefighters of the City of Pensacola.

A Special Advisory Committee on Economic Development to provide advice and counsel to the commission. Each of the following may appoint a member to the committee:

- Pensacola Junior College.
- The Pensacola Bay Area Chamber of Commerce.
- The Perdido Key Chamber of Commerce.
- The Pensacola Downtown Improvement Board.
- The Gulf Coast African American Chamber of Commerce.
- The local chapter of the Florida Black Chamber of Commerce.
- Florida's Great Northwest.
- The Town of Century Chamber of Commerce.
- The Ruritan Club of Walnut Hill.
- The Pensacola Beach Chamber of Commerce.

A Special Advisory Committee on Health Care to provide advice and counsel to the commission. Each of the following may appoint a member to the committee:

- Baptist Health Care.

- Sacred Heart Health System.
- West Florida Hospital.
- The Escambia County Health Department.
- The Escambia Medical Society.

All members serve without compensation. The failure of any person or organization to appoint a member or the failure of a member to serve does not affect the validity of the recommendations of the commission or any special advisory committee. The appointing person or entity may replace any member who resigns or fails to serve. Failure to attend any two meetings without good cause constitutes failure to serve. A member may not be an elected state, county, or municipal official or a constitutional officer. A majority of the duly appointed members of the commission constitute a quorum.

All meetings and records of the commission are public, with meetings to be held throughout Escambia County. The commission or a committee may visit local governments outside of Escambia County to observe their operations.

The commission is required to elect a chairperson at its first meeting. The commission meets at the call of the chair or upon the call of any three members at least once a month from July 1, 2009, through January 15, 2010. The commission is required to compile and present a status report on its progress and tentative findings by November 30, 2009. This status report will be presented to the board, the City of Pensacola, the Town of Century, and the legislative delegation. The commission is required to submit any proposed consolidation plan to the legislative delegation no later than January 15, 2010.

Neither the state nor any governmental entity of the state has an obligation to fund the commission. However, the commission may solicit and receive private contributions limited to \$3,000 from any individual or for-profit entity and may solicit and receive other public contributions in support of its study, with accounting in the same manner as for public funds. The board or other governmental entities may furnish the commission with such services, office space, and supplies as may be requested by the commission and approved by the board or other governmental entities.

The City of Pensacola, Town of Century, and Escambia County are required to provide reasonable technical, legal and clerical assistance to the commission.

The consolidation of the governments of the City of Pensacola, the Town of Century, and Escambia County will become effective only by approval of a majority vote of those electors of Escambia County voting in a referendum. The referendum must be held, after approval of the consolidation plan by the Legislature, at the next general election, in accordance with the provisions of law relating to elections.

In a referendum on consolidation, it is necessary for a majority of the electors in Escambia County to approve the consolidation, as well as a majority of electors in the City of Pensacola, in order for the governments of those two entities to be consolidated. Likewise, it is necessary for a majority of the electors in Escambia County to approve consolidation, as well as a majority of electors in the Town of Century, in order for the governments of those two entities to be consolidated.

The Escambia County Consolidation Study Commission is required to dissolve by July 1, 2010, at which time all property of the commission becomes property of the county.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Provides for definitions.

Section 2: Provides for creation of the Escambia County Consolidation Study Commission.

Section 3: Provides for Commission membership.

Section 4: Provides for meetings, records and reports.

Section 5: Provides for funding and expenses.

Section 6: Provides for clerical, technical and legal assistance.

Section 7: Provides for a referendum.

Section 8: Provides for disposition of property.

Section 9: Provides for an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 30, 2009

WHERE? The *Pensacola News Journal*, a daily newspaper of general circulation published in Escambia 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

While the Economic Impact Statement does not describe a fiscal impact, it indicates that the proposed consolidation would provide for lower taxes, and have a positive impact on economic development.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 3, art.VIII of the Florida Constitution provides as follows:

The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. **The consolidation plan may be proposed only by special law**, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected, as may be provided in the plan. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents receive a benefit from the facility or service for which the indebtedness was incurred.

The Florida Supreme Court previously has noted, when considering the issue of consolidation, that "...it is clear from the language of the Constitution that the term 'special law' means an enactment of the Florida Legislature."⁹

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

On line 35 of the bill, it provides that any consolidation plan proposed by the commission be submitted to the local governments "for action." The Sponsor of the bill may want to clarify this language to state "for approval."

Line 41 of the bill appears to contemplate any proposed unification of administrative services be approved by the legislature. The Sponsor of the bill may want to delete this language.

The Special Advisory Committee on Public Safety is required to meet no later than 30 days after the effective date of the act, must elect a chairperson and report to the chairperson of the commission. It appears that the omission of similar language relating to the other advisory committees was an oversight.

Language in Section 6 of the bill which requires that the local governments provide clerical, technical and legal assistance to the commission appears to contradict Section 5. The Sponsor of the bill may want to change the "shall" on line 160 to "may" in order to make this assistance permissive.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

⁹ See, Sarasota County v. Town of Longboat Key, 355 So. 2d 1197(Fla. 1978), citing Davis V. Gronemeyer, 251 1 (Fla. 1971.)