

**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** CS/HB 775

City of Tamarac, Broward County

**SPONSOR(S):** Porth

**TIED BILLS:**

**IDEN./SIM. BILLS:**

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Military & Local Affairs Policy Committee	14 Y, 0 N, As CS	Nelson	Hoagland
2)	Economic Development & Community Affairs Policy Council	15 Y, 0 N	Nelson	Tinker
3)				
4)				
5)				

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**SUMMARY ANALYSIS**

The City of Tamarac was incorporated in 1963, and is comprised of 12 square miles located in central Broward County. The approximate population of the municipality is 60,000.

This bill enlarges the corporate limits of the City of Tamarac in Broward County to include specified unincorporated land. It provides for: an election; an effective date of annexation; an interlocal agreement; governance of the annexed area; residency requirements for municipal office candidates; preservation of existing contracts; and transfer of public roads and rights-of-way. It also prohibits land use designation or zoning changes and other annexations prior to the subject annexation or defeat of the annexation.

The bill is effective upon becoming law.

According to the Economic Impact Statement, it is estimated that the City of Tamarac's cost for the annexation will be negligible due to the fact that the city already provides municipal services to the neighborhoods immediately surrounding and adjacent to the proposed annexation site. It is estimated that the city will raise \$234,482 in FY 2008-2009 and \$247,183 in FY 2009-2010 in ad-valorem taxes and non-ad valorem fire assessments for the purpose of providing municipal services to the area at issue.

**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 Annexation<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

##### 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.<sup>4</sup>
- The area to be annexed must be reasonably compact.<sup>5</sup>

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> *See*, part II of ch. 171, F.S., the “Interlocal Service Boundary Agreement Act.”

<sup>4</sup> 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.

- 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.<sup>6</sup>
- 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.<sup>7</sup>

## 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.<sup>8</sup>

### *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;<sup>9</sup> and

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<sup>5</sup> 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.

<sup>6</sup> 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 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.

<sup>7</sup> See, s. 171.061, F.S.

<sup>8</sup> 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.

<sup>9</sup> This new requirement was passed by the 1999 Legislature.

- 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.<sup>10</sup>

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.<sup>11</sup>

#### 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.<sup>12</sup>

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<sup>10</sup> 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.

<sup>11</sup> Section 171.091, F.S.

<sup>12</sup> Section 171.081, F.S.

## 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. Broward County currently contains 31 municipalities, the majority of which achieved their current corporate boundaries through a multitude of annexations.

The 1996 Florida Legislature adopted a special act<sup>13</sup> 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 15<sup>th</sup> 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.

The Broward County Legislative Delegation sponsors several local annexation bills each year.

## Mail Ballot Elections

Section 101.6103, F.S., provides that an election may be conducted by mail ballot if:

1. The election is a referendum election at which all or a portion of the qualified electors of one of the following subdivisions of government are the only electors eligible to vote:
  - counties;
  - cities;
  - school districts covering no more than one county; or
  - special districts.
2. The governing body responsible for calling the election and the supervisor of elections responsible for the conduct of the election authorize the use of mail ballots for the election; and
3. The Secretary of State approves a written plan for the conduct of the election, which must include a written timetable for the conduct of the election, submitted by the supervisor of elections.

In addition, an annexation referendum which includes only qualified electors of one county may also be voted on by mail ballot election.

The supervisor of elections is responsible for the conduct of any election held under ss. 101.6101-101.6107, F.S., the "Mail Ballot Election Act." The costs of a mail ballot election are borne by the jurisdiction initiating the calling of the election, unless otherwise provided by law.

Section 101.6103, F.S., provides procedures for mail ballot elections.

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<sup>13</sup> Chapter 96-542, L.O.F., as amended by ch. 99-447, L.O.F.

## Effect of Proposed Changes

The City of Tamarac was incorporated in 1963, and is comprised of 12 square miles located in central Broward County. The approximate population of the municipality is 60,000.

This bill provides for the annexation of a contiguous unincorporated area in Broward County known as the Prospect Bend Area into the City of Tamarac. The area at issue is approximately 78 acres and was included in a local bill which passed the 2007 Legislature (h. 2007-294, L.O.F.) that provided for its annexation into the City of Tamarac. However, no electors voted in the election.

HB 775 requires the Broward County Board of County Commissioners to schedule an election on November 3, 2009. The subject of the election is the annexation of the Prospect Bend Area into the City of Tamarac. Only registered voters residing in the area subject to annexation may vote in the election. Mail ballots must be used in the election.

Upon a majority of the registered voters residing in the subject area voting for annexation into the City of Tamarac, the area will be deemed a part of that municipality on September 15, 2010, pursuant to s.171.062, F.S., except as provided for in the act.

An interlocal agreement must be developed and executed between the governing bodies of Broward County and the City of Tamarac prior to the effective date of the annexation. The agreement is required to address infrastructure improvement projects and include a financially feasible plan for transitioning county services, buildings, infrastructure, waterways and employees.

Upon annexation into the City of Tamarac, the area will be governed as follows:

- (1) The annexed property will be governed by the relevant land use and zoning provisions of the City of Tamarac's Code of Ordinances.
- (2) Any change of zoning districts or land use designations may only be accomplished by a supermajority vote of the full governing body of the municipality.
- (3) Any use, building or structure that is legally in existence at the time of annexation may not be made a prohibited use by the City of Tamarac, as long as the use continues and is not voluntarily abandoned.

After the effective date of the act, no change in land use designation or zoning can take place within the limits of the area subject to annexation until the area has been annexed into the municipality or the date of the election if the annexation is defeated. No annexation within the area by any municipality can occur during the time period between the effective date of the act and the effective date of the annexation or the date of the election if the annexation is defeated.

After the effective day of the annexation, any resident of the area annexed into the City of Tamarac is deemed to satisfy residency requirements for candidacy for municipal office. The bill further provides that nothing in it shall be construed to affect or abrogate the rights of parties to any contract which is in effect prior to the annexation, whether the contract be between Broward County and a third party or between nongovernmental entities.

Finally, the bill provides that all public roads and associated rights-of-way associated in the Broward County Road System, lying within the area subject to annexation, are transferred from Broward County's jurisdiction to the jurisdiction of the annexing municipality. All rights, title, interests and responsibilities for any transferred roads, including, but not limited to, the ownership, operation, maintenance, planning, design and construction of such roads and rights-of-way transfer from Broward County jurisdiction and ownership to the jurisdiction and ownership of the annexing municipality upon the effective date of the annexation.

The act takes effect upon becoming a law.

**B. SECTION DIRECTORY:**

Section 1: Provides a legal description of property to be annexed.

Section 2: Provides for an election.

Section 3: Provides for annexation upon a majority of the registered voters residing in the subject area voting for annexation.

Section 4: Provides for an interlocal agreement.

Section 5: Provides for governance upon annexation.

Section 6: Provides for changes in land use designation or zoning.

Section 7: Provides for residency requirements.

Section 8: Provides for continuation of rights.

Section 9: Provides for ownership of public roads and the public rights-of-way.

Section 10: Provides an effective date.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 9, 2009.

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

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN? November 3, 2009.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

The Economic Impact Statement indicates that it is estimated that the City of Tamarac's cost for the annexation will be negligible due to the fact that the city already provides municipal services to the neighborhoods immediately surrounding and adjacent to the proposed annexation site. It is estimated that the city will raise \$234,482 in FY 2008-2009 and \$247,183 in FY 2009-2010 in ad-valorem taxes and non-ad valorem fire assessments for the purpose of providing municipal services to the area at issue.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**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 may create an exemption to s. 171.062(1), F.S., which provides that an area annexed to a municipality shall be subject to all laws, ordinances and regulations in force in that municipality, via the "continued use" provisions contained in Section 5. The bill additionally may create an exemption to s. 125.01, F.S., which gives counties the authority to prepare and enforce comprehensive plans, and establish and enforce zoning ordinances, as well as the Local Government Comprehensive Planning and Land Development Regulation Act found at part II of ch. 163, F.S., in that Section 6 prevents the county from changing land use designations or zoning in the area proposed for annexation after the effective date of the act.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

At its meeting on March 18, 2009, the Military & Local Affairs Policy Committee adopted a strike-all amendment which removes the legal description of property that previously was annexed into the City of Tamarac, and makes other technical changes to the bill. This analysis is drafted to the Committee Substitute.