

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1129 City of Tamarac, Broward County
SPONSOR(S): Military & Local Affairs Policy Committee and Porth
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	13 Y, 0 N, As CS	Nelson	Hoagland
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
4)	_____	_____	_____	_____
5)	_____	_____	_____	_____

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.

The CS for HB 1129 enlarges the corporate limits of the City of Tamarac to include contiguous, unincorporated land known as "Prospect Bend." The bill provides that this annexation will be effective on September 15, 2010. The bill also: requires an interlocal agreement between the city and Broward County to be executed prior to the annexation; provides for the land use and zoning governance of the annexed area; provides for a partial exemption from fire rescue special assessments for the annexed area; provides a policy relating to the imposition of impact fees; contains language that supports the preservation of existing contracts; and provides for the transfer of public roads and rights-of-way.

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 currently provides municipal services to the neighborhoods immediately surrounding and adjacent to the Prospect Bend property. It is estimated that the city will raise \$351,804 in Fiscal Years 2010-2011 and 2011-2012 in ad valorem taxes, non-ad valorem fire assessments and residential stormwater fees 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.

Additionally, this bill, as amended, may not comply with s. 10 of Art. III of the State Constitution. See, III. COMMENTS, A. CONSTITUTIONAL ISSUES, of this analysis.

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

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

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.

- 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
- 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.

Land cannot be annexed through voluntary annexation when the process results in the creation of an enclave.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

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 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 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.¹⁰

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

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.

¹¹ Section 171.091, F.S.

¹² Section 171.081, F.S.

The 1996 Florida Legislature adopted a special act¹³ 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.

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

The City of Tamarac

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.

Effect of Proposed Changes

The CS for HB 1129 provides that the unincorporated Prospect Bend area in Broward County will be annexed into the City of Tamarac effective September 15, 2010. The area at issue is approximately 78 acres, and is estimated by the Broward County Planning Services Division to have a population of 331.

This property was the subject of a 2007 local act (ch. 2007-294, L.O.F.) that provided for its annexation into the City of Tamarac. Nonetheless, no electors voted in the subsequent referendum. This issue was again the subject of a local act in 2009 (ch. 2009-252, L.O.F.), which provided for the exclusive use of mail ballots. Only 10 voters participated in this referendum—five in favor of the annexation and five against the annexation.¹⁴ There is opposition to this local bill by certain commercial and residential property owners within the area.

The bill requires that 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 Prospect Bend area will be governed as follows:

- The annexed property will be subject to the zoning regulations of Broward County, as amended through March 1, 2010.
- 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.
- 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.

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

¹⁴ February 23, 2010, letter from Sandy Harris, Executive Director of the Broward Legislative Delegation.

- The annexed property will be provided a partial exemption from any fire rescue special assessment levied by the city in order that the amounts collected from these parcels are equal to those previously collected by Broward County. If Broward County discontinues its assessment, the exemption remains in place using the amount that would have been collected by the City of Fort Lauderdale had the parcels been within that municipality. If both the county and Fort Lauderdale cease to levy these types of special assessments, then the assessment levied by the City of Tamarac will be applied to the property.

Case law has established that a special assessment must be fairly and reasonably apportioned among the properties receiving the special benefit. See, City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992). It is unknown whether this plan would be determined to be in compliance with that requirement if challenged.

- The City of Tamarac is prohibited from charging impact fees within the annexed area for any uses or development existing as of the effective date of the annexation.

As impact fees are generally one-time assessments levied on new development to offset its impact on the capital cost of providing services and infrastructure, this language may be irrelevant.

The bill further provides that nothing in it is to be construed to affect or abrogate the rights of parties to any contract which is in effect prior to the annexation, whether the contract is 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 City of Tamarac. 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 City of Tamarac on the effective date of the annexation.

The act takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Provides for annexation of described property.

Section 2: Provides for an interlocal agreement.

Section 3: Provides for land use and zoning governance, and continued uses.

Section 4: Provides for partial exemption from fire rescue special assessments.

Section 5: Provides for the imposition of impact fees.

Section 6: Provides applicability to existing contracts.

Section 7: Provides for transfer of public roads and rights-of-way.

Section 8: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 22, 2010

WHERE? The *Sun-Sentinel*, a daily newspaper published in Broward 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

According to Economic Impact Statement, it is estimated that Tamarac's cost for the annexation will be negligible due to the fact that the city currently provides municipal services to the neighborhood immediately surrounding and adjacent to the proposed annexation sites. It is estimated that the city will raise \$351,804 in Fiscal Years 2010-2011 and 2011-2012¹⁵ in ad valorem taxes, non-ad valorem fire assessments and residential stormwater fees for the purpose of providing municipal services to the area at issue.

The City of Tamarac will benefit from increased revenues. Broward County will benefit by no longer having to provide municipal services to the proposed annexation site. Each individual taxpayer within the proposed annexation sites will benefit from Tamarac's localized municipal services and also will be represented in a municipal government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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 this constitutional provision, and requires that a notice advertising intent to seek enactment of local legislation describe the substance of the contemplated law.

The notice for HB 1129 was very specific, describing each provision in the bill.

Drafting Local Legislation in Florida, a publication of the House of Representative's Bill Drafting Service (1995), provides, in relevant part:

The prime purpose of the constitutional requirement that notice be given with respect to the enactment of special or local legislation is to apprise persons directly interested in the matter or thing to be affected of the nature and substance of the bill, so that the enactments, or the essential substance thereof, may be contested, if that is desired. So long as such laws as finally enacted accord in substance and purpose and are germane to and within the scope of the subject matter of the published notice, the organic provision has been complied with. Therefore, if a special act, as finally adopted, is at variance with the contents of the notice, as published, it is not necessarily invalidated—even though it exceeds such notice in some particular. See: Prescott v. Board of Public Instruction, 32 So. 2d 731 (1947). However, the question as to what constitutes a material variance sufficient to invalidate the act (particularly when the act exceeds its notice) cannot be answered with any degree of certainty. See: AGO 071-223 (1971). Suffice it to say that any such variance is clearly open to challenge and ought to be avoided if at all possible.

In the instant case, one could argue that by virtue of specificity of the notice for HB 1129, the public would have been led to believe that all provisions relating to the annexation were advertised. The

¹⁵ Due to current economic conditions and annual property devaluation, no growth factor was applied in calculating these figures.

amendment to the bill contains three new provisions, two of which are fairly innocuous. The third provision, however, purports to provide for a partial exemption from any fire rescue special assessment levied by the City of Tamarac for the annexed property. While the language appears to be crafted in hopes of avoiding a result whereby the special assessment could be determined to be invalid as not being fairly and reasonably apportioned, this factor does not serve to cure the fact that the other residents of the city may not have received sufficient notice to have prompted their discovery of this arrangement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Section 4 of the CS appears to freeze the amount of fire rescue special assessments of the annexed property to the time preceding the annexation. It is unclear as to whether this result was intended by the Sponsor of the bill.

Section 4 also contains a finding by the Legislature "...that it is fair and reasonable to provide for a partial exemption from any fire rescue special assessment levied by the City of Tamarac to all parcels within the [annexed] area...." This determination may be inappropriate.

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 3.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 8, 2010, the Military & Local Affairs Policy Committee adopted an amendment providing that the property annexed into the City of Tamarac:

- be governed by the zoning regulations of Broward County.
- receive a partial exemption from fire rescue special assessments.
- not be charged impact fees for uses or development existing as of the effective date of the annexation.

The amendment also removed language that provided that any resident of the area annexed into the City of Tamarac is deemed to satisfy residency requirements for municipal office candidacy. The city's charter requires that members of city boards, committees or commissions be residents, with no need for a particular period of residency. Article III, Division 1. Sec. 2-56. Thus, it appears that the deletion of this language will have no effect.

This analysis is drafted to the Committee Substitute.