

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1473

Manatee County

SPONSOR(S): Fitzgerald

TIED BILLS:

IDEN./SIM. BILLS:

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

SUMMARY ANALYSIS

HB 1473 amends the charter of the City of Anna Maria to correct the legal description of the city, and annex described submerged property into the city limits. The bill additionally amends the charter of the City of Holmes Beach to add a boat ramp.

According to the Economic Impact Statement, this bill will not have a fiscal effect.

The bill has an effective date of upon becoming law.

HB 1473 may not comply with s.6 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.

Effect of Proposed Changes

The City of Anna Maria

The City of Anna Maria was incorporated by ch. 9675, L.O.F. (1923). The last time the boundaries of the city were changed was in 2002. See, ch. 2002-384, L.O.F., amending ch. 30561, L.O.F. (1955). HB 1473 amends the charter of the City of Anna Maria to correct what is thought to be a scrivener’s error in the legal description of the city. This discrepancy was recognized by a surveyor doing work for the census. The property is approximately a quarter mile square and has always been considered to be part of the City of Holmes Beach by the local governments, the residents, the police and the tax collector. There are no records which serve to explain why the subject property was included in the legal descriptions for both cities.³

Article II, Sec. 2.01 of the City of Anna Maria’s charter provides, in relevant part:

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 March 15, 2010, e-mail from James Dye, attorney for the City of Anna Maria.

... the City shall have the power to change its boundaries in the manner hereinafter or as otherwise defined by the laws of the State of Florida.

Article VIII, Sec. 8.01 of the charter provides:

The Commission may, by ordinance, propose amendments to any part or all of this Charter, except Article II prescribing boundaries, and upon passage of the initiating ordinance shall place the proposed amendment to a vote of the electors at the next general election held within the city or at a special election called for such purpose. Amendment of Article II resulting from annexation done in accordance with general law shall be by ordinance of the Commission and shall not be subject to a vote of the electors except as provided by general law.

Article VIII, Sec. 8.03 further provides:

The City Commission may, by a unanimously voted ordinance, amend this Charter to correct typographical errors....

Thus, the city could correct the error to their charter at the local level, with no need for a referendum. It is noted that Rule 5.5(a) of the House of Representatives provides:

If the substance of a local bill may be enacted into law by ordinance of a local governing body without the legal need for a referendum, no council or committee may report the bill favorably.

The bill also annexes described submerged land into the city limits, extending the Anna Maria city limits on the Gulf and Tampa Bay shorelines to the mean low water line⁴ plus 10 feet. This change is based on the recognition that the fact that the city limits stop at the mean high water line⁵ creates several hardships at a regulatory and practical level.

The current city description consists of several U.S. lots, which are a surveyor's tool for describing parcels that are irregular and have water boundaries. The government lots' boundaries end at the mean high water line. Anna Maria has concluded that it cannot police or regulate anything beyond the mean high water line because this area is not within the city limits. This issue came to the forefront recently when the city was pursuing a code enforcement case against a property owner for building several boat docks without proper permitting. The property owner relied on the fact that the docks were actually located in unincorporated Manatee County because they extended into the water. Until this dispute, the city had conducted all permitting, policing and provision of governmental service for docks and other near-shore situations.

The mean high water line is often near the point between the dry and wet sand. This creates an additional problematic situation where only a part of the beach is within the city's jurisdiction.⁶

The city's attorney suggested that Manatee County issue building permits, conduct inspections, and provide certificates of occupancy for private boat docks originating on land within the city boundaries. The county declined to duplicate the work of city building officials.⁷

⁴ Pursuant to s. 177.27(16), F.S., "mean low water" means the average height of the low waters over a 19-year period. For shorter periods of observation, "mean low water" means the average height of low waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of mean 19-year value. "Mean low-water line" means the intersection of the tidal plane of mean low water with the shore. Section 177.27(17), F.S.

⁵ Section 177.27(14), F.S. provides that "[m]ean high water" means the average height of the high waters over a 19-year period. For shorter periods of observation, "mean high water" means the average height of the high waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value. "Mean high-water line" means the intersection of the tidal plane of mean high water with the shore. Section 177.27 (15), F.S.

⁶ March 15, 2010, e-mail from James Dye, attorney for the City of Anna Maria.

⁷ March 15, 2010, e-mail from Maureen Sikora, Deputy County Attorney.

City of Holmes Beach

The City of Holmes Beach was created in 1950. It is the largest of three island communities (the others being Anna Maria and Bradenton Beach) on Anna Maria Island, which is located on the Gulf of Mexico just south of the mouth of Tampa Bay.

HB 1473 additionally amends the charter of the City of Holmes Beach to add a boat ramp. The bill provides that, in the exercise of police powers and jurisdictional authority within this property, the City of Holmes Beach is required to apply Manatee County codes, ordinances, resolutions, rules and regulations.

This property, known as the "Kingfish Boat Ramp," is adjacent to the city, and also consists of a picnic and parking area. The property is owned by the state Department of Transportation, and a portion of it is leased to Manatee County for a public use recreation area.

The City of Holmes Beach has been policing this recreational area through an interlocal agreement with the county, which has to be re-executed every two years. This bill would eliminate the need for the interlocal agreement.

Legal staff of the Department of Transportation has reviewed this matter and has no concerns as the annexation will not affect its lease with the county.⁸

The act has an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends the boundaries of the City of Anna Maria.

Section 2: Amends the boundaries of the City of Holmes Beach.

Section 3: Provides for police powers and jurisdictional authority.

Section 4: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 30, 2009.

WHERE? The *Bradenton Herald*, a daily newspaper published in Manatee 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

⁸ April 5, 2010, telephone conversation with Eva Baxter, Chief of Staff/Legislative Programs Administrator for the Department of Transportation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

This bill may not comply with s.6 of Art. III of the State Constitution, which provides in relevant part:

Every law shall embrace but one subject and matter properly connected herewith....

Generally, local bills are contained to a single governmental unit. In this case, while both cities at issue are located in Manatee County, there is no connection between the annexations in the individual municipal jurisdictions.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

Manatee County Board of County Commissioners

On February 23, 2010, the consent agenda for the Manatee County Board of County Commissioners contained a recommendation from the county administrator that this local bill be supported contingent upon additional language that provides for Manatee County to be exempt from any city codes, ordinances, resolutions, rules and regulations relating to construction, installation, placement, or location of County structures, signage, markers, navigation aids, and other facilities and improvements within the waters annexed by the city.

The Florida Department of Environmental Protection

The Department of Environmental Protection indicates that this bill "sits natural with our position."⁹

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

⁹ March 12, 2010, e-mail from Katherine Goletz, Legislative Specialist.