

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 817 City of Cocoa, Brevard County

**SPONSOR(S):** Workman

**TIED BILLS:**           **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	18 Y, 0 N	Dougherty	Rojas
2) State Affairs Committee	16 Y, 0 N	Moore	Camechis

### SUMMARY ANALYSIS

The Pinecrest Cemetery and the Evergreen Memorial Park are abandoned cemeteries contiguous with the municipal boundaries of the City of Cocoa and in unincorporated Brevard County. The recorded owners are defunct corporations and the grounds are in disrepair. Cocoa residents complain that the cemeteries are becoming a public nuisance.

In the interests of the public health, safety, and welfare, the city would like to provide maintenance and security for the cemeteries. To that end, the City Council adopted a resolution outlining their intent and terms of the undertaking. The city intends to maintain and secure the cemeteries, and the city's public works director estimated that the city will spend approximately \$7,000 annually to provide maintenance and security. Additionally, some capital improvements – such as paving the failing roadways within the cemeteries – may eventually be required. The repaving is estimated to cost \$20,000.

However, the city does not have authority to enter the unincorporated properties and must annex the properties before taking stewardship measures. Statutory annexation provisions require action from the owners of the property to be annexed. As such owners are unascertainable, the city seeks legislative annexation in order to maintain and secure the cemeteries.

The bill annexes Pinecrest Cemetery and the Evergreen Memorial Park to the City of Cocoa and provides that the city has all municipal powers and authority over these properties as provided by law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### The Pinecrest Cemetery and the Evergreen Memorial Park

The Pinecrest Cemetery and the Evergreen Memorial Park (cemeteries) are old, unmanaged memorial grounds located in unincorporated Brevard County contiguous to the existing boundaries of the City of Cocoa. As they are contiguous to the municipal boundaries, their dilapidated condition impacts the health, safety, and welfare of Cocoa's citizens. Citizens have expressed concerns that these properties need regular maintenance and security to avoid becoming a further public nuisance.

The cemeteries appear to be abandoned. To the best of Cocoa's knowledge, the last recorded owners of these cemeteries are now defunct. The last recorded owner of Pinecrest was "The Pinecrest Cemetery Co." in 1929. This was an unrecorded incorporation with no record of formation or dissolution. The cemetery was platted and annexed by the city in 1929, but was omitted from the city's boundary description in 1959. The last recorded owner of Evergreen is "Evergreen Memorial Park, Inc.," which has been a dissolved and inactive Florida corporation since 1970.

Without proper maintenance, the cemeteries have fallen into disrepair. Volunteers formed the Pinecrest Cemetery Association in the 1980s to maintain the graves, but most of the approximately 50 remaining members are too old to perform the necessary maintenance. Brevard County has reportedly mowed the cemeteries before some military holidays in the past few years. No other meaningful upkeep efforts have been made.

##### *Historical Significance*

Pinecrest is historically significant for Cocoa. Several Cocoa dignitaries have been laid to rest at Pinecrest, including former city elected officials and Emory L. Bennett, a Congressional Medal of Honor Recipient of the Korean War. Therefore, the City Council of Cocoa claims that the preservation of Pinecrest promotes historical interests.

##### *Annexation Measures*

The city is authorized to take necessary and appropriate action to provide for the maintenance and security of any abandoned cemetery within its municipal jurisdiction.<sup>1</sup> Since the cemeteries are located outside the city's boundaries, the city does not have authority to enter and maintain the properties. However, annexing the cemeteries would allow the city to manage them.

The statutory provisions for voluntary annexation of an unincorporated area of a county contiguous to a municipality require that the owners petition the municipality. As the known owners are dissolved and defunct, and no new owners are ascertainable, voluntary annexation is not possible.

The city maintains that the best alternative to ensure the proper care for the cemeteries is by legislatively annexing them into Cocoa's municipal boundaries so that the city may exercise jurisdictional authority.<sup>2</sup> To that end, the City Council adopted a resolution<sup>3</sup> outlining their intent and terms of the undertaking.

The city intends to maintain and secure the cemeteries, and the city's public works director estimated that the city will spend approximately \$7,000 annually to provide maintenance and security.

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<sup>1</sup> Section 497.284, F.S.

<sup>2</sup> Section 497.284, F.S.

<sup>3</sup> Resolution 2013-119, City of Cocoa, Florida, November 12, 2013.

Additionally, some capital improvements – such as paving the failing roadways within the cemeteries – may eventually be required. The repaving is estimated to cost \$20,000.

### *Terms of the Resolution*

The resolution provides, in pertinent part, the following:

- The city invokes the statutory authority<sup>4</sup> to provide maintenance and security of the cemeteries.
- The city must use public funds for such maintenance and security.
- The city must maintain and secure the cemeteries to the extent necessary to reasonably maintain the health, safety, and welfare of the community.
- Maintenance works to be undertaken by the city include, but are not limited to, lawn care, landscaping, lights and maintenance of all roads, sidewalks, fences, private plots, and monuments and other markers, which are not otherwise properly maintained.
- There is no ongoing duty or obligation created on behalf of the city to provide these services in perpetuity.<sup>5</sup>
- The city incurs no civil liability or penalties of any type for damages to property at the cemeteries.<sup>6</sup>

All of these terms are dependent upon the successful annexation of the cemeteries into the municipal jurisdictional limits of the city by the Legislature during the 2014 Legislative Session.

### Municipal Annexation Law in Florida

The Florida 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.”<sup>7</sup> This provision authorizes the Legislature to annex unincorporated property into a municipality by special act. It also authorizes the Legislature to establish procedures in general law for the annexation of property.

#### *Statutory Annexation*

Pursuant to this authority, the Legislature established local annexation procedures by general law in 1974, with the enactment of the “Municipal Annexation or Contraction Act.”<sup>8</sup> This Act provides for involuntary and voluntary annexation measures that can be undertaken by cities without passage of a special act. Involuntary annexation procedures require, *inter alia*, consent of the owners of 50 percent of the land to be annexed.<sup>9</sup> Voluntary annexation procedures require, *inter alia*, that the owners of the unincorporated real property to be annexed petition for annexation.<sup>10</sup>

#### *Special Act Annexation*

The Florida Constitution also authorizes the Legislature to annex unincorporated property into a municipality by special act. There are no additional requirements placed on legislative annexations. As the owners of the property to be annexed are unascertainable, neither the involuntary nor voluntary annexation statutory procedures are workable options for the city to acquire the cemeteries. Therefore, annexation by special act is the only remaining method for the city to pursue.

### The Florida Funeral, Cemetery, and Consumer Services Act

With respect to cemeteries, “care and maintenance” are defined as “the perpetual process of keeping a cemetery and its lots, graves, grounds, landscaping, roads, paths, parking lots, fences, mausoleums, columbaria, vaults, crypts, utilities, and other improvements, structures, and embellishments in a well-

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<sup>4</sup> Section 497.284, F.S.

<sup>5</sup> Section 497.284(1), F.S.

<sup>6</sup> Section 497.284(2), F.S.

<sup>7</sup> Article VIII, section 2(c), Florida Constitution.

<sup>8</sup> Chapter 171, F.S.

<sup>9</sup> Section 171.0413, F.S.

<sup>10</sup> Section 171.044, F.S.

cared-for and dignified condition, so that the cemetery does not become a nuisance or place of reproach and desolation in the community.” This process may include, but is not limited to, “mowing the grass at reasonable intervals; raking and cleaning the grave spaces and adjacent areas; pruning of shrubs and trees; suppression of weeds and exotic flora; and maintenance, upkeep, and repair of drains, water lines, roads, buildings, and other improvements.” Specifically excluded from the definition are new grave construction and development and the public sale of interment structures.<sup>11</sup>

A municipality or county may maintain and secure abandoned cemeteries within its jurisdictional boundaries, by public funds or solicited private funds, without incurring any ongoing obligation or duty to provide for the continuous security and maintenance of the cemetery.<sup>12</sup> A liability shield protects the municipality or county from civil liability for property damage occurring to such cemeteries by good faith maintenance or security measures.<sup>13</sup>

### **Effect of Proposed Changes**

The bill annexes the Pinecrest Cemetery and the Evergreen Memorial Park to the City of Cocoa and provides that the city has all municipal powers and authority over these properties as provided by law.

#### **B. SECTION DIRECTORY:**

- Section 1: Provides the legal descriptions of the Pinecrest Cemetery and the Evergreen Memorial Park.
- Section 2: Provides for the annexation of the Pinecrest Cemetery and the Evergreen Memorial Park by the City of Cocoa.
- Section 3: Provides an effective date.

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

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 5, 2014

WHERE? The *Florida Today*, a daily newspaper published in Brevard County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN? N/A

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

## **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

None.

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<sup>11</sup> Section 497.005(9), F.S.

<sup>12</sup> Section 497.284(1), F.S.

<sup>13</sup> Section 497.284(2), F.S.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.