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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS**

BILL #: HB 2025 (PCB LGVA 02-04)

RELATING TO: Annexations

SPONSOR(S): Committee on Local Government and Veterans Affairs; Representative(s) Ritter and Sorensen

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 11 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill provides for an alternative method of accomplishing municipal annexation in qualifying counties.

The bill requires qualifying counties to establish a comprehensive plan for annexing all unincorporated, undeveloped and developable areas into municipalities by a certain date, in consultation with the legislative delegation and the municipalities.

The bill requires qualifying counties to adopt ordinances causing the annexations of all unincorporated, undeveloped and developable areas into municipalities by a date certain. The bill prohibits an annexation that would result in the receiving municipality increasing its population by more than 30 percent unless such municipality approves the annexation by resolution.

The bill provides procedures and criteria for the comprehensive annexation plan and authorizes the county to call special elections to determine which municipality will receive a given area in certain circumstances.

The bill prohibits the annexation of regional facilities without the consent of both the county and the annexing municipality.

Fiscal impacts of this bill on local governments in affected counties are indeterminate at this time. There are no fiscal impacts on the state budget.

The Committee on Local Government & Veterans Affairs, at its meeting on March 18, 2002, adopted a "strike all" amendment to the bill. **(See, s. VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES)**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Annexation

Constitutional/Statutory Provisions

Section 2(c), article VIII of the State Constitution 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 by local action.

The Legislature established local annexation procedures by general law in 1974, with the enactment of chapter 171, Florida Statutes. Chapter 171, Florida Statutes, named the "Municipal Annexation or Contraction Act," describes the ways that property can be annexed or de-annexed by cities without passage of an act by the Legislature. There are two types of annexations in Florida, voluntary and involuntary. With voluntary annexations, all property owners in the area proposed for annexation formally seek the annexation by petition. For an involuntary annexation to occur, at least a majority of the electors in the area proposed for annexation must vote in favor of the annexation. In addition, for the annexation to be valid under Chapter 171, Florida Statutes, the annexation must take place within the boundaries of a single county.

There is a twofold purpose of the Florida annexation laws: 1) to set forth local annexation/contraction procedures, and 2) to establish prerequisites for achieving the legislative goals of sound urban development, uniform legislative standards, and efficient provision of urban services.

Statutory Requirements That Must Be Met Before Annexation May Occur

Before local annexation procedures may begin, the governing body of the annexing municipality must prepare a report containing the city's plans for providing urban services to the proposed 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, 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:

- The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality. This means that a substantial part of the boundary of the area

to be annexed has a common boundary with the municipality. The specified exceptions are where the area is separated from the city's boundary by a publicly owned county park, right-of-way, or body of water.

- The area to be annexed must be reasonably compact.
- No part of the area to be annexed may fall within the boundary of another municipality.
- The majority of the land to be annexed must be developed for urban purposes. Urban purposes are defined as:
 - Having a resident population of at least two persons per acre;
 - If 60 percent of the subdivided lots are one acre or less, having a density of one person (resident) per acre;
 - Having at least 60 percent of the subdivided lots used for urban purposes; or
 - Having at least 60 percent of the total urban residential acreage divided into lots of 5 acres or less.
- 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.

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.

Types of Annexations

Voluntary Annexation

If the property owners of a particular unincorporated area desire annexation into a contiguous municipality, they can initiate voluntary annexation proceedings. The following procedures govern voluntary annexations in every county, except for those counties with charters providing an exclusive method for municipal annexation:

- Submission to the municipal governing body of a petition seeking annexation, signed by all property owners in the area proposed to be annexed.
- Adoption of an ordinance by the governing body of the annexing municipality to annex the property after publication of notice at least once a week for 2 consecutive weeks, setting forth the proposed ordinance in full.

In addition, the annexation must not create enclaves. 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.

Upon publishing notice of the ordinance, the governing body of the municipality must provide a copy to the board of county commissioners of the county where the municipality is located.

Involuntary Annexations

A municipality may annex property where the property owners have not petitioned for annexation pursuant to section 171.0413, Florida Statutes. This process is called involuntary annexation. In general, the requirements for an involuntary annexation are:

- The adoption of an annexation ordinance of a "reasonably compact" area by the annexing municipality's governing body.
- Prior to the adoption of an annexation ordinance, the governing body of the municipality must hold at least two advertised public hearings, with the first meeting being held on a weekday at least seven days after the first advertisement and the second meeting being held on a weekday at least five days after the first advertisement. (This new requirement was passed by the 1999 Legislature).
- Submission of the ordinance to a vote of the registered electors of the area proposed to be annexed once the governing body has adopted the ordinance. The registered electors of the annexing municipality may vote on the annexation if the governing body chooses to submit it to a vote. However, this vote is not required.

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. There is no requirement that the electors in the municipality approve an annexation ordinance regardless of the cumulative effect of such annexation.

If there is a majority vote in favor of annexation in the area proposed to be annexed, the area becomes a part of the city. If there is no majority vote, that area cannot be made the subject of another annexation proposal for two years from the date of the referendum.

Annexation of Enclaves

With the passage of chapter 93-206, Laws of Florida, (now found in section 171.046, Florida Statutes), the Legislature recognized that enclaves can create significant problems in planning, growth management, and service delivery. 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.

In 1993, the Legislature recognized that enclaves can create significant problems in planning, growth management, and service delivery. The intent of the legislation was to make it easier to eliminate enclaves of small land areas. A separate process for annexing enclaves of 10 acres or less was created. Using this process, a municipality may annex an enclave by interlocal agreement with the county having jurisdiction of the enclave. It may also annex an enclave with fewer than 25 registered voters by municipal ordinance, when the annexation is approved in a referendum by at least 60 percent of the voters in the enclave. These procedures do not apply to undeveloped or unimproved real property.

Annexation by Charter

Also provided in subsection 171.044(4), Florida Statutes, voluntary annexation procedures do not apply to municipalities and counties with charters that provide for an exclusive method of municipal annexation.

Effect of Annexation on an Area

Immediately upon being annexed, an area becomes subject to all laws, ordinances, and regulations applicable to other city residents. An exception is that applicable county land use and zoning regulations continue in effect until the annexing municipality adopts a comprehensive plan amendment and rezones the area, pursuant to section 171.062(2), Florida Statutes. Also, the county land use plan, and zoning or subdivision regulations of the unincorporated area remain in effect (after the annexation has been approved) until the annexing municipality adopts a local comprehensive plan amendment to include the new area. In contractions, excluded territory is immediately subject to laws, ordinances, and regulations in effect in the county.

Affected persons who believe they will suffer material injury because of the failure of the city to comply with annexation or contraction laws as they apply 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 the appeal is won, the petitioner is entitled to reasonable costs and attorney's fees.

Finally, 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.

Solid Waste Collection

Florida law provides for continuing any exclusive franchised solid waste collection services that have been in effect for six months or longer. They are to continue to the newly annexed area for either 5 years or for the remainder of the franchise term, whichever is shorter. The municipality may allow the franchisee to continue servicing the area under the present franchise agreements, or the city may terminate the agreements if the franchisee does not agree to comply with certain statutory provisions relating to the quality of services or the costs of providing such services. In 2000, the Legislature adopted a provision which provides that a solid waste collection contract in effect at least 6 months prior to the annexation, may continue to provide services to the annexed area for 5 years or the remainder of the contract, whichever is shorter. The solid waste collection provider must provide written evidence of the contract duration, excluding any automatic renewals or "ever-green" provisions, within a reasonable time of a written request. This does not apply to single-family residential properties in specified enclaves.

Annexation by Special Act

Subsection 171.044(4), Florida Statutes, provides that the procedures for voluntary annexation shall be "supplemental to any other procedure provided by general law or special law." There are a number of special annexation laws that exist in Florida, and hence special laws should always be checked prior to beginning annexation procedures. The Legislature may allow municipalities to annex property by passage of a special act and are empowered to waive any and all statutory requirements. Several counties have come to the Legislature recently to seek annexation of unincorporated areas. Among those counties, Broward County is one whose Legislative Delegation sponsors several local bills each year to accomplish some annexations.

Provisions of this bill will allow Broward County, and other qualifying counties, to achieve annexation of unincorporated areas by an alternative method.

C. EFFECT OF PROPOSED CHANGES:

This bill provides for an alternative method of accomplishing municipal annexations by adoption of ordinances in qualifying counties.

The bill does not apply to any county chartered pursuant to s. 6(e), Art. VIII of the State Constitution which provides:

CONSOLIDATION AND HOME RULE. Article VIII, Sections 19, 210, 311 and 424, of the Constitution of 1885, as amended, shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article. All provisions of the Metropolitan Dade County Home Rule Charter, heretofore or hereafter adopted by the electors of Dade County pursuant to Article VIII, Section 11, of the Constitution of 1885, as amended, shall be valid, and any amendments to such charter shall be valid; provided that the said provisions of such charter and the said amendments thereto are authorized under said Article VIII, Section 11, of the Constitution of 1885, as amended.

The bill requires qualifying counties to present a comprehensive plan, in consultation with the legislative delegation and the municipalities, consistent with the provisions of s. 2, Art. I of the State Constitution, for annexing all unincorporated, undeveloped and developable areas into municipalities by a certain date. Section 2, Art. I of the State Constitution provides:

Basic rights.--All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

The bill requires qualifying counties, pursuant to procedures and criteria within the bill, to adopt one or more ordinances causing the annexation of all unincorporated, undeveloped and developable areas into municipalities by a certain date.

Among the criteria is a requirement that no annexations, as provided for in this bill, shall result in a municipality exceeding 30 percent of its population without the consent, by resolution, of the municipality.

The bill provides authority for the county to call special elections to determine which municipality will receive a given area in certain instances.

The bill prohibits the annexation of regional facilities without the consent of both the county and the annexing municipality.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides:

- (1) The bill applies to any chartered county having both: 1) a population of 1.5 million or more as determined in the last decennial census; and 2) 10 percent or less of its developed or developable lands within unincorporated areas. Provides further that the bill does not apply to any county chartered pursuant to s. 6(e), Art. VIII of the State Constitution.
- (2) Requires such a county to present a comprehensive plan, in consultation with the legislative delegation and the municipalities, for the annexation of all remaining undeveloped and developable unincorporated areas within the county into municipalities consistent with the provisions of s. 2, Art. I of the State Constitution. Such plan shall be presented no later than November 30 of the second year following the decennial census. Additionally, no later than September 15 of the fifth year following the decennial census, the board of county commissioners of such a county shall, by one or more ordinances, cause the annexation of all remaining undeveloped or developable areas into municipalities consistent with the plan. The ordinances shall legally describe the areas to be annexed and shall provide an effective date for such annexation. The bill provides that the ordinance affects both the annexed and the annexing areas regardless of Charter provisions or general or special law to the contrary.
- (3) Provides that the annexed area(s) shall be considered a part of the annexing municipality on the effective date of the annexation. Requires that the annexation ordinances be filed with the Department of State by the county within 30 days of the ordinance's adoption.
- (4) Provides definitions.
- (5) Provides procedure for the establishment of the annexation plan.
 - (a) The county may provide staff or professional services for the preparation and implementation of the annexation plan.
 - (b) The county shall hold at least two public meetings prior to adoption of the annexation ordinances.
 - (c) The public hearings shall be noticed by publication at least 7 days in advance of each meeting in a newspaper of general circulation in the county.
 - (d) The plan shall include recommendations, submitted to each area to be annexed for the extension of urban services on substantially the same basis and in the same manner as such services are provided within the rest of the annexing municipality prior to annexation.
- (6) Provides criteria for determining the annexation of unincorporated lands within the county as follows:
 - (a) The total area to be annexed must be contiguous to the municipality's boundaries at the time the annexation proceeding begins; must maintain compactness; and must not be included

within the boundary of another incorporated municipality. Additionally, no area shall be annexed by a municipality that has the affect, in conjunction with all other annexations approved pursuant to this bill, of increasing the population of the municipality by more than 30 percent, unless the annexing municipality has consented by resolution.

- (b) Part of all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as either:
1. Having a total resident population equal to at least two persons per acre of land included within its boundaries; or
 2. Having a total resident population equal to at least one person for each acre of land included within its boundaries and which is subdivided into lots and tracts so that at least 60 percent of the total number of lots and tracts are one acre or less in size; or
 3. Having been so developed that at least 60 percent of the total number of lots and tracts in the area at the time of annexation are used for urban purposes, and so that at least 60 percent of the total acreage (not counting the acreage used at the time of annexation for nonresidential urban purposes) consist of lots and tracts 5 acres or less in size.
- (c) Provides that in addition to the area developed for urban purposes, the board of county commissioners may include in the area to be annexed any area which does not meet the requirements of the bill if such area meets either of the following:
1. The area lies between the municipal boundary and an area developed for urban purposes, such that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services through such sparsely populated area; or
 2. At least 60 percent of the area's external boundary is adjacent to any combination of the municipal boundary and the boundary of an area developed for urban purposes.
- (7) Provides that where an unincorporated area meets the criteria in s. 6 of the bill, and is contiguous to more than one municipality, the qualifying county is authorized to hold a binding referendum to determine into which municipality the unincorporated area shall be annexed. A special election of the qualified electors in the unincorporated area may be called by the board of county commissioners. The names of some or all contiguous municipalities shall appear on said ballot. The municipality receiving the majority vote shall be the annexing municipality. Such annexations shall be effective pursuant to s. 3 of the bill on a date determined by the county annexation plan, but not later than September 15 of the fourth year following establishment of the annexation plan.
- (8) Prohibits the annexation of a regional facility without the consent of both the county and the annexing municipality.
- (9) Provides that the bill takes precedence over all prior existing laws.

Section 2. Provides for an effective date of upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

It is difficult to anticipate the fiscal effects of the bill on county or municipal revenues until the annexation plan is presented.

2. Expenditures:

It is difficult to anticipate the fiscal effects effect of the bill on county or municipal expenditures until the annexation plan is presented.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Indeterminate.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Indeterminate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Indeterminate.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Section 2(c), Art. VIII of the State Constitution provides as follows:

Municipal 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 bill creates general law providing an alternative method of annexation for qualifying counties and thereby appears to comply with this constitutional provision.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Local Government & Veteran Affairs at its meeting on March 18, 2002, adopted a strike all amendment to PCB LGVA 02-04. The amendment provides the following:

- Limits application of this bill to chartered counties.
- Requires the presentation of a comprehensive plan of annexation and adds municipalities to those who must consult with the county.
- Requires enactment of annexation ordinances before September 15 of the fifth year following the decennial census.
- Corrects a drafting error in s. (6)(a) of the PCB as filed to correctly provide that no "area" shall be annexed rather than no "municipality," as annexation applies only to unincorporated areas.
- Allows an annexation to exceed 30 percent of the annexing municipality's population when the annexing municipality approves such annexation by resolution.
- Adds a new s. (7) to authorize the county to provide for a binding referendum in certain instances.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Andrew Grayson

Joan Highsmith-Smith