

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1359 **Broward County**

SPONSOR(S): Sobel

Broward County

TIED BILLS:

IDEN./SIM. BILLS: SB 2744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	6 Y, 0 N	Nelson	Hamby
2) Finance & Tax Committee		Monroe	Diez-Arguelles
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1359 provides for the annexation of unincorporated Broward County property into the City of Parkland without a referendum. The bill also provides for the annexation of the County Acres Area by either the City of Parkland or the City of Coral Springs, contingent upon referendum.

According to the Economic Impact Statement, it will cost an estimated \$90,400 to provide municipal-level services within the Country Acres neighborhood.

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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

This bill will transfer certain responsibilities relating to the annexed property from Broward County to the City of Parkland, and—if annexation is elected—to the Town of Coral Springs.

Ensure Lower Taxes

The Economic Impact Statement indicates that the effect of the bill on the individual taxpayers in the annexed area is unknown.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Constitutional/Statutory Provisions Relating to Annexation¹

Article VIII, s.2 (c), 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. 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.” This act describes the ways that property can be annexed or de-annexed by cities without legislative action. The purpose of the act is to set forth procedures for adjusting the boundaries of municipalities through annexations or contractions of corporate limits, and criteria for determining when annexations or contractions may take place so as to:

- ensure sound urban development and accommodation to growth;
- establish uniform legislative standards throughout the state for the adjustment of municipal boundaries;
- ensure the efficient provision of urban services to areas that become urban in character; and
- ensure that areas are not annexed unless municipal services can be provided to those areas.

Statutory Requirements That Must Be Met Before Annexation

Before local annexation procedures may begin, 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:

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. For an annexation to be valid under ch. 171, F. S., the annexation must take place within the boundaries of a single county.

- The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality.²
- 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.³
- 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.

Types of Annexations

Voluntary Annexation

If the property owners of an 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 procedure 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. 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.

Involuntary Annexations

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

²This 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 a case in which an area is separated from the city's boundary by a publicly owned county park, right-of-way or body of water.

³An area developed for urban purposes is defined as an area which meets any one of the following standards: a resident population of at least two persons per acre; 60 percent of the subdivided lots are one acre or less, and have a density of one person (resident) per acre; or at least 60 percent of the subdivided lots are used for urban purposes, and at least 60 percent of the total urban residential acreage is divided into lots of five acres or less.

- 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;⁴ and
- 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.

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.

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.

Annexation of Enclaves

With the passage of ch. 93-206, L.O.F.,⁵ the Legislature recognized that enclaves can create significant problems in planning, growth management and service delivery, and declared that it was the policy of the state to eliminate enclaves. This legislation provided a separate process for annexing enclaves of 10 acres or less. Using this process, a municipality may annex an enclave by interlocal agreement with the county having jurisdiction of the enclave. It also may 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.

Effect of Annexation on an Area

Upon the effective date of an annexation, the area becomes subject to all laws, ordinances and regulations applicable to other city residents. 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.

Affected persons who believe they will suffer material injury because of the failure of the 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.

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.

Broward County Annexations

⁴ This new requirement was passed by the 1999 Legislature.

⁵ Section 171.046, F.S.

Broward County is located on Florida's South Atlantic coast and consists of nearly 1,200 square miles and a population of approximately 1.3 million residents. Broward County currently contains 31 municipalities, the majority of which achieved their current corporate boundaries through a multitude of annexations.

In 1996, in cooperation with the Broward County Commission, the Broward County Legislative Delegation created the Ad Hoc Committee on Annexation Policy. The delegation charged this committee with the responsibility of developing and recommending policy to the Broward Legislative Delegation regarding the terms under which it would consider future annexations. The committee recommended that the annexation of all the remaining unincorporated areas of Broward County should be encouraged by the year 2010, and that unincorporated areas remaining after 2010 would be subject to annexation by the Florida Legislature. (In 2001, this goal was changed to year 2005.)

The 1996 Florida Legislature adopted a special act (ch. 96-542, L.O.F, as amended by ch. 99-447, L.O.F.), which requires that any annexation of unincorporated property within Broward County proposed to be accomplished pursuant to general law 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.

Annexations may also occur by special act of the Legislature. The Broward County Legislative Delegation sponsors several local annexation bills each year.

2001 Broward County Legislative Delegation's Ad Hoc Committee on Annexation

During the 2001 Legislative Session, House Bill 907 died in the House Committee on State Administration, and Senate Bill 2338 died in the Senate Committee on Rules and Calendar. These bills required the City of Pembroke Park, located in Broward County with a population of approximately 5,000 people, to annex unincorporated areas in South Central Broward County, including the areas of Carver Ranches, Miami Gardens, Utopia and Lake Forest. These areas have a population of approximately 15,000 people and, if added to Pembroke Park, would have quadrupled the city's population.

As a result of the opposition of the City of Pembroke Park to these annexation bills and the eventual disposition of the bills, the Broward County Legislative Delegation initiated a review of the remaining Broward annexations by establishing the 2001 Ad Hoc Committee on Annexation. Their stated mission was "...to facilitate the fair and comprehensive continuation of the 1995 Annexation Policy of Broward County with special consideration being given to each neighborhood and the responsibilities assumed by the annexing municipality with the cooperation of Broward County."

The Committee met six times during the summer of 2001, and agreed to the following 18 guidelines:

1. The annexation of all unincorporated areas in Broward County should take place by October 1, 2005. Any areas left unincorporated after that date would be subject to required annexation by the Florida Legislature.
2. All Broward county annexation bills should be combined into one comprehensive or omnibus bill in order to streamline the process.
3. An official unincorporated partnership committee would be established to identify community projects or issues of interest that could be collaboratively achieved. These projects or issues would become part of any interlocal agreement prior to annexation. This committee would be responsible for communications between the annexing city and the unincorporated area.
4. The geographic integrity, character and unique lifestyle of the different neighborhoods should be preserved.

5. Residents of areas being proposed for annexation should be informed of any new taxes or fees which would be imposed by the annexing municipality.
6. Cities should be creative in providing incentives to unincorporated areas to encourage annexation.
7. Unincorporated area residents should be given the right whenever possible and reasonable to choose which municipality to join, and the right to vote on annexation by referendum.
8. The practice of dual referenda should be discontinued.
9. Existing regional county facilities should remain unincorporated, unless the county and municipality in question agree to annexation.
10. A transition plan would be established to assist those county employees displaced by reason of annexation.
11. Infrastructure projects should be completed by the county as scheduled in the county's "Five Year Capital Improvement Program."
12. The county and prospecting annexing municipalities would execute interlocal agreements in regards to incomplete county infrastructure projects.
13. The practice of "cherry-picking" would end.⁶
14. Commercial properties should not be stripped from neighborhoods from which they logically or geographically belong.
15. Nothing should preclude the use of deannexation, consolidation or incorporation as a means to ameliorate past actions.
16. All future legislative bills could include phase-in dates for infrastructure improvements and the communities to be annexed.
17. Whenever possible, annexation should achieve revenue neutrality for the annexing municipality.
18. With respect to municipal protocol, all correspondence regarding annexation would be directed to the mayor, elected officials and city managers.

The Broward County Legislative Delegation approved these recommendations/guidelines at their final public hearing held on August 23, 2001. As a result, the delegation came to the 2002 Legislature with a request to consider either an omnibus bill (HB 1027) or individual "stand-alone" bills addressing each individual annexation separately. The omnibus bill died in committee.

PROPOSED CHANGES

The bill provides a legal description of the area to be annexed into the City of Parkland effective September 15, 2006, without a referendum. It also provides a legal description for the Country Acres Area, and requires that the Broward County Board of County Commissioners schedule, at their expense, an election on March 14, 2006⁷, the subject of which is the annexation of the Country Acres Area into the City of Coral Springs or the City of Parkland. Registered voters residing in the area at issue may choose to be annexed into either city effective September 15, 2006, by a majority vote. Mail ballots may not be used in the election, although absentee ballots are permitted.

The bill further requires that an interlocal agreement be executed between the annexing municipality and Broward County prior to the date of annexation. This agreement must address infrastructure improvement projects and include a financially feasible plan for transitioning county services, buildings, infrastructure, waterways and employees.

Additionally, the bill provides that:

- residents of the annexed area will be considered to have met residency requirements for municipal office candidacy subsequent to the annexation;
- the act will not affect or abrogate the rights of parties to any contracts which are in effect prior to the annexation;

⁶ A city engages in cherry-picking when it seeks to annex only areas that will produce a positive tax cash flow.

⁷ Municipal elections in Broward County are scheduled on this date.

- the annexing municipality is prohibited from prohibiting any use or structure legally in existence in the annexed area at the time of the annexation as long as the use continues and is not voluntarily abandoned.
- no change in land use designation or zoning may occur within the limits of the annexed land between the effective date of the act (upon becoming law) and the effective date of the annexation (September 15, 2006);
- upon annexation into the City of Coral Springs, the Country Acres Area will be considered a “preservation area⁸,” and all Broward County land use and zoning classifications applicable to the area on the effective date of the act will be adopted by the city; all proposed municipal enactments that may effect a change in the Country Acres Area must be approved by a supermajority of the city’s governing body; all applications for zoning changes will require written notification to all area residents; any application for a change of zoning must first come before a “preservation board” made up of five members residing in the area who will be appointed every two years by the residents and are responsible for issuing recommendations on zoning changes;
- if the Country Acres Area is annexed into the City of Parkland, the city shall adopt and enforce land use and zoning rules and regulations that preserve the rural lifestyle of the area; and
- roads and right-of-ways within the Country Acres Area will be transferred from Broward County to the annexing city on the effective date of the annexation, and private roads within the area will remain private subject to right-of-entry by vehicles providing municipal services.

Country Acres (also known as the “Godfrey Road Area”) consists of approximately 157 acres, with a year 2000 population of 172. Currently, Country Acres receives its police services from the Broward County Sheriff’s Office, its fire and EMS services from the Broward County Fire and Rescue, its drainage services from the Pinetree Water Control District, its water from Coral Springs, and its garbage services from a private company.

The area to be annexed without a referendum consists of seven sections of property. The Broward Delegation has submitted documentation which provides the following:

- 1) Area #1 is a Florida Power and Light-owned enclave. The company has not expressed any opposition to the bill.
- 2) Area #2 is owned by an individual who “realized that annexation into Parkland was inevitable and stated that he did not have any objections.”
- 3) Area #3 is owned by a family whose representative stated “that she and her family were excited at the prospect of annexation of their property into Parkland and were in favor of such.”
- 4) Area #4 is owned by the same individual who owns Area #2.
- 5) Area #5 is the East Marsh Nursery, and the comments for Area #3, above, apply.
- 6) Area #6 is a right of way adjacent to the Sawgrass Expressway and is owned by the Florida Department of Transportation. The Department does not take a position regarding annexation.
- 7) Area #7 is owned by Broward County and it supports the annexation.

No demographic information has been provided on these areas.

C. SECTION DIRECTORY:

Section 1: Provides a legal description of an area to be annexed into the City of Parkland.

⁸ The Delegation cites the sixth point in the “Final Report of the Ad Hoc Committee on Annexation,” a synopsis of which begins on page five of this analysis, as follows: Cities should be creative in providing incentives and inducements to unincorporated areas to encourage them to be annexed, for example: charter amendments to preserve lifestyle, or to guarantee city council representation (where population increase would warrant it); phased-in ad valorem tax adjustments (where significant differences exist), and; infrastructure or service improvements (and the county should be encouraged to participate with or assist the city wherever possible). Many neighborhoods fear that their lifestyle and present uses would be adversely affected by annexation. Through negotiation and the concurrence of neighborhood representatives and municipalities, the delegation designed a creative method of protecting the neighborhood which is identified as a “preservation area.”

Section 2: Provides a legal description for the Country Acres Area.

Section 3: Provides for an election.

Section 4: Provides an effective date for the annexation.

Section 5: Provides for an interlocal agreement between the city and the county.

Section 6: Provides that annexed residents will meet residency requirements for municipal candidacy.

Section 7: Provides that the act will not affect the rights of parties to prior contracts.

Section 8: Provides for sanction of current uses and structures.

Section 9: Provides for continuation of land use designations and zoning.

Section 10: Provides for preservation of community's rural character.

Section 11: Provides for transfer of public roads and rights-of-way.

Section 12: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 20, 2005

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

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? March 14, 2006

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

According to the Economic Impact Statement, it is estimated that it will cost \$90,400 to provide municipal-level services within the Country Acres neighborhood in FY 2005 dollars. It is anticipated that the city will raise revenues to pay these services through the following: ad valorem taxes, sales taxes, state revenue sharing, non-ad valorem assessments, local option gas taxes, franchise fees, utility taxes, communications services taxes, mobile home license fees, beverage taxes, occupation license fees, permit fees, fire rescue fees, and other miscellaneous fees.

The Statement indicates that the proposed annexation will benefit both the annexing city and the county:

- The City of Parkland and/or the City of Coral Springs will benefit from increased revenues.
- Broward County will benefit by reducing its responsibility for municipal-level services in order to focus on regional-level services.

The impact of this annexation on the individual taxpayer is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Language in s. 10 of the bill which refers to any and all proposed municipal enactments that “may effect a change” in the Country Acres Area is ambiguous, as is language which would require the City of Parkland to adopt and enforce land use and zoning rules and regulations that “preserve the rural lifestyle” of the Country Acres Area. Also, the designation of Country Acres as a “preservation area” may be subject to interpretation. While the bill calls for a board to be “appointed” by the residents of Country Acres, it fails to describe the manner in which these appointments would be made.

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 of section 8. 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 9 prohibits a county from changing land use designations or zoning in the area proposed for annexation after the effective date of the act.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.