HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 425 Municipal Annexation
SPONSOR(S): Government Efficiency & Accountability Council and Long
TIED BILLS: **IDEN./SIM. BILLS:** SB 572

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Urban & Local Affairs	7 Y, 0 N	Nelson	Kearney
2) Government Efficiency & Accountability Council	14 Y, 0 N, As CS	Nelson	Cooper
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill amends a statutory involuntary annexation procedure by excluding state-owned land from provisions which requires the consent of the owners of more than 50 percent of the land where more than 70 percent of the property in an area proposed for annexation is owned by individuals, corporations or legal entities which are not registered electors. The application of the bill is limited to a county that has a population greater than 500,000, that contains more than 20 municipalities, and that contains at least one municipality having a population greater than 250,000. Thus, the consent of the Board of Trustees of the Internal Improvement Trust Fund (the Governor and Cabinet) would not be required with regard to the annexation of any state-owned land in such an instance.

The fiscal impact of the bill is indeterminate. While the State is immune from taxation, it could experience higher costs associated with certain services (e.g., utilities) depending on whether its property remains unincorporated territory or is included within a municipality.

The bill has an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty

If the State is not considered in the consent process for involuntary annexations, private owners of the unincorporated areas under consideration will have more control over the annexation of their property.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Constitutional/Statutory Provisions Relating to Annexation[1]

Section 2 (c), 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. 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 way in which property may 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 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.:

[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. See, s. 171.045, F.S.

- 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.[3]
- 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.[4]
- 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.[5]

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.

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.[6]

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[2] 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.

[3] 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.

[4] 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.

[5] See, s. 171.061, F.S.

[6] Section 171.031(13), F.S.

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; [7] 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.[8]

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 can not 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.[9]

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[7] This new requirement was passed by the 1999 Legislature.

[8] 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.

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.[10]

State-Owned Land

Chapter 253, F.S., is entitled "State Lands." Section 253.001, F.S., establishes that pursuant to the provisions of s. 7, Art. II, and s. 11, Art. X of the State Constitution, all lands held in the name of the Board of Trustees of the Internal Improvement Trust Fund are held in trust for the use and benefit of the people of the State of Florida.

The Governor and the Cabinet sit as the Board of Trustees of the Internal Improvement Trust Fund. Pursuant to s. 253.03, F.S., the Board is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection and disposition of all lands owned by, or which may hereafter inure to, the State or any of its agencies, departments, boards or commissions, excluding certain properties. The Division of State Lands of the Department of Environmental Protection performs staff duties and functions related to the acquisition, administration and disposition of those lands in which title is vested in the Board. See, s. 253.002(1), F.S.

EFFECT OF PROPOSED CHANGES

This bill amends the involuntary annexation procedure contained in s. 171.0413, F.S., by excluding state-owned land from the consent processes provided in that section in a county that has a population greater than 500,000, that contains more than 20 municipalities, and that contains at least one municipality having a population greater than 250,000. Thus, it prevents the Board of Trustees of the Internal Improvement Trust Fund from participating in these annexation decisions.

In some instances, the Board currently does not have the ability to participate in annexation decisions regarding land that it owns as it is not a registered elector who can vote on a proposed ordinance. However, pursuant to s. 171.0413(5), F.S., if more than 70 percent of an area proposed to be annexed is owned by entities which are not registered electors of the area, a requirement is triggered which calls for the consent of the owners of more than 50 percent of the land in such area prior to the referendum. This provision allows the Board to participate in the decision making process in instances where it is a land owner in an area proposed for annexation. Section 171.0413(6), F.S., also allows the Board to take part in the decision-making process if the area proposed for annexation has no registered electors by requiring consent from the owners of more than 50 percent of the parcels of land in the area.

The Department of Environmental Protection has indicated that generally the Board is in favor of annexation of state land. However, in instances where the State owns over 50 percent of the land in an area proposed for involuntary annexation under s. 171.0413, F.S., the State's consent assures annexation without regard to the wishes of other landowners. The bill addresses this potential outcome by removing the Board from the consent equation. Under the bill's provisions, these types of annexations would be decided by landowners other than the State.

The bill has an effective date of July 1, 2007.

[9] Section 171.091, F.S.
[10] Section 171.081, F.S.

C. SECTION DIRECTORY:

Section 1: Amends s. 171.0413, F.S., to exclude state-owned land from an annexation procedure in a county with certain populations.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   While the State is immune from taxation, it could experience higher costs associated with certain services (e.g., utilities) depending on whether its property remains unincorporated territory or is included within a municipality.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Unknown.

2. Expenditures:

   Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   This bill restricts its applicability to a county that has a population greater than 500,000, that contains more than 20 municipalities, and that contains at least one municipality having a population greater than 250,000. This language was crafted to apply to Pinellas County. Case law has allowed a legislative classification, in general law, that is based upon population if:

- The classification is open in that it applies to other political subdivisions who may fall within the classification later; and

- The classification is reasonably related to the subject matter, is based on differences that inhere in or are peculiar to the class, and is not arbitrary.

If an act does not satisfy both of these criteria, it is a local act and subject to the constitutional requirements applicable to such, including the notice requirement contained in s. 10 of Art. III of the State Constitution.

See, Lewis v. Mathis, 345 So. 2d 1066 (Fla. 1977) (upholding a population classification scheme that provided greater compensation for judges in more populous counties because the classification was open and the greater responsibilities of judges in counties with more than 40,000 created a sufficient basis for the classification).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

A representative of The Florida Department of Environmental Protection has indicated that, as a matter of policy, the agency opposes this bill. The Board of Trustees represents the citizens of the State of Florida, and this bill would essentially eliminate their right to weigh in on these issues. [11]

D. STATEMENT OF THE SPONSOR

This bill is necessary so that the "tax-paying" and "voting" property owners in unincorporated areas will have more input as to whether or not they want to be a part of a municipality.

Currently, municipalities annex lands by drawing the areas to be annexed to include state-owned land. In instances where the state owns over 50 percent of the land in the area to be annexed, the State's consent assures annexation without regard to what the "voting" property-owners wish. The problem resides in counties like Pinellas where annexation wars between the cities and unincorporated areas are prevalent. By removing the state-owned lands from the equation, "tax-paying" private property-owners in the unincorporated areas will have more control in involuntary annexations, and can decide whether or not they want to be annexed.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

At its meeting on March 14, 2007, the Governmental Efficiency & Accountability Council adopted a substitute amendment. This amendment limits the application of the bill to counties that have populations greater than 500,000, that contain more than 20 municipalities, and that contain at least one municipality having a population greater than 250,000. The analysis has been updated to reflect this substitute amendment.

[11] Telephone conversation with Ryder Rudd, Legislative Affairs, February 15, 2007.