

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 777

City of West Park, Broward County

SPONSOR(S): Porth

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	12 Y, 0 N	Nelson	Hoagland
2)	Economic Development & Community Affairs Policy Council	15 Y, 0 N	Nelson	Tinker
3)	Finance & Tax Council		Wilson	Langston
4)				
5)				

SUMMARY ANALYSIS

This bill provides for the annexation of property in the Town of Pembroke Park by the City of West Park in Broward County. According to the Economic Impact Statement, the costs associated with the annexation will be negligible due to the fact that the city currently provides municipal services to the area.

The bill provides for an effective date of upon becoming law.

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.

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. In 2006, this chapter was expanded to provide an alternative process for annexation that allows counties and municipalities to jointly determine how services are provided to residents and property.³

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.:

- The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality.⁴

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 See, part II of ch. 171, F.S., the “Interlocal Service Boundary Agreement Act.”

⁴ 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.

- The area to be annexed must be reasonably compact.⁵
- 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.⁶
- 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.⁷

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.⁸

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

⁵ 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.

⁶ 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.

⁷ See, s. 171.061, F.S.

⁸ 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. Section 171.031(13), F.S.

days after the first advertisement and the second hearing held on a weekday at least five days after the first advertisement;⁹ 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.¹⁰

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 cannot 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.¹¹

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.¹²

⁹ This new requirement was passed by the 1999 Legislature.

¹⁰ 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.

¹¹ Section 171.091, F.S.

¹² Section 171.081, F.S.

Broward County Annexations

Broward County is located on Florida's South Atlantic coast and consists of nearly 1,200 square miles with a population of approximately 1.8 million residents. Broward County currently contains 31 municipalities, the majority of which achieved their current corporate boundaries through a multitude of annexations.

The 1996 Florida Legislature adopted a special act¹³ which describes Broward County has having "numerous scattered unincorporated pockets which reflect the haphazard manner in which annexation into municipalities has taken place over the years by the application of general annexation laws of the state...." This law requires that any annexation of unincorporated property within Broward County proposed to be accomplished pursuant to ch. 171, F.S., 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.

That same year, in cooperation with the Broward County Board of County Commissioners, the Broward County Legislative Delegation created the "Ad Hoc Committee on Annexation Policy." The delegation charged the committee with the responsibility of developing and recommending policy regarding future annexations. The committee recommended that annexation of all unincorporated areas of Broward County be encouraged to occur by the year 2010, and that any remaining unincorporated areas would be subject to annexation by the Florida Legislature. In 2001, this goal was changed to the year 2005.

The Broward County Legislative Delegation sponsors several local annexation bills each year.

Effect of Proposed Changes

This bill provides for specified property in the Town of Pembroke Park to be annexed by the City of West Park in Broward County. The area at issue, McTyre Park, is 18.4 acres. The park is jointly owned by the State of Florida and the School Board of Miami-Dade County and was operated by Broward County until September 30, 2008, when West Park assumed that responsibility.

Earlier this year, Pembroke Park and West Park entered into an interlocal agreement pursuant to s. 163.01, F.S., "The Florida Interlocal Cooperation Act of 1969," regarding the annexation at issue. Delegation staff has indicated that West Park would like to acquire this property as it is primarily used by the city's residents, and contains buildings that could be renovated for municipal purposes.¹⁴

McTyre Park is used for recreational purposes, and for Broward County and Miami-Dade Schools communications purposes. The park includes a Broward County Public Safety communications tower, another such tower owned by the Miami-Dade County School Board, a walking path, one recreation building, one office building, a parking lot, four gazebos, one playground, a football field, concession stand, four basketball courts and one sand volleyball court.

Presently, the funding for the operations of McTyre Park is shared by the City of West Park (\$100,000), the Town of Pembroke Park (\$30,000) and Broward County (\$40,000). West Park officials have indicated that the city plans to manage the park with reduced staffing, thus decreasing their costs.¹⁵

The bill provides that the area described in the bill will be deemed a part of the City of West Park on September 15, 2009, subject to s. 171.062, F.S., except as provided for in the act. Upon annexation into the City of West Park, the property will be governed by the relevant land use and zoning provisions

¹³ Chapter 96-542, L.O.F., as amended by ch. 99-447, L.O.F.

¹⁴ Conversation with Sandy Harris, Broward Legislative Delegation Executive Director, on March 19, 2009.

¹⁵ March 12, 2009, e-mail from Russell Benford, West Park City Administrator.

of the City of West Park's Code of Ordinances. Any change of the zoning districts or land use designations may only be accomplished by enactment of a supermajority vote of the majority of the full governing body of the City of West Park.

Any use, building or structure that is legally in existence at the time of annexation will not be made a prohibited use by the City of West Park, on the property of such use, for as long as the use continues and is not voluntarily abandoned.

The act further provides that nothing in it shall be construed to affect or abrogate the rights of parties to any contract, whether the contract be between Broward County and a third party, the Town of Pembroke Park and a third party, the City of West Park and a third party, or Miami-Dade Public Schools and a third party, or between nongovernmental entities, that is in effect prior to the effective date of the annexation.

The act provides an effective date of upon becoming a law

B. SECTION DIRECTORY:

Section1: Provides a legal description of the property to be annexed.

Section 2: Provides for annexation of property.

Section 3: Provides for governance.

Section 4: Provides for continuation of rights.

Section 5: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? January 9, 2009

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

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 ☐

The Economic Impact Statement provides that the City of West Park currently provides staffing and administers parks and recreation services at Mctyre Park. It is estimated that the cost for the annexation will be negligible due to the fact that the city currently provides municipal services to the area. West Park is expected to generate \$150,344 in ad valorem taxes and McTyre Park user fees for the purpose of providing municipal services to the proposed annexation area.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

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 contained in Section 3.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES