

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/HB 699 East Lake Tarpon Community, Pinellas County

**SPONSOR(S):** Community & Military Affairs Subcommittee, Nehr

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1892

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	11 Y, 0 N, As CS	Nelson	Hoagland
2) Economic Affairs Committee	17 Y, 0 N	Nelson	Tinker

### SUMMARY ANALYSIS

CS/HB 699 creates a special act relating to the East Lake Tarpon Community in Pinellas County. This bill provides that a municipality may not annex unincorporated territory situated within the defined boundaries of the community after the effective date of the act unless it annexes the entire area, and such is approved by a majority vote of the resident electors. The bill allows a property owner to seek voluntary annexation pursuant to general law procedures.

The bill also describes the boundaries of the community, and provides an effective date of upon becoming law. If passed by the Florida Legislature, the act expires on September 30, 2022.

**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. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Constitutional/Statutory Provisions Relating to Annexation<sup>1</sup>

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.<sup>2</sup> It also authorizes the Legislature to establish procedures in general law for the annexation of property.

The Legislature established 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.<sup>3</sup>

The purpose of the act is to set forth procedures for adjusting the boundaries of municipalities, and to set forth 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.

##### 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.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> See, part II of ch. 171, F.S., the “Interlocal Service Boundary Agreement Act.”

Land cannot be annexed through voluntary annexation when the process results in the creation of an enclave.<sup>4</sup>

### *Involuntary Annexation*

Section 171.0413, F.S., provides a process whereby a municipality may annex contiguous,<sup>5</sup> compact<sup>6</sup> property where the property owner or owners have not petitioned for annexation. 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; 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.<sup>7</sup>

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, 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.

### The East Lake Tarpon Community

The East Lake Tarpon Community is situated in the northeastern area of Pinellas County, and bordered on two sides by the Pasco and Hillsborough county lines. It is a recognized unincorporated community, and one of the largest unincorporated areas in the county, encompassing 18,100 acres. The community boundaries are coterminous with those of the East Lake Tarpon Fire Control District. Community residents are assessed a total real estate millage of 20.1175 mills, which is

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<sup>4</sup> 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.

<sup>5</sup> “Contiguous” means that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality. See, s. 171.031(11), F.S.

<sup>6</sup> “Compactness” means 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. Section 171.031 (12), F.S.

<sup>7</sup> 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.

slightly less than the assessments levied in the neighboring cities of Oldsmar (20.1281 mills) and Tarpon Springs (20.9820 mills).<sup>8</sup>

This area has experienced rapid growth, and currently consists of 100-plus unique communities, with three postal addresses: Oldsmar, Palm Harbor and Tarpon Springs. Most residents reside within deed-restricted communities. In 2007, an American Community Survey determined that the area included a population of 32,683 and 17,985 housing units. There are few businesses and numerous preservation and park areas.

In March 2009, East Lake Tarpon voters overwhelmingly defeated a referendum that would have annexed portions of the area into the City of Oldsmar. That area contains several commercial sites, including the East Lake Woodlands Shopping Center and the Lockheed Martin Tactical Defense Systems complex. Officials of the East Lake Tarpon Special Fire control district were concerned with the potential loss of East Lake Woodlands from the district's property tax base.<sup>9</sup>

### **Effect of Proposed Changes**

CS/HB 699 provides that, notwithstanding s. 171.0413, F.S., a municipality within Pinellas County cannot annex unincorporated territory situated within the defined boundaries of the East Lake Tarpon Community after the effective date of the act unless it annexes the entire area and such is approved by a majority vote of the electors of the East Lake Tarpon Community. The bill allows a property owner to seek voluntary annexation pursuant to s. 171.044, F.S.

The Municipal Annexation or Contraction Act, ch. 171, F.S., reflects a legislative determination that municipal annexation should ensure sound urban development and accommodation to growth, and be made pursuant to uniform legislative statewide standards. This bill would prevent municipalities from annexing contiguous, compact, unincorporated land into their boundaries pursuant to the involuntary annexation procedures contained in s. 171.0413, F.S. Accordingly, if the instant proposal were to be legislated on a state-wide basis with regard to similar large unincorporated areas, urban growth in Florida could be significantly restricted. Also, the proposal could prevent residents of particular areas from having the right to vote as to their inclusion in a municipality as voluntary annexation measures generally are employed with regard to a very limited number of properties.

While charter counties have the ability to preempt some annexation through the designation of "urban preservation districts" which protect the status of property within the district as unincorporated, Pinellas County currently does not have such a measure.<sup>10</sup> In November 2000, Pinellas County voters adopted Ordinance 00-66, which amended the county charter to provide the following:

*Nothing in this Charter shall prevent a municipality from annexing an unincorporated area into its municipal boundaries, except that all annexations shall be in accordance with the exclusive method and criteria for voluntary municipal annexation, including the delineation of areas eligible for annexation, adopted by ordinance under the authority elsewhere provided for in this Charter.<sup>11</sup>*

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<sup>8</sup> Pinellas County Tax Collector; millage rates levied for 2011.

<sup>9</sup> In 2000, the Legislature created s. 171.093, F.S., to address municipal annexation of property within the boundaries of an independent special district that levies ad valorem taxes. As an independent special district's tax base erodes due to annexations, the district may become economically inefficient and unstable. This law was an effort to provide independent special districts with certain limited protections from the effects of annexation activity, while not restricting a municipality's ability to annex. The East Lake Tarpon Fire Control District has been the subject of a special act pertaining to annexation within its boundaries. Chapter 2003-336, L.O.F., provided that if any municipality or other fire control district annexed land within the district, the district would continue as the sole taxing, enforcing and service-providing authority for district purposes in the annexed land. This measure expired on December 31, 2007. Currently, the East Lake Tarpon Fire Control District levies the lowest millage rate in the county (1.51 mills). In comparison, Lealman Fire Control District levies 4.48 mills.

<sup>10</sup> Approximately 280,000 people reside in unincorporated Pinellas County, which represents 36 percent of the county not located within one of the 24 municipalities.

<sup>11</sup> Article II, Sec. 2.07, of the Pinellas County Home Rule Charter.

Concurrently, the county commission adopted Ordinance Number 00-63, providing an exclusive method of voluntary annexation and delineating areas eligible for municipal annexation. This ordinance was ruled invalid by the Second District Court of Appeal in *Pinellas County v. City of Largo*, 964 So.2d 847 (Fla.App. 2 Dist. Sep 19, 2007), which held that while county could provide an exclusive method of voluntary municipal annexation in its charter under s. 171.044(4), F.S., the county's exclusive method of voluntary municipal annexation was ineffective because it was not set forth in the county charter and approved by the voters.

In 2009, the Legislature passed HB 1375 which prohibited a municipality within Pinellas County from annexing unincorporated territory situated within the defined boundaries of the Tierra Verde Community unless the action was approved by a majority vote of the electors. Nonetheless, that legislation is distinguished from the current set of circumstances by the fact that Tierra Verde consists of a group of small barrier islands. It is noted that s. 171.031(11), F.S., contemplates a special law that prohibits the annexation of territory separated from an annexing municipality by a body of water.

HB 699 has an effective date of upon becoming a law, and the act expires on September 30, 2022. The expiration date was agreed upon by the Pinellas County Legislative Delegation "so the community, in the future, could continue or discontinue this act."<sup>12</sup>

**B. SECTION DIRECTORY:**

Section 1: Provides special act standards for annexation within the East Lake Tarpon Community in Pinellas County.

Section 2: Provides a legal description.

Section 3: Provides an expiration date.

Section 4: Provides an effective date.

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

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? August 26, 2011

WHERE? The *Gulf Coast Business Review*, a weekly newspaper published in Clearwater, Florida. See, III. COMMENTS, A. CONSTITUTIONAL ISSUES, below.

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

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

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<sup>12</sup> February 10, 2012, e-mail from Sharon Nehring, legislative aide to Representative Peter Nehr.

Section 10 of Art. III of the State Constitution, provides:

Special laws.—No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law.... Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.<sup>13</sup>

Section 11.02, F.S. implements the constitutional notice requirement found in s. 10, Art. III of the State Constitution. By law, a notice advertising intent to seek enactment of local legislation and describing the substance of the contemplated law must be published one time, at least 30 days prior to the bill's introduction into the Legislature.

Publication can be either by advertisement in a newspaper of general circulation in each affected county or, if no such newspaper is published in or circulated throughout an affected county, by posting the notice for 30 days in three public places in that county, including the courthouse.

Under ss. 50.011 and 50.031, F.S., in order to qualify as a newspaper of general circulation, a publication must:

- be printed and published at least once a week;
- contain at least 25 percent of its words in the English language;
- be entered or qualified to be admitted and entered as periodicals matter at a post office in the county where it is published;
- be for sale and available to the public generally for publication of official or other notices;
- customarily contain information of a public character, or of interest or value to the residents or owners of property in the county where published, or of interest or of value to the general public; and
- have been in existence for one year or longer (certain exceptions may apply).

While the *Gulf Coast Business Review* appears to satisfy most of these requirements, it may not be the type of publication contemplated by the language describing newspapers that: *customarily contain information of a public character, or of interest or value to the residents or owners of property in the county where published, or of interest or of value to the general public.*

This publication is self-described as...“the leading provider and most authoritative source of business and economic information affecting the Gulf Coast from Tampa Bay south to Naples. It specializes in reporting on the region’s industry and economic trends; emerging companies; corporate strategies; identifying and profiling the region’s up-and-coming entrepreneurs and top business leaders; and keeping its readers abreast of state, regional and local government actions affecting business and the economy,” and, thus, may be intended for a limited audience.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

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<sup>13</sup> The function of this requirement is to provide reasonable notice to a person whose interests may be directly affected by the proposed legislation so that he or she may inquire further into the details of the local bill and, if he or she so desires, seek to prevent enactment or to persuade the Legislature to change the substance of the proposed bill. See, Local Bill Policies and Procedures Manual, Community & Military Affairs Subcommittee, page 6.

## Drafting Issues

None.

## Other Comments

### Council of North County Neighborhoods

The proponent of this bill is the Council of North County Neighborhoods, a Florida not for profit 501(c)(4) organization founded in 2007. The mission of the council is “to bring together the Northern Pinellas County’s neighborhoods to promote communication and cooperation between member organizations, to foster a sense of community, to provide a forum for member organizations, and most important is to act as a neighborhood advocate for the benefit of our member organizations and to bring a common voice to government including and not limited to the Pinellas County Board of County Commissioners and the State Legislature.”

From the council’s website, it appears that less than 25 of the East Lake Tarpon Community neighborhoods are members.<sup>14</sup>

### City of Oldsmar City Council Resolution

On September 14, 2011, the City of Oldsmar City Council passed a resolution opposing this local bill, noting that:

- the measure takes away the right to vote currently provided by ch. 171, F.S. and
- the adopting of the local bill is not necessary because annexations are already governed by the Municipal Annexation and Contraction Act.

### Exemption from General Law

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 appears to provide an exemption to s. 171.043, F.S.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 13, 2012, the Community & Military Affairs Subcommittee adopted an amendment that removed a supremacy clause, and replaced it with a specific exemption from s. 171.043, F.S. The amendment also corrected a drafting error.

This analysis is drafted to the Committee Substitute.

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<sup>14</sup> <http://www.cncnpc.org/>, last visited February 9, 2012.