

STORAGE NAME: h0829a.lgva.doc
DATE: April 12, 2001

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

BILL #: HB 829
RELATING TO: Broward County/Lauderdale-By-The-Sea
SPONSOR(S): Representative Ritter
TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS YEAS 5 NAYS 2
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I. SUMMARY:

This bill extends the corporate limits of the Town of Lauderdale-By-The-Sea, three miles into the tidal waters as of August 15, 2001. This bill also revises the effective date of the annexation of an area known as "Intercoastal/Beach Area, " to allow the residents of the newly annexed area to run for elective office. This bill provides that the population calculation for fiscal year 2001 for revenue purposes, for the Town of Lauderdale-By-The-Sea, includes the residents of the annexed area. This bill also provides for an interlocal agreement between the Town of Lauderdale-By-The-Sea and Broward County regarding the transition of the annexed area.

Pursuant to House Rule 5.6(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 5.6(b) appear to apply to this bill. (See II.C. "EFFECT OF PROPOSED CHANGES:" section.)

On April 12, 2001, the Committee on Local Government & Veterans Affairs considered HB 829, adopted one amendment, and passed the bill. The amendment, which is traveling with the bill, is explained in this bill analysis. (See section V. "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 checked="" type="checkbox"/> | N/A <input 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 checked="" type="checkbox"/> | N/A <input 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:

1. This bill potentially increases government regulations. Under the bill's provisions, the Town of Lauderdale-By-The-Sea is authorized to use its police powers and jurisdiction in an area (the surrounding 3 miles of tidal waters) previously not authorized. The Town of Lauderdale-By-The-Sea may pass ordinances, which were not previously allowed, which regulates personal sea crafts, house boats, etc., within the tidal waters.

4. This bill may decrease some individuals' freedom as it allows the Town of Lauderdale-By-The-Sea to place certain restrictions on individuals located within 3 miles of tidal waters adjacent to the municipality.

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 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.

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.

Broward County Annexations

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 the 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 annexation of all the remaining unincorporated areas of Broward County should be encouraged to occur by the year 2010 and unincorporated areas remaining after 2010 will be subject to required annexation by the Florida Legislature.

The 1996 Florida Legislature adopted a special act (chapter 96-542, Laws of Florida, as amended by chapter 99-446, Laws of Florida), which exempts Broward County from the general law provision in chapter 171, Florida Statutes. This provision requires a referendum of the electors of an annexing municipality where the total area annexed by a municipality during a calendar year cumulatively exceeds more than 5 percent of the total land area of the municipality or cumulatively exceeds more than 5 percent of the municipal population.

In addition, the special act 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 fifteenth day September following adjournment sine die of the next regular legislative session following the accomplishment of all procedures necessary for annexation.

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

Chapter 99-465, Laws of Florida

In 1999, the Legislature passed chapter 99-465, Laws of Florida, which provided for a study to be performed in Broward County, in an area commonly known as the "Intracoastal/Beach Area", to determine the effects of annexation of the area into any municipality proposing annexation or the incorporation of the studied area into a new municipality.

A referendum provision allowed voters to choose a municipality in which to annex or choose to incorporate as a new municipality. Furthermore, if the voters chose to annex into one of the municipalities proposing annexation, the annexation effective date was October 1, 2001. However, if the voters elected to become a municipality, the Broward County Legislative Delegation was directed to draft a charter to be submitted for enactment during the next legislative session.

On September 5, 2000, the referendum was held regarding the annexation or incorporation of the "Intercoastal/Beach Area." The residents of the area had the choice of becoming a new city or being annexed by the Cities of Fort Lauderdale or Pompano Beach or the Town of Lauderdale-By-The-Sea. By an overwhelming 86.11%, the residents chose to be annexed into the Town of Lauderdale-By-The-Sea.

Section 186.901, Florida Statutes

Section 186.901, Florida Statutes, requires the Office of Economic and Demographic Research to provide annually to the Executive Office of the Governor population estimates of local governmental units as of April 1 of each year, utilizing accepted statistical practices. This population estimate of local governments is applied to any revenue-sharing formula with local governments under the provisions of sections 218.20-218.26, Florida Statutes. The Office of Economic and Demographic Research also provides the Executive Office of the Governor population estimates for municipal annexations or consolidations occurring during the period April 1 through February 28. The Executive Office of the Governor includes these estimates in its certification to the Department of Revenue for the annual revenue-sharing calculation.

Population is computed as the number of residents, employing the same general guidelines used by the United States Bureau of the Census. However, for the purpose of revenue-sharing distribution formulas and distribution proportions for the local government half-cent sales tax, inmates and patients residing in institutions operated by the Federal Government, the Department of Corrections, the Department of Health, or the Department of Children and Family Services are not considered residents of the governmental unit in which the institutions are located.

In cases of annexation or consolidation, local governments are required to submit to the Executive Office of the Governor, within 30 days following annexation or consolidation, a statement as to the population census effect of the action.

Section 218.26, Florida Statutes

Section 218.26, Florida Statutes, address the administration and distribution schedule for revenue sharing programs. The Department of Revenue establishes, for all taxes collected and received for placement into the revenue sharing trust funds, a schedule of equal monthly distribution for any computation period. The Department of Revenue computes the apportionment factors once each fiscal year for use during the fiscal year. The computation is made prior to July 25 of each fiscal year and is based upon information submitted and certified to the department prior to June 1 of each year. Except in the case of error, the apportionment factors remain in effect for the fiscal year.

Municipal Powers/Jurisdiction

Pursuant to chapter 166, Florida Statutes, municipalities are limited to exercising its police powers to within its municipal boundaries. Currently, there are two municipalities, within Monroe County, which have been authorized by the Legislature to exercise its police powers and jurisdiction to include **600** feet into the tidal waters adjacent to the municipal boundaries. The two cities are: the City of Key Colony Beach by chapter 85-468, Laws of Florida, and the City of Key West by chapter 78-541, Laws of Florida. There is one municipality within Monroe County, which has been authorized by the Legislature to exercise its police powers and jurisdiction to include **1200** feet into the tidal waters adjacent to its municipal boundaries. The city is Islamorada, Village of Islands, by chapter 2000-408, Laws of Florida.

Currently, the Fish and Wildlife Conservation Commission is charged with regulating the waters of the state.

Retroactive Clauses

Substantive statutes will not operate retroactively absent clear legislative intent to the contrary. *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995). However, if the application of the statute impairs vested rights, creates new obligations, or imposes new penalties, the statute may not be applied retroactively, regardless of legislative intent. *Id.*

In addition, procedural or remedial statutes may be applied retroactively. *Id.* Procedural relates to the means and methods of applying and enforcing those duties and rights prescribed by substantive law. *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994).

C. EFFECT OF PROPOSED CHANGES:

This bill extends the corporate limits of the Town of Lauderdale-By-The-Sea to include three miles into the tidal waters. This extension of the corporate limits of the Town of Lauderdale-by-the-Sea allows the Town of Lauderdale-By-The-Sea to enforce ordinances along the beach area. The Town of Lauderdale-By-The-Sea has a pier that extends 600' from the shoreline. Additionally, the Town of Lauderdale-By-The-Sea has the closest living coral reef to the shoreline in the United States. The closest tier of that reef is 100 yards from the shoreline.

This bill also revises the effective date of the annexation of an area known as "Intercoastal/Beach Area" from September 15, 2001, as approved in chapter 99-465, Laws of Florida, to August 15, 2001. This revision allows the residents of the newly annexed area to qualify to run for elective office in the Town of Lauderdale-By-The-Sea.

This bill provides that the population calculation for fiscal year 2001 revenue purposes for the Town of Lauderdale-By-The-Sea includes the residents of the annexed area, even though the residents are not residents of the Town of Lauderdale-By-The-Sea until August 15, 2001. This revises the effective date provided for in chapter 99-465, Laws of Florida. In addition, it requires the Office of Economic and Demographic Research and the Department of Revenue to include within its figures for fiscal year 2001, residents that were not residents until August 15, 2001. This revision allows the Town to include the census figures for that area in the population figures of the Town for the entire decade rather than having to wait for new census figures in 2011.

This bill also requires an interlocal agreement between the Town of Lauderdale-By-The-Sea and Broward County regarding certain transition issues of the annexed area. This agreement is required to be executed prior to August 15, 2001. The agreement must include a financially feasible plan for transitioning county services, buildings, infrastructure, including roads, waterways,

and employees. The plan must also include jointly funded programmed infrastructure improvements. However, the Town of Lauderdale-By-The-Sea may not be limited in its ability to receive anticipated utility taxes, utility franchise fees, or other franchise fees.

It appears as though these revisions may be applied retroactively as it does not impair any vested rights, impose any new penalties, or create new obligations.

The Town of Lauderdale-By-The-Sea estimates increased revenues for fiscal year 2001-2002 of \$1,456,669 from community development block grants, municipal revenue sharing funds, and ad valorem taxes.

Pursuant to House Rule 5.6(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 5.6(b) appear to apply to this bill.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: This section extends the corporate limits of the Town of Lauderdale-By-The-Sea, effective August 15, 2001, to include three miles into the tidal waters and provides a legal description.

Section 2: This section revises the effective date of the annexation of the area known as "Intercoastal/Beach Area" into the Town of Lauderdale-By-The-Sea from September 15, 2001 to August 15, 2001.

Section 3: This section provides, notwithstanding sections 186.901 and 218.26, Florida Statutes, the population calculation for fiscal year 2001 revenue purposes, for the Town of Lauderdale-By-The-Sea, includes the residents of the annexed area.

Section 4: This section requires an interlocal agreement between the Town of Lauderdale-By-The-Sea and Broward County regarding the transition of the annexed area. This agreement is required to be executed prior to August 15, 2001 and must include a financially feasible plan for transitioning county services, buildings, infrastructure, including roads, waterways, and employees. The plan must also include jointly funded programmed infrastructure improvements. However, the Town of Lauderdale-By-The-Sea may not be limited in its ability to receive anticipated utility taxes, utility franchise fees, or other franchise fees.

Section 5: The effective date of this bill is upon becoming a law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN?

January 28, 2001

WHERE?

Sun Sentinel; Fort Lauderdale, Broward County, Florida

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

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The Department of Revenue has stated that this bill's impact on revenue sharing is minimal.

The Florida Fish and Wildlife Commission and the Department of Environmental Protection have stated that it does not oppose the Town of Lauderdale-By-The-Sea's expansion of 3 miles into the tidal waters. In addition, this bill does not cause the Town of Lauderdale-By-The-Sea to avoid paying submerge land lease fees arising from the pier.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Local Government & Veterans Affairs, at its April 12, 2001 meeting, adopted an amendment by Representative Ritter that clarifies the population figures to be used for revenue purposes and allows the city to collect franchise fees and utility taxes currently being collected by Broward County with reference to the annexed area beginning August 15, 2001.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Laura Jacobs, Esq.

Joan Highsmith-Smith