1974

Session Law 74-190

Florida Senate & House of Representatives

STAFF SUMMARY ON HB 2730

(a) HB 2730, Representative Boyd, Community Affairs only reference. A bill which rewrites Chapter 171, F.S. on annexation or contraction of municipal boundaries.

(b) Similar legislation -- The Municipal Home Rule Act of 1973 in its original form as HB 1020 included a rewrite of annexation procedures that included a boundary commission at the state level. That portion was amended out of HB 1020 in the Senate and an appeals board. The Commission will not file a separate bill but work with HB 2730.

(c) Problem addressed by the bill -- The attached staff report #108, is an analysis of present annexation procedures. A simple summation would be that the only viable general law procedures for annexation are those in §171.16, dealing with the voluntary method and that has been abused since its passage in 1972. Specifically, voluntary annexation is often used by a developer to avoid county zoning or density, and the annexing city is frequently incapable of providing urban services to annexed territory. In Broward County, Parkland with 221 people is in the process of annexing over 1,000 acres with a planned population of over 60,000. Greenacres City in Palm Beach County with fewer than 3000 people is in the process of annexing some 1500 acres which will result in a population increase of 75,000-100,000. At the same time, cities that could logically expand services to urban fringes are hampered by the unworkableness of Chapter 171 apart from §171.16.

(d) Comments -- HB 2730 is modeled on the North Carolina annexation law. The major concepts embodied in that law are 1) specific criteria must be met by the land to be annexed, 2) specific criteria must be met by the city concerning service delivery and 3) the safeguard of referenda is included but only after a petition requests a referendum. The referendum only upon petition puts the weight of inertia on the side of the city by forcing residents in the proposed area to initiate action in the form of a petition. The abuses of voluntary annexation are restrained by making all annexed land subject to county zoning and density ordinances for two years unless the county agrees to a change.

The proposed committee substitute incorporates the greater part of the substantive proposals in the Local Government Study Commission bill. Other proposals will be presented to the committee on behalf of the Commission.

(e) Growth policy statement -- The expansion of municipal services to growing urban areas is as critical to achieving orderly growth as any function of government. Local government must manage growth and a viable annexation law is one tool that they must have to do this job.

AG/jb

House Committee on Community Affairs

STAFF REPORT 108

Municipal Annexation September 1973

A. Definition of the Problem. There are presently two methods to bring about municipal annexation; by special act or by general law using the procedures in Chapter 171, F.S. Either of these methods presents very real problems. Florida's general law annexation procedures have never facilitated annexation. In 1965, in the Auburndale case (171 So.2d 161, 1965), the Supreme Court struck down a large part of Chapter 171. According to the Florida Statutes Annotated, the invalidated part was so integral ". . . that its invalidity was fatal to the entire statute."

Annexation by special act has always been widely used in Florida and from 1965 to 1972, it was the only method used. In 1972, the provision for voluntary annexation was added as §171.16, and has been widely used since. Special act annexation has several problems. First, it involves the Legislature in a local matter. Second, annexation questions can be politically nasty, and result in "no win" situation for legislators. Third, there are no established standards or criteria for special act annexations. There is some case law in this area, but it is not in the least definitive. Fourth, in multi-member districts, local delegations may not be able to agree on an annexation, leaving the city helpless in its bid to grow.

Concurrent with the difficulty of annexation in Florida has been the ease of incorporation. Again, special act incorporations have been the most common, but incorporation under the general law provision of Chapter 165, F.S. has also been easy. Ease of incorporation combined with difficulty in physical growth has resulted in counties with 20, 25, 30 or more cities, many of them small and non-viable.

B. Objectives and Evaluation Criteria. Cities must be able to annex land in their urban fringe in order to meet several objectives:

1) The fringe area is needed by the city for continued orderly growth and the prosperity of the metropolitan area.
2) Fringe lands are needed so that public service facilities such as water and sewer systems, street extensions, and recreational facilities may be planned and provided on a rational and economic basis.
3) The fringe area should be brought within and developed under city land use controls such as planning, zoning and subdivision regulations, and housing and building codes.
4) The fringe areas should be subject to city protective regulations and receive police and fire protection.

5) Residents of the fringe area actually benefit from many of the services and facilities provided by city government, and should bear their full share of the costs. This is especially true in Florida where dual taxation of city residents to the benefit of county residents is a fact.

These specific reasons for orderly annexation reflect the general fact that an urban area is a social and economic entity built upon interdependent parts and the smoothest, most efficient functioning of the urban area is realized when political growth keeps pace with economic growth.

The objective of state annexation law should be two-pronged. It should make annexation easy enough to allow cities to expand their de jure boundaries as they expand their de facto boundaries, but it should prevent large scale land grabs by cities bent on municipal imperialism and tax base speculating. In short, state law must walk the middle road, encouraging beneficial annexation, but discouraging frivolous or greedy annexation. This requires the establishment of specific criteria in order to annex, but then ease of annexation once the criteria are met.

Criteria - In 1959, North Carolina adopted an annexation statute that has come to be considered a national model by municipal professionals and scholars of local government. The North Carolina statute sets forth criteria that must be met, and requires that a report be prepared, showing that all criteria have been met. The most important criteria include:

1) Contiguity of at least 1/8 of the boundary of the annexed area.
2) Annexed area must be developed for "urban purposes", such area defined as a density of 2 persons per acre, or subdivision of area into lots, 60% or more being 1 acre or less in size.
3) Sixty percent of the lots must be used for residential, commercial, industrial, institutional or governmental purposes.
4) Areas not meeting the above criteria, but which lie between the city and an area to be annexed such that utilities or thoroughfares would pass over them.

In addition to the criteria for the area, the city must also meet criteria to include:

1) Immediate provision of police and fire protection, garbage collection, and street maintenance substantially on the same basis as such services are provided in the rest of the city.
2) Provision for extension of water and sewer trunk lines to all property owners in the area annexed.
3) If water and sewer trunks do not exist for the area annexed, letting of contracts and construction to begin within 12 months of the date of annexation.

4) A statement of the financial means by which extension of services is to be carried out.

Definitions and standards for judicial review are established also. There is no referendum requirement in the North Carolina law. Texas, Missouri and Nebraska have similar provisions for annexation. The one disadvantage of the North Carolina plan from the standpoint of orderly urban growth, is that initiation is entirely with the city. This allows a city to ignore run-down areas that will be a drain on the city's resources. An additional section could be written to allow initiation by the residents or property owners of a particular area, by petition of 51% of the property owners or residents; such petition being sufficient to cause the city to prepare a report on the area, and if all criteria are met, for the area to be annexed.

C. Current Activities and Agencies Involved. At present, annexation policy involves municipalities and counties, primarily. State agencies, in particular the Department of Revenue, are also affected by annexations with regard to revenue sharing and distribution of tax monies. Finally, because Chapter 171, F.S., is unused except for §171.16, the Legislature is involved in almost all annexation matters through special acts.

D. Political and Other Significant Factors. Politically, the hottest feature of the North Carolina plan is the absence of a referendum by the people to be annexed. Such referenda have traditionally been the protection against capricious annexations. The North Carolina plan guards against such abuses by setting strict standards. An additional safeguard that would make the plan politically more palatible would be to allow a certain percentage, by petition, to force a referendum. This would still leave the initiative with the city, and positive and considerable action would be necessary to force a referendum. Voluntary annexation is provided in §171.16, F.S. in 1972 has been widely used and probably is a worthwhile option, but it has also been used for purposes not consistent with orderly urban growth, or the best interests of the taxpayers of the cities involved. This is especially the case in areas where voluntary annexation is used to get around county planning and zoning, or to get water and sewer from a city that is not in a financial position to provide it. Voluntary annexation could be retained, but with safeguards. For instance, land voluntarily annexed could not be zoned from its county zoning for one or perhaps two years, except with the approval of the county. The contiguity standards should be used in voluntary annexation also, but the criteria of urban use would not come into play, thus, making voluntary annexation a more flexible tool than regular annexation.

E. Alternatives. There are five commonly recognized methods of annexation. Some may be combined, thus, giving more possibilities. The North Carolina plan is considered a form of municipal determination. The others include:

1) Legislative determination which is reliance upon special acts of the legislature for each annexation.
2) Popular determination which includes initiation by and approval of the people to be annexed.
3) Judicial determination in which courts, using criteria prescribed by the legislature, rule on annexations.
4) Quasi-legislative determination in which an independent, non-judicial tribunal or board is empowered to approve annexations.

There are variations on each of these,of course, along with combinations. The option proposed for Florida of municipal initiation, and execution under specific criteria with the ability of the people affected to force a referendum is a combination of municipal and popular determination.

F. Assumptions, Effect on Growth Policy, and Documentation. It has been assumed that present Florida law is either outdated, unusable, unconstitutional or all of these. With the exception of voluntary annexation provided in 1972, general law has been virtually unused for annexation since 1965. It has been assumed that orderly urban growth is dependent upon an annexation policy that facilitates annexations whenever adjacent fringe areas take on urban characteristics, and begin needing municipal services. It has been assumed that political restraints prevent radical changes such as independent boards or commissions or turning it over to the courts. Finally, it has been assumed that it is politically impossible to not provide for the possibility of a referendum by the people concerned.

Effect on Growth Policy:

Implicit throughout this report has been the impact of growth on urban areas and the control of growth by government rather than the other way around. The term "orderly urban growth" has been used several times. To allow the incorporation of virtually any area seeking it, to allow core cities to be strangled by satellite communities often at cross purposes with the core city, and to deprive a city of the tax base for which it provides the value added factor are all the antithesis of orderly urban growth and, thus, contradictory to a coordinated growth policy. The legislation suggested in the report is a minimal step toward rationalizing and bringing some equity to the annexation process.

Documentation:

Commission on Local Government;
Local Government Formation, Special Report 73-2;
Tallahassee, Florida, 1973.
Florida Statutes, 1971 and 1972 Supplement, State of Florida, Tallahassee 1971, 1972.
Florida Statutes Annotated, Harrison, Atlanta, Ga., 1966 and 1973 insert.

General Statutes of North Carolina Annotated, State of North Carolina, Releigh, 1970.
McQuillan, Eugene; The Law of Municipal Corporations, Callagan and Co., Chicago, 1949.
Minnesota Statutes Annotated, State of Minnesota, St. Paul, 1970.
Sengstock, Frank S.; Annexation: A Solution to the Metropolitan Area Problem; Michigan Legal Publications, Ann Arbor, 1960.

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STAFF SUMMARY ON HB 2918

(a) HB 2918, Representative Poorbaugh, Community Affairs only reference. The bill amends §171.04, F.S. to correct the constitutional deficiencies of the section as set forth in Auburndale V. Adams Packing, (171 So.2d 161 (1965)).

(b) Similar legislation - HB 2730, Representative Boyd, completely rewrites Chapter 171, F.S. The Local Government Study Commission will also propose a complete rewrite of Chapter 171.

(c) Problem addressed by the bill - The Supreme Court of Florida struck down the part of §171.0 4 which delegated circuit court review of annexations without providing any guidance or criteria for use by the court. This was ruled unlawful delegation of legislative authority to the judiciary branch. For all practical purposes, §171.04 has been a nullity since 1965 (F.S.A., Vol 9, p 415).

(d) Comments - All of Chapter 171, excluding §171.16, is dated and unweildy. The amendments proposed in this bill are sound and would correct the constitutional deficiencies of the section. The question is whether to use this method or that proposed by others as shown above.

(e) Growth policy statement - The ability of local governments to manage new development is critical to a state growth policy. A workable annexation law is a necessary growth management tool.

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of said tract of land. Such election shall be called and conducted, and the expense thereof paid by the corporate authorities of said city or town; and the said tract of land shall not be annexed unless such annexation is approved by a majority of the registered electors actually voting at such election in said district and in said city or town, provided, that any unincorporated tract of land proposed to be so annexed shall, when annexed, constitute a reasonably compact addition to the incorporated territory with which it is combined, that if such tract of land is vacant and uninhabited, or if such tract of land is owned solely by only one individual person, firm or corporation, then and in either of such events, only one owner of real estate in the district so proposed to be annexed who objects to the proposed annexation, may apply by petition to the circuit court in and for the county in which said city or town is situated, in the same manner and with the same effect as hereinabove provided in cases where two owners of real estate are required to join in objecting to such proposed annexation. The term "one individual person" as used hereinabove shall include a man and wife who own property jointly. The method of annexation provided by this section is in addition to any other procedure provided by any special or local law, and no such special or local law is repealed or modified by this act.

Section 2. This act shall take effect upon becoming a law.

LEGISLATIVE SUMMARY

Requires municipalities to meet certain requirements prior to annexation of additional property contiguous thereto and wholly within the boundaries of the same county, designed to discourage the creation of unincorporated enclaves.

By Representative Poorbaugh

A bill to be entitled

An act relating to the extension of municipal territorial limits; amending §171.04(1), Florida Statutes, 1973, to provide that before a municipality may annex any additional territory it must meet certain requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 171.04, Florida Statutes, 1973, is amended to read:

171.04 Extension of territorial limits.--

(1) If any incorporated city or town shall desire to change its territorial limits by the annexation of any unincorporated tract of land ~~lying contiguous thereto and within the same county, it is lawful so to do in the following manner:~~ , it is lawful to do so provided there is compliance with each and every one of the conditions (a) through (e) hereinafter set forth and provided the procedures for annexation are undertaken in the manner hereinafter set forth. The tract of land intended to be annexed:

(a) Shall be located wholly within the boundaries of the same county in which the city or town intending to annex is located and shall be contiguous to said city or town; and

(b) Shall, when annexed, constitute a reasonably

CODING: Words ~~in struck type~~ are deletions from existing law; words underlined are additions.