The Florida Senate

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Committee on Comprehensive Planning James E. "Jim" King, Jr., President

INTERLOCAL AGREEMENTS AND THE ANNEXATION PROCESS

SUMMARY

This report is a follow up to the 2003 interim project on annexation by the Committee on Comprehensive Planning, Local and Military Affairs. Staff made several recommendations and discussed suggested statutory revisions from the Florida City and County Management Association. The Florida Association of Counties and the Florida League of Cities made suggestions regarding statutory changes to the annexation process as required by growth management legislation passed in 2002.

The suggestions of representatives of Florida's cities and counties and continued discussions between those groups resulted in proposed legislation to reform the annexation statutes. However, this legislation failed to pass in 2003. The cities and counties have recently formed new working groups and are continuing discussions on this issue.

The proposed legislation from the 2003 Regular Session required the annexation of internal enclaves by a date certain, provided a process of negotiating the annexation of external enclaves, and established an alternative process to existing annexation procedures that would have allowed municipalities and counties to negotiate local boundary adjustment and service delivery interlocal agreements. These agreements would address a number of issues including efficient service delivery and the financial consequences of a proposed annexation.

Staff will continue to monitor discussions between the cities and counties regarding possible statutory changes to Florida's annexation procedures. Staff recommends consideration of amending ch. 171, F.S., to require a boundary adjustment and service delivery interlocal agreement prior to annexation and following requirements similar to s. 171.093, F.S., if the local governments are unable to reach agreement. In addition, staff recommends amending existing law to ensure that, in the absence of an alternative process for annexation as proposed last year or requiring interlocal agreements prior to annexation, those voluntary interlocal agreements between local governments that direct future annexation efforts are enforceable.

BACKGROUND

The issue of annexation was the topic of a 2003 interim project by the Committee on Comprehensive Planning, Local and Military Affairs entitled "Does Current Law Adequately Address Delivery of Local Government Service Issues and Other Conflicts That Arise During Annexation?". As part of the report, staff recommended the following: requiring an interlocal agreement between the county and municipality prior to annexation that addresses financial impacts and service delivery issues, applying the county comprehensive plan and land use regulations to a parcel for three years absent any agreement between the county and municipality on a land use change for the parcel, mandating that municipalities agree to the annexation of enclaves by a date certain, and providing for a legislative intent statement that ensures the enforceability of interlocal annexation agreements. Also, staff recommended the inclusion of a statement of legislative intent to ensure the enforceability of interlocal agreements relating to annexation.

The Florida City and County Management Association (FCCMA) adopted a policy statement on annexation in 2002 that proposed a number of changes to the existing annexation procedures. Those changes included the annexation of internal and external enclaves by a date certain. The FCCMA also recommended allowing a county and a municipality(ies) to establish a joint service-delivery and boundary agreement subject to approval by a majority vote of all county electors.

During preliminary discussions on annexation legislation prior to the 2003 Regular Session, the Florida Association of Counties indicated its support for the elimination of enclaves and requiring the

municipalities to assess the financial impacts of a proposed annexation and establishing a process to offset negative financial consequences of the annexation. The League of Cities recommended enhancing the abilities of a municipality to eliminate enclaves and supported procedures to expedite the annexation process for parcels contiguous to municipal boundaries.

Presently, there are several methods for annexation, including voluntary annexation, involuntary annexation, interlocal agreement, and special act. Section 171.044, F.S., provides the requirements for a voluntary annexation which occurs when 100 percent of the landowners in an area petition a municipality for annexation. Sections 171.0413 and 171.042, F.S., provide procedures for an involuntary annexation, including a referendum in the area proposed for annexation and, at the municipality's option, in the annexing municipality. A majority of property owners must consent when more than 70 percent of the property in a proposed annexation area is owned by persons that are not registered electors. The governing body of the annexing municipality is required to prepare a report on the provision of urban services to the area proposed for annexation.

Appeal on Annexation ─ Within 30 days following the adoption of an annexation ordinance, an affected party who believes that he or she will suffer material injury because of the failure of a municipality to comply with the statutory procedures for annexation as applied to his or her property may petition the circuit court for certiorari review of the annexation. If the complainant is successful, he or she is entitled to reasonable costs and attorney fees under s. 171.081, F.S.

Interlocal Agreements ─ When a municipality annexes an area within an independent special district, the governmental entities may enter into an interlocal agreement to address service delivery issues, real estate assets, equipment, and personnel pursuant to s. 171.093, F.S. If the municipality proceeds with the annexation in the absence of an interlocal agreement, the special district continues to provide services for a 4-year period and receives an amount from the municipality equal to the ad valorem taxes or assessments that would have been collected on the property. Following the 4-year period and any agreed upon extensions, the municipality and special district must have reached agreement on the equitable distribution of property or the matter proceeds to circuit court.[1]

Florida Statutes also provide for the annexation of enclaves by interlocal agreement with the county having jurisdiction over the enclave. This provision is intended to expedite the annexation of enclaves that are 10 acres or less in size into the appropriate municipality depending on any existing or proposed arrangements for service delivery. However, this provision does not apply to undeveloped or unimproved real property.

Some local governments have negotiated interlocal agreements that set up boundary or service lines with the municipalities agreeing not to annex beyond service boundaries. Such an agreement may be unenforceable because the Legislature has not expressly authorized a local government to contract away its annexation powers.[2]

Efficiency and Accountability in Local Government Services ─ Current law allows any county or combination of counties and the municipalities within those counties to develop a plan to improve the efficiency of service delivery.[3] Specifically, the plan must do the following:

- designate the services that the plan will apply to;
- discuss the existing organization and financing of the services along with a reorganization plan;
- designate the agency responsible for delivery of each local service;
- designate the services that are best delivered regionally or countywide;
- discuss cost reductions for providing local services;
- provide a multiyear capital outlay plan for infrastructure;
- discuss the expansion of any municipal boundaries to meet the goals of this section of law if the proposed expansion area meets the requirements of ch. 171, F.S.;
- provide procedures for modifying or terminating the plan;
- identify any necessary modifications of special acts; and

[1] S. 171.093, F.S. was created by ch. 2000-304, L.O.F. The expiration of a 4-year period requiring an interlocal agreement has not occurred yet.
[2] *City of Ormond Beach v. City of Daytona Beach*, 794 So. 2d 660 (Fla. 5th DCA 2001).
[3] S. 163.07, F.S.

- provide an effective date.

After the plan has been developed by the governmental entities, it is subject to approval by a majority vote of the governing body of each county involved in the plan, a majority vote of the governing bodies of a majority of municipalities in each county, and a majority vote of the governing bodies of the municipality(ies) representing a majority of the municipal population of each county. Following approval by the governing bodies, the plan requires approval by a majority vote of electors as part of a countywide election in each county involved. The annexation of areas proposed for municipal boundary expansion as part of a plan approved using the above procedure takes effect on approval of the plan notwithstanding the requirements of ch. 171, F.S.

Joint Planning Area Agreements ─ Part II of ch. 163, F.S., the Local Government Comprehensive Planning and Land Development Act, authorizes local governments to enter into joint planning area agreements. These agreements allow local governments to better coordinate and mitigate the effects of a proposed annexation. The agreement creates a joint planning area and municipalities are restricted from annexing properties outside the boundaries of this joint planning area.

Typically, a joint planning agreement requires the affected local governments to amend their comprehensive plans to include the newly adopted agreement. Each local government continues to provide services and maintain facilities within its jurisdiction unless otherwise specified in the agreement. Under the terms of the agreement, a city may also rezone a property immediately following annexation if consistent with the joint land use map. In the absence of the agreement, a municipality must amend its comprehensive plan before issuing development orders that differ from those of the county.

Annexation in 2003 ─ As required by the growth management legislation passed in 2002, representatives of special districts, counties, and municipalities provided recommended statutory changes relating to the delivery of local services in future annexation areas to the Legislature in the 2003 regular session.

The Florida Association of Counties and the Florida League of Cities recommended a number of statutory changes during a joint presentation to this committee. These changes included adding statutory definitions for external and internal enclaves and providing for interlocal service-delivery agreements as part of an alternative statutory process for annexation. These recommendations were incorporated into the proposed committee substitute for Senate Bills 490 and 1042. However, the bill did not pass during the 2003 Regular Session. The following description of the bill provides some insight as to how the parties ended their discussions and is a starting point for discussions this year.

The bill would have created the "Local Government Boundary Adjustment and Service Delivery Interlocal Agreement Act". This bill defined an "external enclave" as an unincorporated area enclosed within and bounded on each side by two or more municipalities or two or more municipalities and a county boundary. Under this bill, an "internal enclave" referred to an unincorporated area enclosed within and bounded on each side by one municipality and a county boundary or natural or manmade obstacle that only allows the passage of vehicular traffic to the unincorporated area through the municipality.

Annexation of Internal Enclaves ─ With regard to internal enclaves, the bill provided for the annexation of all internal enclaves into the surrounding municipality on January 1, 2008 notwithstanding any other provision of law except a subsequently adopted special act. It also allowed the governing bodies of the county and municipality to enter into an interlocal agreement prior to January 1, 2008 and required that a special district supplying services within the internal enclave be a party to the interlocal agreement.

Interlocal Agreement Process for Internal Enclaves ─ The bill required an interlocal agreement addressing annexation of internal enclaves to provide for an earlier date for the annexation of the internal enclave and the process for the annexation or that the internal enclave remains unincorporated until the governing bodies reach an internal enclave interlocal agreement. In addition, the interlocal agreement could include a provision declaring the annexation is subject to referendum approval by the residents of the proposed annexation area. The agreement could also provide for a transfer between the county and municipality of any governmental responsibility, including service delivery.

Interlocal Agreement Process for External Enclaves ─ An external enclave interlocal agreement process was included in the provisions of the bill. The governing bodies of two or more municipalities surrounding an external enclave could negotiate a proposed external enclave interlocal agreement to be

considered by the governing body of the county. Under the terms of the bill, a municipality could request to negotiate for an interlocal agreement any time prior to January 1, 2006. The proposed interlocal agreement shall include provisions indicating whether the external enclave should be annexed into a municipality or remain unincorporated, the process for the annexation including whether a referendum will be held, and the responsibilities of the county and municipality with regard to service delivery issues. Also, the agreement shall provide for public participation in the process.

If the municipalities negotiating for an external enclave interlocal agreement reach agreement within 1 year after initiating the process, the proposed interlocal agreement is to be adopted by each municipality and sent to the county for consideration. The county may consent to the agreement, suggest revisions, or reject the agreement which would send the parties to the dispute resolution process provided in the bill. If the county consents to the agreement, the county and municipalities shall adopt the interlocal agreement pursuant to the regular ordinance adoption process. Any revisions suggested by the county shall be considered by the municipality and if the parties agree, then the municipality will modify its resolution and seek the county's consent to the revised resolution. However, if the revised resolution is rejected, the issue is then subject to the dispute resolution process. A municipality must initiate this external enclave interlocal agreement process by January 1, 2006 and reach agreement within one year or the county may then initiate the process.

Dispute Resolution Process for External Interlocal Agreements ─ In order to resolve disputes that arise from the external enclave interlocal agreement process, local governments may establish a dispute resolution process. Unless this process is established by an interlocal agreement, the process provided in the bill is applicable. This statutory dispute resolution process allows a county or municipality to file a petition with the Division of Administrative Hearings seeking arbitration. An administrative law judge will be assigned as an arbitrator within 10 days of receiving a complete petition. The arbitration hearing will be conducted within 30 days after assignment. The arbitrator shall issue a written decision within 30 days of the hearing.

In reaching a decision, the arbitrator must consider the following factors:

- preference of the residents and property owners in the proposed annexation area;
- fiscal effects of boundary adjustments, including the ability of the county and municipalities to provide services and facilities to residents in the proposed annexation area, residents of the municipality that is proposing the annexation, and the remaining residents of the unincorporated area;
- reduction in value or use of any infrastructure owned by the county or a special district;
- commonality of interests among the residents of the proposed annexation area and the residents of the municipality that is proposing annexation;
- effects of the annexation on efficiency and effectiveness of urban service delivery;
- whether the proposed annexation is contiguous to the municipality's boundaries and is reasonably compact as required by s. 171.043(1), F.S.;
- whether the proposed annexation area has an urban character; and
- the Legislature's intent when enacting this legislation.

This bill authorizes the arbitrator to establish municipal boundaries and provide for the process for annexation which may include a referendum requirement; determine service delivery responsibilities among the parties; resolve fiscal compensation issues by requiring a single or multiple payments to the party providing urban services; and resolve any other issue related to the external enclave interlocal agreement process. Within 45 days after issuance of the arbitrator's order, the governmental entities accept the findings and enter into an agreement based on the order, negotiate an agreement that differs from the order, or file an action to set aside the order.

Boundary Adjustment and Service Delivery Interlocal Agreements ─ As an alternative process to existing procedures in ch. 171, F.S., the governing bodies of a county and one or more municipalities may enter into an boundary adjustment and service delivery interlocal agreement. The agreement may be for a term of 20 years or less and may identify future annexation areas and those areas that will be left unincorporated. The parties may review and consider revisions to the agreement every 4 years unless the parties agree on a shorter timeframe. In addition, the agreement may specify the governmental entity responsible for public safety, fire service, water and wastewater, road maintenance, recreation, and storm water management and drainage services. This agreement may include

provisions that address other services, facilities, and the transfer of services.

Notwithstanding other provisions of law, the boundary adjustment and service delivery agreement may establish a process and schedule for a proposed annexation area. A process for land use decisions may also be included in the agreement and may allow for a municipality to adopt land use changes for the proposed annexation area within the schedule provided in the interlocal agreement. The local governments may establish a process for compensation relating to the loss of tax base and revenue as well as stranded infrastructure. Also, the agreement may address the joint use of facilities and the co-location of services.

As far as public participation, the governmental entities may develop a process that includes public participation for reaching a boundary adjustment and service delivery interlocal agreement. The bill provides an optional process that allows for the initiation of negotiations regarding an agreement. Negotiations between the county and municipality must begin within 60 days of either entity adopting a resolution indicating its intent to seek an interlocal agreement. Once the local governments have reached agreement, each governing body must adopt the agreement by resolution and hold at least two public hearings within 120 days following the resolution. After the last public hearing, the governmental entities may further negotiate but must adopt any agreement by ordinance.

Within 1 year of initiating negotiations, either local government may declare an impasse in the negotiations. The mediation process to be used in this situation may be set by interlocal agreement or the bill provides a process. Similar to the arbitration process for disputes involving external enclave interlocal agreements, the local governments must file a petition with the Division of Administrative Hearings. Following assignment of an administrative law judge as a mediator within 10 days of receipt of the petition, the mediator shall hold a mediation hearing within the next 30 days.

During the mediation hearing, the mediator may consider the same factors as discussed above for an arbitrator in an arbitration proceeding related to an external enclave agreement. In addition, the mediator may make the same determinations as the arbitrator concerning boundaries, service-delivery responsibilities, fiscal compensation issues, and the resolution of any other issues related to boundary adjustment and service delivery agreements. Within 30 days after the mediation hearing, the mediator must issue a written proposal. The local governments may accept the findings of the mediator and consent to a boundary adjustment and service delivery interlocal agreement based on those findings. The parties may also negotiate further and consent to an agreement that differs from the mediator's proposal or simply refuse to enter into an agreement.

In addition to the above provisions, the bill prohibits a county or municipality from offering up-zoning of land use or financial inducements as an incentive to remain unincorporated or be annexed into the municipality unless agreed upon by the local governments. The bill states specifically that it does not affect a joint planning agreement between a municipality and a county, but those governmental entities may use the interlocal agreement process in the bill which may result in the repeal or modification of the joint planning agreement. Finally, the bill requires a municipality to give a county 45-days notice of a proposed annexation and provides that the failure to follow this notice requirement may be a cause of action to invalidate the annexation.

Issues That Require Further Negotiation ─ Two primary concerns arose during the 2003 Regular Session concerning the proposed annexation legislation. First, the restrictions on incentives for annexation or to remain unincorporated received attention. Second, the possibility of waiving the referendum requirement when amending municipal boundaries presented some concerns. The challenge remains how to develop a process that includes adequate opportunity for those residents that oppose annexation to be heard on the issue and yet allow for greater flexibility when amending local government boundaries as an alternative to the process currently provided in ch. 171, F.S.

METHODOLOGY

The representatives of the municipalities and counties made a presentation to the committee on October 22, 2003 regarding the status of their negotiations. Staff reviewed the annexation legislation from the 2003 Regular Session. In addition, staff consulted with local governments regarding problems with existing annexation laws.

FINDINGS

Committee staff recognizes the necessity of amending Florida's annexation laws to allow more flexibility for local governments to negotiate beneficial agreements that provide for efficient and economical service

delivery. It is important that the annexation process not create negative fiscal consequences for a local government through a loss in value or use of facilities. Negotiations between municipalities and counties for an interlocal agreement would address the service delivery issue and the resulting financial consequences.

RECOMMENDATIONS

Negotiations between representatives of the counties and cities are continuing and should result in consensus on an alternative to the current process for annexation provided in ch. 171, F.S. This alternative process may include a process for boundary adjustment and service delivery interlocal agreements as contained in the 2003 Regular Session bill.

Staff recommends consideration of amending ch. 171, F.S., to require a boundary adjustment and service delivery interlocal agreement prior to annexation. Should the county and municipality fail to agree on the terms of the interlocal agreement, the municipality could proceed with the annexation but requirements similar to those contained in s. 171.093, F.S., would apply.

Staff also recommends amending Florida Statutes to provide municipalities and counties with express authority to enter into an interlocal agreement that directs future annexation efforts. This would ensure the enforceability of an interlocal agreement in the absence of a required agreement prior to annexation or any alternative process for annexation as proposed in 2003.