# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: Proposed Committee Bill #3

SPONSOR: Committee on Comprehensive Planning

SUBJECT: Annexation

DATE: December 18, 2003 REVISED: _____ _____ _____ _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
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| 1. | Herrin DMH | Yeatman AC | CP | |
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## I. Summary:

The bill creates the "Local Government Boundary Adjustment and Service Delivery Interlocal Agreement Act." The bill provides a statement of legislative intent. It also defines "internal enclaves" and "external enclaves." The bill requires all internal enclaves to be annexed into surrounding municipalities by January 1, 2009, notwithstanding charter provisions or other provisions of law unless provided otherwise in a subsequently adopted special act. Also, the bill provides a process for the annexation of external enclaves into surrounding municipalities. If the surrounding municipalities are unable to agree on the terms of an enclave interlocal service agreement, the bill provides for an arbitration process at the Division of Administrative Hearings. A municipality may initiate the process to negotiate an external enclave interlocal agreement prior to January 1, 2007. After this date, a county may initiate negotiations. This bill also allows a homeowners' association or condominium association to petition a municipality or county to initiate the negotiation process for an external enclave interlocal service agreement if the board of the association approves such action.

In addition, the bill provides for a voluntary boundary adjustment and service delivery interlocal agreement process as an alternative to current law for future annexations. This process allows a county and one or more municipalities to enter into a joint agreement. The bill outlines a number of optional provisions for the agreement. An agreement may not exceed a term of 20 years, but the parties may review and consider revisions to the agreement every 4 years unless provided otherwise in the agreement.

This bill prohibits any zoning changes or any financial inducements as an incentive to remain unincorporated by the county or as an incentive for annexation by the municipality unless the county and municipality reach agreement on the issue. Finally, the bill requires a 45-day notice of proposed annexations.

This bill amends sections 171.042, and 171.044, Florida Statutes, and creates the following sections of the Florida Statutes: 171.2001, 171.2002, 171.2003, 171.20035, 171.2004, 171.2005, 171.2006, 171.2007, 171.2008, 171.2009, 171.2010, 171.2011, 171.2012, and 171.2013.

## II. Present Situation:

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:

- 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;
- requiring municipalities to agree on the annexation of enclaves by a date certain; and
- including a statement of legislative intent to ensure the enforceability of interlocal agreements relating to annexation.

Chapter 171, F.S., is intended to provide for efficient service delivery and to limit annexation to urban service areas. Florida's annexation policy attempts to accomplish these goals through restrictions aimed at preventing irregular municipal boundaries. An area proposed for annexation must be unincorporated, contiguous, and reasonably compact.[1] For a proposed annexation area to be contiguous under ch. 171, F.S., a substantial portion of the annexed area's boundary must be coterminous with the municipality's boundary.[2] "Compactness," for purposes of annexation, is defined as the concentration of property in a single area and does not allow for any action that results in an enclave, pocket, or fingers in serpentine patterns.[3]

A newly annexed area comes under the city's jurisdiction on the effective date of the annexation. Following annexation, a municipality must apply the county's land use plan and zoning regulations until a comprehensive plan amendment is adopted that includes the annexed area in the municipality's future land use map. It is possible for the city to adopt the comprehensive plan amendment simultaneously with the approval of the annexation.

As far as revenues are concerned, the effective date of the annexation determines who receives funds. The county share of revenue sharing and the half-cent sales tax will be reduced, effective July 1 if a parcel is annexed prior to April 1. Should the annexation occur before a city levies millage, the annexed property is subject to the city millage, but excluded from the MSTU. If a county has not levied its non-ad valorem assessments before annexation, the county loses those assessments. This structure for revenues does not allow for any transition period for local governments financially impacted by a recent annexation.

[1] Ss. 171.0413-.043, F.S.
[2] S. 171.031(11), F.S.
[3] S. 171.031(12), F.S.

Article VIII, section (2)(c) of the State Constitution provides authority for the Legislature to establish annexation procedures for all counties except Miami-Dade. Annexation can occur using several methods: special act, charter, interlocal agreement, voluntary annexation, or involuntary annexation. First, annexation may be accomplished by a special act of the Legislature pursuant to Article VIII, section (2)(c) of the State Constitution. Annexation through a special act must meet the notice and referendum requirements of Article III, section 10 of the State Constitution applicable to all special acts.

Cities may annex enclaves by interlocal agreement with the county under the provisions of s. 171.046, F.S. An enclave is defined in s. 171.031(13), F.S., as any unincorporated improved or developed area lying within a single municipality or surrounded by a single municipality and a manmade or natural obstacle that permits traffic to enter the unincorporated area only through the municipality. Enclaves can also be annexed by municipal ordinance when there are fewer than 25 registered voters living in the enclave and at least 60 percent of those voters approve the annexation in a referendum. In a similar process, s. 163.3171, F.S., allows for a joint planning agreement between a municipality and county to allow annexation of unincorporated areas adjacent to a municipality.

Section 171.044, F.S., provides the procedures for a voluntary annexation which occurs when 100 percent of the landowners in an area proposed to be annexed petition a municipality. In addition to the annexing municipality enacting an ordinance allowing for the annexation to occur, there are certain notice requirements that must be met. This section does not apply where a municipal or county charter provides the exclusive method for voluntary annexation.[4] Also, the voluntary annexation procedures in this section are considered supplemental to any other procedure contained in general or special law.[5]

Sections 171.0413 and 171.042, F.S., establish an electoral procedure for involuntary annexation that allows for separate approval of a proposed annexation in the existing city, at the city's option, and in the area to be annexed. A majority of the property owners must consent when more than 70 percent of the property in a proposed annex area is owned by persons that are not registered electors. Also, the governing body of the annexing municipality must prepare a report on the provision of urban services to the area being annexed, as well as adopt an ordinance allowing for the annexation and meet certain notice requirements. The urban services report does not have to provide a lot of detail.

A municipality may annex within an independent special district pursuant to s. 171.093, F.S. The municipality, after electing to assume the district's responsibilities and adopting a resolution, may enter into an interlocal agreement to address responsibility for service provision, real estate assets, equipment and personnel. Absent an interlocal agreement, the district continues as the service provider in the annexed area for a period of 4 years and receives an amount from the city equal to the ad valorem taxes or assessments that would have been collected on the property. Following the 4-year period and any mutually agreed upon extension, the municipality and district must reach agreement on the equitable distribution of property and indebtedness or the matter will proceed in circuit court.

[4] S. 171.044(4), F.S.
[5] S. 171.044(4), F.S.

**Appeal on Annexation —** Within 30 days following the adoption of an annexation ordinance, a party affected who believes 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.[6] The term "parties affected" means a person or firm owning property in, or residing in, either the municipality proposing the annexation or owning property that is proposed for annexation or any governmental unit with jurisdiction over such area.[7] 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.[8]

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.[9]

**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.[10] 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.;

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[6] S. 171.081, F.S.
[7] S. 171.031(5), F.S.
[8] 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.
[9] *City of Ormond Beach v. City of Daytona Beach*, 794 So. 2d 660 (Fla. 5th DCA 2001).
[10] S. 163.07, F.S.

- provide procedures for modifying or terminating the plan;
- identify any necessary modifications of special acts; and
- 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 Legislation** — 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 2003.

The Florida Association of Counties and the Florida League of Cities recommended a number of statutory changes during a joint presentation to the Committee on Comprehensive Planning. 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.

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. In the interim project report, 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.

## III. Effect of Proposed Changes:

**Section 1** creates s.171.2001, F.S., to provide the act shall be known as the "Local Government Boundary Adjustment and Service Delivery Interlocal Agreement Act."

**Section 2** creates s. 171.2002, F.S., to provide for a statement of legislative intent.

**Section 3** creates s.171.2003, F.S., to provide definitions for terms used in ss. 171.2001-.2013, F.S. The term "external enclaves" means an unincorporated area bounded on all sides by two or more municipalities, or by a county boundary and two or more municipalities. An "internal enclave" is defined as an unincorporated area bounded on all sides by a single municipality, or enclosed within and bounded by a single municipality and a county boundary or a natural or manmade obstacle allowing the passage of vehicular traffic to the unincorporated area only through the municipality.

**Section 4** creates s. 171.20035, F.S., to provide that all internal enclaves shall be annexed into surrounding municipalities by January 1, 2009, notwithstanding a charter provision or other provision of law unless provided otherwise in a subsequently adopted special act. However, the bill allows the governing body of the county and the governing body of the municipality surrounding the internal enclave to enter into an interlocal agreement relating to the annexation of internal enclaves that provides otherwise prior to January 1, 2009. If a special district provides essential services within an internal enclave, the special district must be a party to this interlocal agreement. This bill also requires certain provisions in an interlocal agreement addressing internal enclaves. The bill allows an interlocal agreement to include, as part of the annexation process, referendum approval by the residents of the area to be annexed. Also, the bill authorizes the transfer between the city and county of any governmental responsibilities, including service delivery, infrastructure, and compensation.

**Section 5** creates s. 171.2004, F.S., to provide a process for the annexation of external enclaves into surrounding municipalities by interlocal agreement, notwithstanding a charter provision or other provision of law unless provided otherwise in a subsequently adopted special act. A municipality may initiate the process to negotiate an external enclave interlocal agreement prior to January 1, 2007 by adopting a resolution and notifying the county and other surrounding municipalities. This bill also requires certain provisions in an interlocal agreement addressing external enclaves. If the governing bodies of two or more municipalities reach agreement within one year after the process is initiated, each municipality must adopt the proposed interlocal agreement by resolution and send a copy to the county's chief administrative officer. The county

then has 60 days to review the agreement and agree to it, suggest revisions, or reject the agreement.

If the county agrees with the proposed interlocal agreement, the county and the affected municipalities shall adopt the agreement by resolution. Suggested revisions by the county shall be considered by the municipalities submitting the agreement. The county's rejection of a proposed interlocal agreement or revised agreement requires the county to notify the municipalities of its desire to resolve the issue using the dispute resolution process provided in the act. The bill allows a county, after January 1, 2007, to initiate the process of negotiating an external enclave interlocal agreement if municipalities have not initiated the process or the municipalities cannot reach agreement within the one-year period.

A homeowners' association, as defined in s. 720.301(7), F.S., or a condominium association, as defined in s. 718.103(2), F.S., may petition one or more municipalities, before January 1, 2007, or a county, after January 1, 2007, to initiate the negotiation process for an external enclave interlocal service agreement if the board of the association approves such action.

**Section 6** creates 171.2005, F.S., to provide a dispute resolution process for the external enclave interlocal agreement process when a county and municipality(s) fail to negotiate an agreement. In the absence of an interlocal agreement that provides a dispute resolution process, the parties must use the process provided in this section. The local government seeking arbitration must file a petition with the Division of Administrative Hearings. The bill provides timeframes for assigning an administrative law judge as an arbitrator, scheduling the arbitration hearing, and the issuance of a written decision. In reaching a decision, the arbitrator must consider a number of factors, including, but not limited to, the preference of the residents in the proposed annex area, the fiscal effects on the local government's ability to provide services and facilities, the loss in value or use of infrastructure owned by a county or a special district, the commonality of residents' interests in the proposed annexation area and the annexing municipality, the effects on urban service delivery, whether the area is urban in character, whether the code enforcement regulations of the county should be preserved, and the Legislature's intent as expressed in the act. This bill authorizes the arbitrator to adjust boundaries, to determine service delivery responsibilities, to order compensation if necessary to ensure fiscal responsibilities for urban services are met, and to resolve any outstanding issues related to disputes over external enclaves.

After the arbitrator has issued an order, the governmental entities have 45 days to accept the award and enter into an agreement, negotiate an agreement that differs from the award, or take action to set aside or enforce the award. All proceedings subsequent to the filing of an action to set aside or enforce the award are governed by part III of ch. 684, F.S. This bill authorizes the Division of Administrative Hearings to develop and adopt rules for the arbitration process.

**Section 7** creates s. 171.2006, F.S., to provide a voluntary boundary adjustment and service delivery interlocal agreement process. A county may enter into a separate boundary adjustment and service delivery interlocal agreement with a municipality within the county, or may enter into a joint agreement with more than one municipality. The term of this interlocal agreement must not exceed 20 years and the agreement may contain a number of specified provisions. These provisions may include the identification of a future annexation area and unincorporated area, responsibility for services, the use of facilities and transfer of employees, the establishment

of a process and schedule for annexing a designated area, the adoption of land-use changes for areas to be annexed within the term of the agreement, the establishment of a process for fiscal considerations, and the provision for joint use of facilities and co-location of services. The bill states that land-use changes initiated by a municipality because of annexations under the terms of an interlocal agreement do not count towards the limitation on the frequency of comprehensive plan amendments.

This bill authorizes a county and a municipality to develop a process for negotiating a boundary adjustment and service delivery interlocal agreement and requires the process to provide adequate notice and hearing provisions. If the local governments do not jointly develop a process, those entities must follow the provisions of this bill. Under the provisions of the bill, a county or municipality may initiate the process of negotiating a boundary adjustment and service delivery interlocal agreement by adopting a resolution and negotiations are required to begin within 60 days after its adoption. The bill includes a schedule for adopting a negotiated agreement and requires at least 2 public hearings. If the county and municipality are unable to reach agreement within 1 year after negotiations begin, either party may declare an impasse in negotiations and seek to use the dispute resolution process in the bill. The affected local governments may agree on a mediation process by interlocal agreement or use the process provided in the bill. The mediation process provided in this section is similar to the arbitration process described in section 6 of the bill for disputes involving an external enclave interlocal agreement. This mediation process has the same timeframes and the mediator will consider similar factors as those described in section 6 of the bill.

The bill authorizes the mediator to issue a proposal that will identify boundaries and specify a process for annexation; determine service delivery responsibilities; order compensation, if necessary, to ensure fiscal responsibilities for urban services are met; and to resolve any outstanding issues related to a boundary adjustment and service delivery interlocal agreement. After the mediator has issued a proposal, the governmental entities have 45 days to accept the findings and enter into an agreement based on the award, negotiate an agreement that differs from the award, or refuse to enter into an agreement. This bill authorizes the Division of Administrative Hearings to develop and adopt rules for the mediation process.

The county and municipality may review and consider revisions to the boundary adjustment and service delivery interlocal agreement every four years unless otherwise provided for in the agreement.

**Section 8** creates s. 171.2007, F.S., to prohibit the up-zoning of land use or any financial inducements as an incentive to remain unincorporated by the county or as an incentive for annexation by the municipality unless the county and municipality reach agreement on the up-zone or financial inducement.

**Section 9** creates s. 171.2008, F.S., to provide for the transfer of powers as authorized by s. 4, Art. VIII of the State Constitution, resulting from any interlocal agreement under this act.

**Section 10** creates s. 171.2009, F.S., to provide authority for the municipal exercise of extraterritorial powers pursuant to an interlocal agreement, including the provision of services and facilities within an unincorporated area or within the territory of another municipality.

**Section 11** creates s. 171.2010, F.S., to provide authority for counties to exercise powers within a municipality pursuant to an interlocal agreement, including the provision of services and facilities within an unincorporated area or within the territory of another municipality.

**Section 12** creates s. 171.2011, F.S., to provide that any joint planning agreement is not abrogated by the language of this act; however, the use of the act by a county or municipality may result in the repeal or modification of a joint planning agreement.

**Section 13** creates s. 171.2012, F.S., to provide that any interlocal agreement created under this act, is presumed valid and the burden of proving its invalidity is on the challenger in litigation.

**Section 14** creates s. 171.2013, F.S., to require a municipalities' charter to be amended, pursuant to general law, to include territory annexed under this act.

**Section 15** amends s. 171.042, F.S., to require the municipality to deliver its report regarding the fiscal effects of annexation to the county 45 days prior to commencing annexation procedures where a referendum is required. The bill further provides that failure to follow this notice provision shall be the basis for a cause of action invalidating the annexation.

**Section 16** amends s.171.044, F.S., to require the governing body of a municipality to notice the county 45 days prior to publishing or posting the ordinance notice required for voluntary annexations. This bill provides that failure to follow this notice provision shall be the basis for a cause of action invalidating the annexation.

**Section 17** states that except as otherwise provided, the act takes effect July 1, 2004.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Areas that are the subject of interlocal agreements authorized under this act may receive more efficient and economical provision of services as a result of the agreement.

C. Government Sector Impact:

This bill requires the Division of Administrative Hearings to establish both arbitration and mediation processes to resolve issues relating to external enclave interlocal service agreements and boundary adjustment and service delivery interlocal agreements, respectively.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Amendments:

None.

A bill to be entitled

An act relating to local governments; creating s. 171.2001, F.S.; providing a short title; creating s. 171.2002, F.S.; providing legislative intent; creating s. 171.2003, F.S.; providing definitions; creating s. 171.20035, F.S.; providing for the annexation of internal enclaves; creating s. 171.2004, F.S.; providing a process for external enclave interlocal agreements; creating s. 171.2005, F.S.; providing a dispute resolution process; creating s. 171.2006, F.S.; providing for the creation of boundary adjustment and service delivery interlocal agreements; creating s. 171.2007, F.S.; prohibiting certain acts; creating s. 171.2008, F.S.; providing for the transfer of powers; creating s. 171.2009, F.S.; providing for municipalities to exercise extraterritorial powers; creating s. 171.2010, F.S.; providing powers for counties to exercise in incorporated areas; creating s. 171.2011, F.S.; providing for the effect on existing interlocal agreements; creating s. 171.2012, F.S.; providing a presumption of validity; creating s. 171.2013, F.S.; providing for the amendment of certain municipal charters; amending s. 171.042, F.S.; providing a notice requirement; providing grounds for invalidating an annexation; amending s. 171.044, F.S.; providing a notice requirement; providing



**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

grounds for invalidating an annexation;
providing an effective date.

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

Section 1. Section 171.2001, Florida Statutes, is created to read:

171.2001 Short title.--Sections 171.2001-171.2013 may be cited as the "Local Government Boundary Adjustment and Service Delivery Interlocal Agreement Act."

Section 2. Section 171.2002, Florida Statutes, is created to read:

171.2002 Legislative intent.--The Legislature intends to provide an alternative to the annexation of territory into a municipality and subtraction of territory from the unincorporated area of the county. The principal goal of this act is to encourage local governments to jointly determine how to provide municipal services to residents and property in the most efficient and effective manner, balancing the needs and desires of the community with the ability to pay. This act is intended to establish a more flexible process for the adjustment of municipal boundaries and to address a wider range of annexation impacts. Annexation laws should encourage intergovernmental coordination in adjusting municipal boundaries, local government revenue structures, and service-provision responsibilities to better reflect urban development patterns, community identities, and service delivery capacities. Likewise, it is the intent of the Legislature to promote sensible municipal boundaries that might reduce the costs of local government, facilitate service delivery, and increase political transparency and

accountability. This act is also intended to prevent the wide dispersion of unincorporated area that may be caused by annexation that results in service delivery problems and a tax base insufficient to serve the needs of the widely dispersed unincorporated area. This act is intended to offer municipalities and counties a new process through which municipal and unincorporated area boundaries may be adjusted and services may be provided to those areas.

Section 3. Section 171.2003, Florida Statutes, is created to read:

171.2003 Definitions.--As used in ss. 171.2001-171.2013, the term:

(1) "External enclave" means an unincorporated area that is enclosed within and bounded on all sides by two or more municipalities or bounded on all sides by two or more municipalities and a county boundary.

(2) "Internal enclave" means an unincorporated area that is enclosed within and bounded on all sides by a single municipality or that is enclosed within and bounded by a single municipality and a county boundary or a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.

Section 4. Section 171.20035, Florida Statutes, is created to read:

171.20035 Annexation of internal enclaves.--

(1) Notwithstanding any charter provision or other provision of law, except a subsequently adopted special act, effective January 1, 2009, all internal enclaves are annexed into the surrounding municipality.

(2) The governing body of the county and the governing body of the municipality surrounding an internal enclave may,

however, prior to January 1, 2009, enter into an interlocal agreement providing otherwise. If essential public services are provided by a special district within an internal enclave, the special district must be a party to the interlocal agreement.

(a) The interlocal agreement shall provide:

1. For an earlier date for the annexation of the internal enclave, including the process by which the internal enclave may be annexed; or

2. That the internal enclave shall not be annexed, but shall remain unincorporated until the governing bodies reach an internal enclave interlocal agreement.

(b) The interlocal agreement may provide a process for annexation which may include a provision that the annexation is subject to referendum approval by the residents within the area to be annexed.

(c) The interlocal agreement may provide for a transfer between the county and the municipality of any governmental responsibility, including service delivery, infrastructure, and compensation.

Section 5. Section 171.2004, Florida Statutes, is created to read:

171.2004 External enclave interlocal agreement process.--

(1) Notwithstanding any charter provision or other provision of law, except a subsequently adopted special act, the governing bodies of two or more municipalities surrounding an external enclave may negotiate a proposed external enclave interlocal agreement for consideration by the governing body of the county.

(2) At any time prior to January 1, 2007, a municipality may adopt a resolution indicating its intent to negotiate an external enclave interlocal agreement. The resolution shall identify the unincorporated area for which the municipality desires to negotiate. Within 3 days after its adoption, the municipality shall send the resolution by certified mail to the chief administrative officers for the county and all other municipalities surrounding the external enclave.

(3) A proposed interlocal agreement shall:

(a) Indicate whether the area should be annexed into a municipality or remain unincorporated;

(b) Specify the process by which the area will be annexed, including a determination of whether or not a referendum will be held;

(c) Determine whether the county or a municipality should provide municipal services and facilities to the area;

(d) Include any other service delivery issue, including fiscal compensation to any municipality or county; and

(e) Include a public participation process that provides reasonable notice to the public.

(4) If the governing bodies of two or more municipalities surrounding the external enclave reach a proposed agreement within 1 year after initiating the process, the proposed interlocal agreement shall be adopted by resolution by each municipality and sent to the chief administrative officer for the county by certified mail.

(a) Within 60 days after receipt of the resolution, the governing body of the county shall consider the proposed interlocal agreement and may agree to the proposed interlocal

agreement, suggest revisions to it, or reject it and send the issue to dispute resolution pursuant to s. 171.2005.

1. If the county governing body agrees with the proposed interlocal agreement, it shall adopt a resolution indicating its agreement and notify the municipalities. Thereafter, the municipalities and the county shall adopt the interlocal agreement pursuant to the regular ordinance adoption process provided in ss. 125.66(2)(a) and 166.041(3)(a).

2. If the county governing body adopts revisions to the proposed interlocal agreement, it shall return the revised resolution to the municipalities. The governing bodies of each of the municipalities shall consider the county's revised resolution.

a. If a municipality agrees with the county's revisions, it shall modify its resolution and notify the governing bodies of the county and the other municipalities accordingly.

b. If a municipality further revises the resolution, it shall do so by resolution and notify the governing body of the county and the surrounding municipalities accordingly.

c. The county governing body shall consider the proposed revised interlocal agreement and may agree to accept or reject it and submit the issue to dispute resolution pursuant to s. 171.2005.

(5) If the county governing body rejects the proposed agreement, it shall notify the municipalities in writing by certified mail of its intent to initiate the dispute resolution process in s. 171.2005.

(6) If no municipality surrounding an external enclave initiates the interlocal agreement process by January 1, 2007,

or if the municipalities do not reach an agreement within 1 year after such initiation, the county governing body may initiate the process pursuant to this section.

(7) A homeowner's association, as defined in s. 720.301(7), or a condominium association, as defined in s. 718.103(2), may petition one or more of the affected municipalities to initiate the interlocal agreement process in subsection (1) prior to January 1, 2007, if the board of the association has approved such action. After January 1, 2007, the association may petition the county to initiate the interlocal agreement process in subsection (6) if the board of the association has approved such action.

Section 6. Section 171.2005, Florida Statutes, is created to read:

171.2005 Dispute resolution process.--

(1) For resolving disputes arising under s. 171.2004, the local governments may establish a dispute resolution process by interlocal agreement that provides for an orderly, speedy, and final resolution of the dispute.

(2) If local governments do not adopt a dispute resolution interlocal agreement, they must use the following dispute resolution process:

(a) A county or municipality may file a petition seeking arbitration which states with particularity the issue in dispute.

(b) Notwithstanding s. 120.569, the petition shall be filed with the Division of Administrative Hearings which shall, immediately upon filing, forward copies to the other local government that is a party. Within 10 days after receiving a complete petition, the division director shall assign an administrative law judge as arbitrator, who shall

conduct an arbitration hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown.

(c) Within 30 days after the arbitration hearing, the arbitrator shall issue a written decision and state the reasons in writing. The division shall immediately transmit copies of the decision to the county and the municipalities.

(d) The evidentiary standards shall be as provided in ss. 120.569(2)(g) and 120.57(1)(c).

(e) This subsection does not preclude settlement by mutual agreement of the parties at any time.

(f) The arbitrator shall consider the following factors:

1. Preference of the residents and property owners in the area proposed for annexation;

2. The fiscal effects of boundary adjustments, including the annexation of the area under consideration on the ability of the county and the municipalities to provide services and facilities to the area under consideration, the remainder of the unincorporated area, and the incorporated area of the participating municipalities;

3. Reduction in the value or use of infrastructure owned by the county or a special district, that may result from annexation;

4. Commonality of interests among the residents and property owners of the area proposed for annexation and the adjacent incorporated area;

5. Effects of the proposed annexation on the efficiency and effectiveness of urban service delivery;

6. Whether the area proposed for annexation meets the criteria in s. 171.043(1);



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7. Whether the area proposed for the annexation is urban in character;

8. Whether the code enforcement regulations of the county should be preserved; and

9. The intent of the Legislature as expressed in this act.

(g) The arbitrator may:

1. Determine unincorporated area and municipal boundaries, including a process for annexation which may include a referendum requirement;

2. Determine service delivery responsibilities among the county, municipality, and special district;

3. Resolve fiscal compensation issues, including requiring a single payment or payment over a term of years of non-ad valorem revenue by one of the parties to assure that fiscal responsibilities for providing urban services can be met; and

4. Resolve any other issue relating to disputes arising under s. 171.2004.

(h) Arbitration hearings shall be conducted as provided by ss. 120.569 and 120.57, except that the arbitrator's order shall be transmitted to the governmental entities, which have 45 days to:

1. Accept the findings and enter into an agreement based upon the award;

2. Negotiate and enter into an agreement that differs from the award; or

3. File an action rejecting the award pursuant to s. 684.22 to set aside the award or enforce it. All subsequent proceedings shall be governed by part III of chapter 684.

(i) The Division of Administrative Hearings may develop and adopt administrative rules governing the arbitration process.

Section 7. Section 171.2006, Florida Statutes, is created to read:

171.2006 Boundary adjustment and service delivery interlocal agreement.--The governing body of a county may enter into a separate boundary adjustment and service delivery interlocal agreement with a municipality within the county. At the discretion of the county and each municipality, more than a single municipality and the county may enter into a joint interlocal agreement.

(1) An interlocal agreement may be for a term of 20 years or less and:

(a) May identify the area for annexation and area to be left unincorporated.

(b) May identify the local government responsible for the delivery of the following services:

1. Public safety;

2. Fire service;

3. Water and wastewater;

4. Road maintenance;

5. Recreation; and

6. Storm water management and drainage.

(c) May address other services, facilities, and transfer of employees.

(d) May establish a process and schedule for annexation of the designated area, notwithstanding other provisions of law.

(e) May establish a process for land-use decisions, including those made jointly by the governing bodies of the

county and the municipality and may allow a municipality to adopt land-use changes for areas that are scheduled to be annexed within the timeframe of the interlocal agreement. However, comprehensive plan amendments relating to land-use changes initiated by a municipality because of annexations made pursuant to such interlocal agreements do not count toward the limitation on the frequency of plan amendments in s. 163.3187.

(f) May establish a process for fiscal considerations, including compensation for loss of tax base and revenue and stranded infrastructure.

(g) May include provisions for the joint use of facilities and the colocation of services.

(2) The governing bodies of a county and a municipality may develop a process for reaching a boundary adjustment and service delivery interlocal agreement, which provides for public participation in a manner that meets or exceeds the requirements of paragraph (b) or the governing bodies may use the following process:

(a) A municipality or county may initiate negotiations by adopting a resolution indicating such intent. Within 60 days after receipt of such resolution, negotiations between the county and the municipality shall begin.

(b) When the municipality and county have reached a tentative agreement, each local government shall adopt it by resolution. Thereafter, within 120 days, the tentative agreement shall be the subject of at least two public hearings by each local government.

(c) Following the last public hearing, the municipality and county may further negotiate and shall adopt

the agreement by ordinance pursuant to ss. 166.043 and 125.66, respectively.

(d) No earlier than 1 year after the commencement of negotiations, the city or county may declare an impasse in the negotiations and seek a resolution of the issues pursuant to this section.

(3) The local governments may, by interlocal agreement, establish a mediation process; otherwise, they must use the following mediation process:

(a) A county or municipality may file a petition seeking mediation, which petition states with particularity the issue in dispute, suggests a proposed resolution, and states the reasons for supporting the resolution.

(b) Notwithstanding s. 120.569, the petition shall be filed with the Division of Administrative Hearings which shall, immediately upon filing, forward copies to the other local government that is a party. Within 10 days after receiving a complete petition, the division director shall assign an administrative law judge as mediator, who shall conduct a mediation hearing within 30 days thereafter, unless the petition is withdrawn or a continuance is granted by agreement of the parties or for good cause shown.

(c) Within 30 days after the mediation hearing, the arbitrator shall issue a written proposal and state the reasons in writing. The division shall immediately transmit copies of the proposal to the county and the municipality.

(d) The evidentiary standards shall be as provided in ss. 120.569(2)(g) and 120.57(1)(c).

(e) This subsection does not preclude settlement by mutual agreement of the parties at any time.

(f) The mediator shall consider the following factors:



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1. Preference of the residents and property owners in the area proposed for annexation and in adjoining incorporated and unincorporated areas;

2. The fiscal effects of annexations, including the annexation of the area under consideration, on the ability of the county and the municipality to provide services and facilities to the area under consideration, the remainder of the unincorporated area, and the incorporated area of the participating municipality;

3. Reduction in the value or use of infrastructure owned by the county or a special district which may result from annexation;

4. Commonality of interests among the residents and property owners of the area proposed for annexation;

5. Commonality of interests between the area proposed for annexation and adjacent incorporated and unincorporated neighborhoods and communities;

6. Effects of the proposed annexation on the efficiency and effectiveness of urban service delivery;

7. Whether the area proposed for annexation meets the criteria in s. 171.043(1);

8. Whether the area proposed for the annexation is urban in character; and

9. The intent of the Legislature as expressed in this act.

(g) The mediator may:

1. Determine unincorporated area and municipal boundaries, including adopting a process for annexation that may include a referendum requirement;

2. Determine service-delivery responsibilities among the county, municipality, and special district;



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3. Determine fiscal compensation issues, including requiring a single payment or payment over a term of years of non-ad valorem revenue by one of the parties to assure that fiscal responsibilities for providing urban services can be met; and

4. Resolve any other issue involving a dispute about boundary adjustment and service delivery.

(h) Mediation hearings shall be conducted as provided by ss. 120.569 and 120.57, except that the mediator's proposal is not final, but shall be transmitted to the governmental entities, which have 45 days to:

1. Accept the findings and enter into an agreement based upon the award;

2. Negotiate and enter into an agreement that differs from the award; or

3. Refuse to enter into an agreement.

(i) The Division of Administrative Hearings may develop and adopt administrative rules governing the mediation process.

(j) Unless another time period is agreed upon, the county and the municipality may review and consider revisions to the interlocal agreement every 4 years.

Section 8. Section 171.2007, Florida Statutes, is created to read:

171.2007 Prohibited acts.--A county or municipality may not approve any up-zoning of land use or any financial inducements as an incentive to remain unincorporated with respect to a county or incentive to annexation with respect to a municipality. However, such incentives or disincentives may be offered with the agreement of the other local government.

Section 9. Section 171.2008, Florida Statutes, is created to read:

171.2008 Transfer of powers.--This act is an alternative provision otherwise provided by law as authorized in s. 4, Art. VIII of the State Constitution for the transfer of power resulting from an interlocal agreement for the provision of services or the acquisition of public facilities among a municipality, county, special district, or other entity.

Section 10. Section 171.2009, Florida Statutes, is created to read:

171.2009 Municipal extraterritorial power.--This act authorizes a municipality to exercise extraterritorial powers that include the authority to provide services and facilities within the unincorporated area or within the territory of another municipality as provided within a boundary adjustment and service delivery interlocal agreement.

Section 11. Section 171.2010, Florida Statutes, is created to read:

171.2010 County incorporated area power.--This act authorizes a county to exercise powers within a municipality that include the authority to provide services and facilities within the unincorporated area or within the territory of another municipality as provided within a boundary adjustment and service delivery interlocal agreement.

Section 12. Section 171.2011, Florida Statutes, is created to read:

171.2011 Effect on existing interlocal agreement.--A joint planning agreement between a municipality and a county is not abrogated by this act. However, a county or

municipality may use this act, which may result in the repeal or modification of the joint planning agreement.

Section 13. Section 171.2012, Florida Statutes, is created to read:

171.2012 Interlocal agreement entitled to presumption of validity.--In any litigation over the terms, conditions, construction, or enforcement of an interlocal agreement created pursuant to this act, the agreement is presumed valid and the burden of proving its invalidity is on the challenger.

Section 14. Section 171.2013, Florida Statutes, is created to read:

171.2013 Municipal charter.--The territorial jurisdiction provided for in an annexing municipality's charter shall be amended pursuant to s. 166.031(3) to include the territory annexed under this act.

Section 15. Subsection (2) of section 171.042, Florida Statutes, is amended to read:

171.042 Prerequisites to annexation.--

(2) Forty-five days prior to commencing the annexation procedures under s. 171.0413, the governing body of the municipality shall file a copy of the report required by this section with the board of county commissioners of the county wherein the municipality is located. This notice provision may be the basis for a cause of action to invalidate the annexation.

Section 16. Subsection (6) of section 171.044, Florida Statutes, is amended to read:

171.044 Voluntary annexation.--

(6) Forty-five days prior to ~~Upon~~ publishing or posting the ordinance notice required under subsection (2), the governing body of the municipality must provide a copy of

the notice, via certified mail, to the board of the county commissioners of the county wherein the municipality is located. The notice provision provided in this subsection shall ~~not~~ be the basis for a ~~of any~~ cause of action invalidating ~~challenging~~ the annexation.

Section 17. This act shall take effect July 1, 2004.



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SENATE SUMMARY

Creates the "Local Government Boundary Adjustment and Service Delivery Interlocal Agreement Act." Provides for the annexation of all internal enclaves into surrounding municipalities by January 1, 2009, notwithstanding charter provisions or other provisions of law unless provided otherwise in a subsequently adopted special act. Provides for a county and municipality to negotiate an external enclave interlocal service agreement. Provides for arbitration if the parties cannot reach agreement. Authorizes a municipality to initiate the process to negotiate an agreement before January 1, 2007, and provides for a county to initiate negotiations after that date. Authorizes the board of a homeowners' association or condominium association to petition a municipality or county to initiate the negotiation process for an external enclave interlocal service agreement. Provides for the governing body of a county to enter into a boundary adjustment and service delivery interlocal agreement with a municipality within the county. Limits the term of the agreement to 20 years. Prohibits a county or municipality from approving the up-zoning of land use or any financial inducements as an incentive to remain unincorporated or as an incentive for annexation unless the county and municipality agree on the up-zoning or financial inducement. Requires a 45-day notice of any proposed involuntary and voluntary annexation. (See bill for details.)