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: CS/SB's 490 and 1042

SPONSOR: Comprehensive Planning Committee, Senators Constantine and Geller

SUBJECT: Annexation

DATE: April 14, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	Fav/Combined CS
2.			ATD	
3.			AP	
4.			RC	
5.				
6.				

I. Summary:

The committee substitute (CS) creates the "Local Government Boundary Adjustment and Service Delivery Interlocal Agreement act." The CS includes definitions of "internal enclaves" and "external enclaves". It also provides a statement of legislative intent.

Under this CS, all internal enclaves will be annexed into surrounding municipalities by January 1, 2008, notwithstanding charter provisions or other provisions of law unless provided otherwise in a subsequently adopted special act. Also, the CS provides a process for the annexation of external enclaves into surrounding municipalities and 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, 2006. After this date, a county may initiate negotiations. This CS 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 CS provides 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. Under this CS, the agreement may contain a number of specified provisions. 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.

Further, the CS prohibits 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. Finally, the CS requires a 45-day notice of proposed involuntary and voluntary annexations.

This CS 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:

Florida's annexation statute, ch. 171, F.S., has remained largely unchanged for 30 years. During this period, many municipalities have expanded their boundaries to reach an expanding population in urbanizing counties. This expansion, in some cases, has created conflict between cities and counties.

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 municipalities' 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.

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.

[1] Ss. 171.0413-.043, Fla. Stat. (2002).
[2] S. 171.031(11), Fla. Stat. (2002).
[3] S. 171.031(12), Fla. Stat. (2002).

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.

Florida City and County Management Association

The Florida City and County Management Association (FCCMA) adopted a policy statement that proposes a number of changes, as summarized below, to Florida's annexation procedures.[6] With regard to enclaves, FCCMA proposes eliminating all "internal enclaves" by 2005 and "external enclaves" by 2007. "Internal enclaves" would consist of any unincorporated property, regardless of size or whether it has improvements, that is surrounded by a single municipality.

[4] S. 171.044(4), Fla. Stat. (2002).
[5] S. 171.044(4), Fla. Stat. (2002).
[6] Lance deHaven-Smith, Ph.D., *FCCMA Policy Statement on Annexation* (Oct. 12, 2002), http://www.fccma.org/pdf/FCCMA_Paper_Final_Draft.pdf.

An "external enclave" could not exceed 100 acres, may be vacant or have improvements, and is surrounded by two more contiguous cities.

Prior to the annexation of internal and external enclaves, the FCCMA proposes that counties quantify any decrease in value for county-owned capital facilities resulting from the proposed annexations. Where a diminution in value for the counties' facilities can be shown, the annexing cities would be required to negotiate a service-delivery agreement or compensate the county for the loss.

Further, the FCCMA proposes creating a separate process for annexations that total less than 100 acres. To prevent annexation of smaller parcels in avoidance of the threshold, any contiguous, unincorporated lands annexed within a two-year period would be considered a single annexation. The annexation of less than 100 acres would require notification of the county, the public and other cities contiguous to the annexed area. In addition, the city must adopt a service-delivery plan for the area to be annexed as well as hold two public hearings at least 10 days apart. The FCCMA proposes following existing law regarding landowner and voter approval for these annexations.

For annexations in excess of 100 acres, the FCCMA recommends adding two steps to the current process. First, the financial impacts of a contemplated annexation would be identified and studied. Second, the affected governments would be required to negotiate an agreement for assignment of costs and service delivery. Should the county and city fail to reach an agreement for a proposed annexation, the FCCMA would rely on the government dispute resolution provided for in ch. 164, F.S. However, the FCCMA suggests limiting the binding arbitration required by ch. 164, F.S., to only the issue of assigning costs, not whether the annexation will proceed.

The FCCMA proposes the financial implications of an annexation be phased in over several years and that local governments be compensated for any related decrease in value of capital facilities. Further, the FCCMA suggests that absent an agreement between the county and municipality, the county land use plan and zoning regulations remain in place for three years following annexation regardless of the size of the parcel(s) to be annexed.

Also, FCCMA proposes amending s. 171.051, F.S., to allow contraction or de-annexation by interlocal agreement with the county. The organization also suggests authorizing any county or combination of cities to agree on a joint service-delivery and boundary plan in any geographic area under their collective jurisdiction. These joint service plans would allow for annexations and contractions and would be effective upon approval by a majority vote with all county electors. Assuming a joint planning agreement won voter approval, the state revenue-sharing formula would be adjusted to redirect a share of those monies to the cities and counties that participated in the joint agreement.

As an incentive to engage in the joint planning process, the FCCMA proposes offering financial support in the form of grants to cities and counties for the following: joint planning, conflict resolution, binding arbitration, and economic impact analysis. Counties would be given greater flexibility over certain revenues for successful completion of joint planning activities.

The FCCMA recommendations also call for the Legislative Committee on Intergovernmental Relations to evaluate annexation, contraction, enclaves, joint planning, and conflict resolution processes related to annexation and issue a report at least every 5 years. Finally, the FCCMA calls for three different studies including the measurement of long-term costs to counties associated with annexation of lands with high development potential, examination of the frequency, nature, location, and aggregate amount of land involved in annexations over the 100-acre threshold in the process described above, and an assessment of "external enclaves" and whether these enclaves or some part of the group should be targeted for mandatory annexation.

Recommended Statutory Changes

Part of the growth management legislation passed in 2002 included a requirement in s. 163.3177(6)(h)9., F.S., that representatives of special districts, counties, and municipalities provide recommended statutory changes regarding delivery of local services in future annexation areas to the Legislature by February 1, 2003. The counties, cities and special districts have been discussing recommendations for statutory changes to the State's annexation procedures. The goal of these proposed changes is to eliminate duplication of services, provide for more efficient service delivery, ensure logical municipal boundary expansion, and promote good growth management policy. The Florida League of Cities and the Florida Association of Counties made a joint presentation on proposed annexation reform to the Senate Committee on Comprehensive Planning on March 6, 2003.

The Senate Committee on Comprehensive Planning, Local and Military Affairs completed an interim project report in January 2003 that examined service delivery issues as well as other conflicts resulting from annexation.[7] As part of the interim project, staff consulted with a number of interested parties including the League of Cities, the Florida Association of Counties, the Association of Special Districts, and the FCCMA.

The committee interim project report made the following recommendations:

- Require an interlocal agreement between a county and municipality on financial impacts and service delivery prior to any annexation. If the county and municipality cannot reach agreement, the process outlined in s. 171.093, F.S., for resolution of annexation conflicts between special districts and municipalities should apply;
- With regard to land use changes, require county comprehensive plan and land use regulations to remain in place for three years following annexation absent an agreement between the county and municipality on any land use change for the annexed area;
- Require cities to agree on annexation of enclaves by a date certain; and
- Provide a legislative intent statement that ensures the enforceability of interlocal annexation agreements.

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."

[7] Senate Committee on Comprehensive Planning, Local and Military Affairs, *Does Current Law Adequately Address Delivery of Local Government Service Issues and Other Conflicts that Arise During Annexation?*, Interim Project Report 2003-115 (January 2003).

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. 171.2004-.2007, 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, 2008, notwithstanding charter provisions or other provisions of law unless provided otherwise in a subsequently adopted special act. However, the CS 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, 2008. If a special district provides essential services within an internal enclave, the special district must be a party to this interlocal agreement. This CS also requires certain provisions in an interlocal agreement addressing internal enclaves. The CS 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 CS 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 charter provisions or other provisions 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, 2006 by adopting a resolution and notifying the county and other surrounding municipalities. This CS also requires certain provisions in an interlocal agreement addressing external enclaves. If the governing bodies of two 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 CS allows a county, after January 1, 2006, to initiate the process if municipalities have not initiated the process or the municipalities cannot reach agreement within the one-year period.

A homeowners' association or condominium association may 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.

Section 6 creates 171.2005, F.S., to provide a dispute resolution process for the external enclave 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 CS provides timeframes for assigning an administrative law judge as an arbitrator, scheduling the arbitration hearing, and the division's 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, 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 CS 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. This CS 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 separate boundary adjustment and service delivery interlocal agreements 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 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 for a process for fiscal considerations, and the provision for joint use of facilities and co-location of services. The CS states the land-use changes initiated because of annexations under the terms of an interlocal agreement do not count towards the limitation on the frequency of comprehensive plan amendments.

This CS provides a process for negotiating a boundary adjustment and service delivery interlocal agreement. A county or municipality may initiate the process by adopting a resolution and negotiations are required to begin within 60 days after its adoption. The CS includes a schedule for adopting a negotiated agreement and requires public hearings. If the county and municipality are unable to reach agreement within 1 year after negotiations begin, either party may declare an impasse. The affected local governments may agree on a mediation process by interlocal agreement or use the process provided in the CS. The mediation process provided in this section is similar to the arbitration process described in section 6 of the CS. This mediation process has the same timeframes and the mediator will consider similar factors as those described above.

Additional factors for consideration in the mediation process include the commonality of interests between the residents and property owners in the area proposed for annexation, and also the commonality of interests between the area proposed for annexation and adjacent incorporated and unincorporated communities.

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 CS 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 in the agreement.

Section 8 creates s. 171.2007, F.S., to prohibit 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 authorization for transfer of powers as authorized by Art. VIII, s. 4 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 may not be abrogated by 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 any interlocal agreement 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 CS 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 CS 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, 2003.

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 CS 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.