

By the Committee on Comprehensive Planning; and Senators
Constantine and Geller

316-2403-03

1 A bill to be entitled
2 An act relating to local governments; creating
3 s. 171.2001, F.S.; providing a short title;
4 creating s. 171.2002, F.S.; providing
5 legislative intent; creating s. 171.2003, F.S.;
6 providing definitions; creating s. 171.20035,
7 F.S.; providing for the annexation of internal
8 enclaves; creating s. 171.2004, F.S.; providing
9 a process for external enclave interlocal
10 agreements; creating s. 171.2005, F.S.;
11 providing a dispute resolution process;
12 creating s. 171.2006, F.S.; providing for the
13 creation of boundary adjustment and service
14 delivery interlocal agreements; creating s.
15 171.2007, F.S.; prohibiting certain acts;
16 creating s. 171.2008, F.S.; providing for the
17 transfer of powers; creating s. 171.2009, F.S.;
18 providing for municipalities to exercise
19 extraterritorial powers; creating s. 171.2010,
20 F.S.; providing powers for counties to exercise
21 in incorporated areas; creating s. 171.2011,
22 F.S.; providing for the effect on existing
23 interlocal agreements; creating s. 171.2012,
24 F.S.; providing a presumption of validity;
25 creating s. 171.2013, F.S.; providing for the
26 amendment of certain municipal charters;
27 amending s. 171.042, F.S.; providing a notice
28 requirement; providing grounds for invalidating
29 an annexation; amending s. 171.044, F.S.;
30 providing a notice requirement; providing
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1 grounds for invalidating an annexation;
2 providing an effective date.

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

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

8 171.2001 Short title.--Sections 171.2001-171.2013 may
9 be cited as the "Local Government Boundary Adjustment and
10 Service Delivery Interlocal Agreement Act."

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

13 171.2002 Legislative intent.--The Legislature intends
14 to provide an alternative to the annexation of territory into
15 a municipality and subtraction of territory from the
16 unincorporated area of the county. The principal goal of this
17 act is to encourage local governments to jointly determine how
18 to provide municipal services to residents and property in the
19 most efficient and effective manner, balancing the needs and
20 desires of the community with the ability to pay. This act is
21 intended to establish a more flexible process for the
22 adjustment of municipal boundaries and to address a wider
23 range of annexation impacts. Annexation laws should encourage
24 intergovernmental coordination in adjusting municipal
25 boundaries, local government revenue structures, and
26 service-provision responsibilities to better reflect urban
27 development patterns, community identities, and service
28 delivery capacities. Likewise, it is the intent of the
29 Legislature to promote sensible municipal boundaries that
30 might reduce the costs of local government, facilitate service
31 delivery, and increase political transparency and

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

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

11 171.2003 Definitions.--As used in ss.
12 171.2001-171.2013, the term:

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

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

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

25 171.20035 Annexation of internal enclaves.--

26 (1) Notwithstanding any charter provision or other
27 provision of law, except a subsequently adopted special act,
28 effective January 1, 2008, all internal enclaves are annexed
29 into the surrounding municipality.

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

1 however, prior to January 1, 2008, enter into an interlocal
2 agreement providing otherwise. If essential public services
3 are provided by a special district within an internal enclave,
4 the special district must be a party to the interlocal
5 agreement.

6 (a) The interlocal agreement shall provide:

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

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

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

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

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

23 171.2004 External enclave interlocal agreement
24 process.--

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

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1 (2) At any time prior to January 1, 2006, a
2 municipality may adopt a resolution indicating its intent to
3 negotiate an external enclave interlocal agreement. The
4 resolution shall identify the unincorporated area for which
5 the municipality desires to negotiate. Within 3 days after its
6 adoption, the municipality shall send the resolution by
7 certified mail to the chief administrative officers for the
8 county and all other municipalities surrounding the external
9 enclave.

10 (3) A proposed interlocal agreement shall:

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

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

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

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

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

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

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

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

3 1. If the county governing body agrees with the
4 proposed interlocal agreement, it shall adopt a resolution
5 indicating its agreement and notify the municipalities.
6 Thereafter, the municipalities and the county shall adopt the
7 interlocal agreement pursuant to the regular ordinance
8 adoption process provided in ss. 125.66(2)(a) and
9 166.041(3)(a).

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

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

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

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

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

30 (6) If no municipality surrounding an external enclave
31 initiates the interlocal agreement process by January 1, 2006,

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

4 (7) A homeowner's association, as defined in s.
5 720.301(7), or a condominium association, as defined in s.
6 718.103(2), may petition one or more of the affected
7 municipalities to initiate the interlocal agreement process in
8 subsection (1) prior to January 1, 2006, if the board of the
9 association has approved such action. After January 1, 2006,
10 the association may petition the county to initiate the
11 interlocal agreement process in subsection (6) if the board of
12 the association has approved such action.

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

15 171.2005 Dispute resolution process.--

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

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

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

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

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

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

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

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

12 (f) The arbitrator shall consider the following
13 factors:

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

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

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

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

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

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

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

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

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

7 (g) The arbitrator may:

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

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

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

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

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

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

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

28 3. File an action rejecting the award pursuant to s.
29 684.22 to set aside the award or enforce it. All subsequent
30 proceeds shall be governed by part III of chapter 684.

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

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

6 171.2006 Boundary adjustment and service delivery
7 interlocal agreement.--The governing body of a county may
8 enter into a separate boundary adjustment and service delivery
9 interlocal agreement with a municipality within the county. At
10 the discretion of the county and each municipality, more than
11 a single municipality and the county may enter into a joint
12 interlocal agreement.

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

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

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

19 1. Public safety;

20 2. Fire service;

21 3. Water and wastewater;

22 4. Road maintenance;

23 5. Recreation; and

24 6. Storm water management and drainage.

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

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

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

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

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

12 (g) May include provisions for the joint use of
13 facilities and the co-location of services.

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

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

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

29 (c) Following the last public hearing, the
30 municipality and county may further negotiate and shall adopt
31

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

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

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

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

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

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

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

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

31 (f) The mediator shall consider the following factors:

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

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

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

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

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

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

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

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

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

26 (g) The mediator may:

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

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

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

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

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

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

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

16 3. Refuse to enter into an agreement.

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

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

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

25 171.2007 Prohibited acts.--A county or municipality
26 may not approve any up-zoning of land use or any financial
27 inducements as an incentive to remain unincorporated with
28 respect to a county or incentive to annexation with respect to
29 a municipality. However, such incentives or disincentives may
30 be offered with the agreement of the other local government.

31

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

3 171.2008 Transfer of powers.--This act is an
4 alternative provision otherwise provided by law as authorized
5 in s. 4, Art. VIII of the State Constitution for the transfer
6 of power resulting from an interlocal agreement for the
7 provision of services or the acquisition of public facilities
8 among a municipality, county, special district, or other
9 entity.

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

12 171.2009 Municipal extraterritorial power.--This act
13 authorizes a municipality to exercise extraterritorial powers
14 that include the authority to provide services and facilities
15 within the unincorporated area or within the territory of
16 another municipality as provided within a boundary adjustment
17 and service delivery interlocal agreement.

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

20 171.2010 County incorporated area power.--This act
21 authorizes a county to exercise powers within a municipality
22 that include the authority to provide services and facilities
23 within the unincorporated area or within the territory of
24 another municipality as provided within a boundary adjustment
25 and service delivery interlocal agreement.

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

28 171.2011 Effect on existing interlocal agreement.--A
29 joint planning agreement between a municipality and a county
30 is not abrogated by this act. However, a county or
31

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

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

5 171.2012 Interlocal agreement entitled to presumption
6 of validity.--In any litigation over the terms, conditions,
7 construction, or enforcement of an interlocal agreement
8 created pursuant to this act, the agreement is presumed valid
9 and the burden of proving its invalidity is on the challenger.

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

12 171.2013 Municipal charter.--The territorial
13 jurisdiction provided for in an annexing municipality's
14 charter shall be amended pursuant to s. 166.031(3) to include
15 the territory annexed under this act.

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

18 171.042 Prerequisites to annexation.--

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

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

28 171.044 Voluntary annexation.--

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

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

6 Section 17. This act shall take effect July 1, 2003.

7
8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 Senate Bill's 490 and 1042

11 The committee substitute (CS) creates the "Local Government
12 Boundary Adjustment and Service Delivery Interlocal Agreement
13 act." The CS includes a definitions section and statement of
14 legislative intent. Under this CS, all internal enclaves will
15 be annexed into surrounding municipalities by January 1, 2008,
16 notwithstanding charter provisions or other provisions of law
17 unless provided otherwise in a subsequently adopted special
18 act.

19 Also, the CS provides a process for the annexation of external
20 enclaves into surrounding municipalities. The CS provides for
21 the negotiation of an external enclave interlocal service
22 agreement and includes an arbitration process at the Division
23 of Administrative Hearings if the parties cannot reach
24 agreement. A municipality may initiate the process to
25 negotiate an external enclave interlocal agreement prior to
26 January 1, 2006. A county may initiate negotiations after
27 January 1, 2006. A homeowners' association or condominium
28 association may petition a municipality or county to initiate
29 the negotiation process for an external enclave interlocal
30 service agreement if the board of the association approves
31 such action.

32 In addition, the CS provides a voluntary boundary adjustment
33 and service delivery interlocal agreement process as an
34 alternative to current law for future annexations. This
35 process allows a county and one or more municipalities to
36 enter into a joint agreement that may contain a number of
37 specified provisions. The CS provides that an agreement may
38 not exceed a term of 20 years, but the parties may review and
39 consider revisions to the agreement every 4 years unless
40 provided otherwise in the agreement.

41 Further, the CS prohibits the up-zoning of land use or any
42 financial inducements as an incentive to remain unincorporated
43 by the county or as an incentive for annexation by the
44 municipality unless the county and municipality reach
45 agreement on the up-zone or financial inducement. Finally, the
46 CS requires a 45-day notice of proposed involuntary and
47 voluntary annexations.