

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: SB 3072

SPONSOR: Senator Constantine

SUBJECT: Interlocal Svc. Boundary Agreement

DATE: April 3, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Lang</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	<u>CP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates the “Interlocal Service Boundary Agreement Act” as part II of ch. 171, F.S., to provide a process by which counties and municipalities may force each other to negotiate in good faith to resolve which local government is responsible for providing services and facilities to unincorporated areas of a county or to areas of a municipality and to identify unincorporated areas that may be annexed by a municipality. The negotiating parties, however, are not required to reach an agreement.

The bill also increases the amount of time required under existing law between the adoption of a municipal ordinance proposing annexation and the referendum on annexation from at least 30 to at least 60 days. Lastly, the bill provides that a municipality that proposes to annex an unincorporated area of a county must notify the county of its intent 30 days before commencing annexation procedures under s. 171.043, F.S.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes:

II. Present Situation:

Interlocal Agreements

The conditions under which a county or municipality may contract with each other to provide services are specified in Art. 8, s. 4, Fla. Const. Article 8, s. 4, Fla. Const., states:

By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

Section 163.01, F.S., creates the “Florida Interlocal Cooperation Act of 1969” (act) to permit local governments to cooperate with each other to efficiently exercise their powers to provide services and facilities for their communities.¹ Under the act, local governments may enter into interlocal agreements with each other to exercise any power, privilege, or authority that the local governments have in common.² The functions that may be exercised under an interlocal agreement authorized by the act expressly include the construction and operation of water and wastewater facilities and power plants.³ Additionally, municipalities may enter into interlocal agreements with each other for law enforcement services.⁴

Annexation

Section 174.0143, F.S., establishes a uniform method for a municipality to annex unincorporated areas of a county. Areas that may be annexed are generally limited to territory that is contiguous to the boundaries of the municipality, compact, and of urban character. The annexation of compact territory will not create enclaves of unincorporated territory surrounded by the municipality or finger areas in serpentine patterns.⁵

The process for annexation initiated by a municipality begins with at least two advertised public hearings on a proposal to annex an unincorporated area.⁶ Then the municipality must adopt an ordinance proposing to annex the area. The ordinance proposing annexation does not become final until the approval of a referendum on annexation by the registered voters in the area proposed for annexation. The municipality must publish a notice of the referendum at least once a week for 2 consecutive weeks in a newspaper serving the affected area.⁷ The referendum must be held at least 30 days after the adoption of the ordinance proposing the annexation.⁸

¹ Section 163.01(2), F.S.

² See s. 163.01(4) and (5), F.S.

³ Section 163.01(7)(g) and (15), F.S.

⁴ Section 166.0495, F.S.

⁵ See s. 171.0413 and s. 171.031(12), F.S.

⁶ Section 171.0413(1), F.S.

⁷ Section 171.0413(2)(b), F.S.

⁸ Section 171.0413(1)(a), F.S.

If more than 70 percent of the area proposed for annexation is owned by people who are not registered to vote in the area or if there are no registered voters in the area, the area may not be annexed unless the owners of more than 50 percent of the area consent to the annexation.⁹

Enclaves of unincorporated areas of 10 acres or less surrounded by a municipality may be annexed by an interlocal agreement with the county.¹⁰ If fewer than 25 registered voters reside in the enclave, the enclave may be annexed after a referendum on annexation approved by at least 60 percent of the registered voters who reside in the area.

III. Effect of Proposed Changes:

Interlocal Service Boundary Agreements

The bill creates the “Interlocal Service Boundary Agreement Act” as part II of ch. 171, F.S., to provide a process by which counties and municipalities may force each other to negotiate in good faith to resolve which local government is responsible for providing services and facilities to unincorporated areas in a county or areas of a municipality and to identify unincorporated areas that may be annexed by a municipality. The negotiating parties, however, are not required to reach an agreement.

Interlocal Service Boundary Agreement Defined

The bill provides that an interlocal service boundary agreement is an agreement that addresses certain issues between a county and one or more municipalities within the county and may include special districts. The issues that may be addressed by the agreement may include, but are not limited to, the identification of the local government responsible in specified unincorporated areas for the delivery or funding of public safety; fire service; water and wastewater services; road maintenance; parks and recreation; storm water management and drainage. Additionally, the agreement may establish a process and schedule for the annexation of areas within a municipal service area and include provisions for joint use of facilities and the collocation of services.

Initiation of Negotiations

The bill provides that the negotiations for an interlocal service boundary agreement are initiated when a county or municipality adopts a resolution inviting at least one other local government to enter into negotiations. The bill provides that once negotiations are initiated, the local governments must negotiate in good faith for an interlocal service boundary agreement but, the local governments are not required to reach an agreement. As such, the bill permits a local government to force another local government to negotiate to resolve issues that may be the subject of an interlocal service boundary agreement.

An initiating resolution must identify an unincorporated area to be discussed and the issues to be negotiated. If a county initiates the negotiation process, the resolution must then be distributed to the municipalities invited and all of the other municipalities and special districts in the county. If

⁹ Section 171.0413(5) and (6), F.S.

¹⁰ Section 171.046, F.S.

a municipality initiates the negotiation process, the resolution must be distributed to the county invited and all of the other municipalities and special districts in the county.

An invited local government must adopt a responding resolution within 60 days of its receipt of the resolution inviting the local government to enter into negotiations. The responding resolution may identify an additional unincorporated area and additional issues for discussion. The responding resolution may also invite an additional municipality to negotiate an interlocal service boundary agreement.

Independent special districts may participate in the negotiations by adopting a resolution stating their intent to participate and sending the resolution to the local government that initiated negotiations and the invited local governments. Municipalities that were not invited to the negotiations may adopt a resolution requesting to participate. The county and invited municipalities may adopt a resolution allowing the requesting municipality to participate in the negotiations. If an agreement is reached, the participating parties must adopt the agreement by ordinance, rule, order, or other appropriate method.

Impasse in Negotiation

If after six months after negotiations have commenced an interlocal service boundary agreement has not been reached, the initiating or invited local governments may declare an impasse in the negotiations. The party declaring an impasse may seek to resolve the issues through the conflict resolution procedures in ch. 164, F.S. These conflict resolution procedures include: a conflict assessment meeting; a joint public meeting, either of which may be assisted by a facilitator; and mediation. If the negotiations ultimately fail to lead to an agreement, the initiating local government may not initiate negotiations to require the invited local government to negotiate the same issues with respect to the same unincorporated areas for three years.

Annexation

The bill provides procedures under which land identified in interlocal service boundary agreement for annexation may be annexed by a municipality. These land areas may include areas that may not be annexed by a municipality under existing ch. 171, F.S. Specifically, the bill authorizes a municipality to annex land that: is not contiguous to the municipality; is not urban in character; creates an enclave; and is not compact. The land that may be annexed under the agreement, may be annexed by the municipality upon the filing of a petition for annexation signed by more than 50 percent of the registered voters of the area or 50 percent of the property owners in the area or upon the approval of a referendum on annexation by the registered voters in the areas proposed for annexation. Unlike the annexation procedures in s. 171.0413(1), and (2), F.S., the bill does not require a municipality to notify the public of the referendum on annexation or to hold public hearings on the proposed annexation.

Enforcement

The bill provides that local governments must first attempt to resolve disputes arising out of an interlocal service boundary agreement through the conflict resolution procedures in ch. 164 before initiating an action in circuit court.

The bill provides that municipalities that participated in the negotiation of an interlocal service boundary agreement after a request to participate was approved by the initiating and invited local

governments are bound by the agreement regardless of whether the participating municipalities consented to the agreement. Such municipalities are prohibited by the bill from taking any action that would violate the agreement. If a municipality does not consent to an agreement, the bill does not explain why or how such a municipality would be a party to the agreement or whether obligations may be imposed on the non-consenting municipality by the parties to the agreement. If a municipality is not a party to an agreement, the bill does not state how a municipality could violate an agreement.

The bill additionally provides that an independent special district that participates in the negotiations may seek compensation under s. 171.093, F.S., if it does not consent to the agreement.

Annexation of Land not Designated for Annexation Under an Interlocal Agreement

The bill increases the amount of time required under existing law between the adoption of a municipal ordinance proposing annexation and the referendum on annexation from at least 30 to at least 60 days.

The bill specifies that a municipality proposing to annex an unincorporated area of a county must notify the county of its intent 30 days before commencing annexation procedures under s. 171.043, F.S. Existing law only requires notice to be provided to the county *prior* to the commencement of the annexation procedures. The bill provides that failure to comply with the notice provision is the basis for a cause of action to invalidate the annexation. Because the bill specifies that the notice must be provided “thirty days” prior to the commencement of annexation procedures, a notice provided more than 30 days before the commencement is arguably not in compliance with the notice required by the bill. The Legislature may wish to amend the bill to specify that a municipality must provide notice *at least* 30 days prior to the commencement of annexation procedures.

The bill specifies that notice must be provided by a municipality proposing annexation to the residents of the area proposed for annexation. Notice of proposed annexation, however, is already required under existing law through advertised public hearings and through notices published in a newspaper at least once a week for two consecutive weeks immediately preceding the date of the referendum. As such, the bill is unclear as to whether some additional type of notice to the residents of an area proposed for annexation is required.

Effective Date

The bill provides an effective date of 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:

The interlocal service boundary agreements authorized by the bill may permit more efficient delivery of services and facilities to residents living in unincorporated areas of a county. Additionally, the bill facilitates the annexation of unincorporated areas designated for annexation by a municipality in an interlocal service boundary agreement subjecting the residents of those areas to different regulations and taxes.

C. Government Sector Impact:

Counties and municipalities may force each other to negotiate in good faith to resolve which local government is responsible for providing services and facilities to unincorporated areas in a county and to identify unincorporated areas that may be annexed by a municipality. The negotiating parties, however, are not required to reach an agreement.

VI. Technical Deficiencies:

Section 171.302, F.S., created by the bill states that local governments in negotiations for an interlocal service boundary agreement may provide a process for public participation that “meets or exceeds the requirements of subsection (7) . . . or this section.” No process for public participation is provided in s. 171.302, F.S., except for a joint public hearing after the failure of negotiations.

On page 8, line 1, the word “*whether*” should be replaced with *that*.

On page 10, line 14, the cross reference to “s. 164.1053, F.S.,” should probably be replaced with s. 164.1052, F.S., in order to include all of the provisions related to the conflict resolution procedures in ch. 164, F.S.

On page 14, lines 5-7, the bill should be clarified to provide that the independent special district is an independent special district that requested to participate in the negotiations for the interlocal service boundary agreement.

VII. Related Issues:

None.

VIII. Amendments:

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
