

By Senator Constantine

22-178-04

1 A bill to be entitled
2 An act relating to local governments; creating
3 s. 171.094, F.S.; providing for the annexation
4 of local enclaves; creating s. 171.2001, F.S.;
5 providing a short title; creating s. 171.2002,
6 F.S.; providing legislative intent; creating s.
7 171.2003, F.S.; providing definitions; creating
8 s. 171.2004, F.S.; providing a process for
9 external enclave interlocal agreements;
10 creating s. 171.2005, F.S.; providing a dispute
11 resolution process; creating s. 171.2006, F.S.;
12 providing for the creation of boundary
13 adjustment and service delivery interlocal
14 agreements; creating s. 171.2007, F.S.;
15 prohibiting certain acts; creating s. 171.2008,
16 F.S.; providing for the transfer of powers;
17 creating s. 171.2009, F.S.; providing for
18 municipalities to exercise extraterritorial
19 powers; creating s. 171.2010, F.S.; providing
20 powers for counties to exercise in incorporated
21 areas; creating s. 171.2011, F.S.; providing
22 for the effect on existing interlocal
23 agreements; creating s. 171.2012, F.S.;
24 providing a presumption of validity; creating
25 s. 171.2013, F.S.; providing for the amendment
26 of certain municipal charters; amending s.
27 171.042, F.S.; providing a notice requirement;
28 providing grounds for invalidating an
29 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 171.094, Florida Statutes, is
7 created to read:

8 171.094 Annexation of internal enclaves.--

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

13 (2) The governing body of the county and the governing
14 body of the municipality surrounding an internal enclave may,
15 however, prior to January 1, 2009, enter into an interlocal
16 agreement providing otherwise. If essential public services
17 are provided by a special district within an internal enclave,
18 the special district must be a party to the interlocal
19 agreement.

20 (a) The interlocal agreement shall provide:

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

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

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

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

5 (d) This section is an alternative provision otherwise
6 provided by law as authorized in s. 4, Art. VIII of the State
7 Constitution for any transfer of power resulting from an
8 interlocal agreement for the provision of services or the
9 acquisition of public facilities among a municipality, county,
10 or special district.

11 Section 2. Section 171.2001, Florida Statutes, is
12 created to read:

13 171.2001 Short title.--This act may be cited as the
14 "Local Government Boundary Adjustment and Service Delivery
15 Interlocal Agreement Act."

16 Section 3. Section 171.2002, Florida Statutes, is
17 created to read:

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

1 development patterns, community identities, and
2 service-delivery capacities. Likewise, it is the intent of the
3 Legislature to promote sensible municipal boundaries that
4 reduce the costs of local government, facilitate service
5 delivery, and increase political transparency and
6 accountability. This act is also intended to prevent the wide
7 dispersion of unincorporated area that may be caused by
8 annexation that results in service delivery problems and a tax
9 base insufficient to serve the needs of the widely dispersed
10 unincorporated area. This act is intended to offer
11 municipalities and counties a new process through which
12 municipal and unincorporated area boundaries may be adjusted
13 and services may be provided to those areas.

14 Section 4. Section 171.2003, Florida Statutes, is
15 created to read:

16 171.2003 Definitions.--As used in ss.
17 171.2004-171.2007, the term:

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

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

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

30 171.2004 External enclave interlocal agreement
31 process.--

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

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

15 (3) A proposed interlocal agreement must:

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

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

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

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

26 (e) Include a process for public participation which
27 provides reasonable notice to the public.

28 (4) If the governing bodies of two or more
29 municipalities surrounding the external enclave reach a
30 proposed agreement within 1 year after initiating the process,
31 the proposed interlocal agreement shall be adopted by

1 resolution by each municipality and sent to the chief
2 administrative officer for the county by certified mail.

3 (a) Within 60 days after receipt of the resolution,
4 the governing body of the county shall consider the proposed
5 interlocal agreement and may agree to the proposed interlocal
6 agreement, suggest revisions to it, or reject it and send the
7 issue to dispute resolution pursuant to s. 171.2005.

8 1. If the county governing body agrees with the
9 proposed interlocal agreement, it shall adopt a resolution
10 indicating its agreement and notify the municipalities.
11 Thereafter, the municipalities and the county shall adopt the
12 interlocal agreement pursuant to the regular process for
13 ordinance adoption provided in ss. 125.66(2)(a) and
14 166.041(3)(a).

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

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

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

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

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1 (5) If the county governing body rejects the proposed
2 agreement, it shall inform the municipalities of its desire to
3 have the issue resolved by the dispute resolution process in
4 s. 171.2005.

5 (6) If no municipality surrounding an external enclave
6 initiates the interlocal agreement process by January 1, 2006,
7 or if the municipalities do not reach an agreement within 1
8 year after such initiation, the county governing body may
9 initiate the process pursuant to this section.

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

12 171.2005 Dispute resolution process.--

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

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

20 (a) A county or municipality may file a petition
21 seeking arbitration which states with particularity the issue
22 in dispute, suggests a proposed resolution, and states the
23 reasons supporting the resolution.

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

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1 unless the petition is withdrawn or a continuance is granted
2 by agreement of the parties or for good cause shown.

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

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

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

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

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

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

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

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

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

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

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

3 8. The intent of the Legislature in this act.

4 (g) The arbitrator may:

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

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

10 3. Determine fiscal compensation issues, including
11 requiring a single payment or payment over a term of years by
12 one of the parties to assure that fiscal responsibilities for
13 providing urban services can be met; and

14 4. Resolve any other issue involving a dispute about
15 external enclaves.

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

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

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

24 3. File an action rejecting the award under s. 674.22
25 to set aside the award or enforce it.

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27 All subsequent proceedings shall be governed by part III of
28 chapter 684.

29 (i) The Division of Administrative Hearings may adopt
30 arbitration rules.

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

3 171.2006 Boundary adjustment and service delivery
4 interlocal agreement.--The governing body of a county may
5 enter into a separate boundary adjustment and service delivery
6 interlocal agreement with a municipality within the county. At
7 the discretion of the county and each municipality, more than
8 a single municipality and the county may enter into a joint
9 interlocal agreement.

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

12 (a) Identify the area for annexation and area to be
13 left unincorporated.

14 (b) Identify the local government responsible for the
15 delivery of the following services:

16 1. Public safety;

17 2. Fire service;

18 3. Water and wastewater;

19 4. Road maintenance;

20 5. Recreation; and

21 6. Storm water management and drainage.

22 (c) Address other services, facilities, and transfer
23 of employees.

24 (d) Establish a process and schedule for annexation of
25 the designated area, notwithstanding other provisions of law.

26 (e) Establish a process for land-use decisions,
27 including those made jointly by the governing bodies of the
28 county and the municipality, and allow a municipality to adopt
29 land-use changes for areas that are scheduled to be annexed
30 within the timeframe of the interlocal agreement. However,
31 land-use changes initiated by a municipality because of

1 annexations made pursuant to such interlocal agreements are
2 exempt from the two-per-year limitation applicable to
3 comprehensive plan changes in s. 163.3187.

4 (f) Establish a process for fiscal considerations,
5 including compensation for loss of tax base and revenue and
6 stranded infrastructure.

7 (g) Include provisions for the joint use of facilities
8 and the colocation of services.

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

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

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

24 (c) Following the last public hearing, the
25 municipality and county may further negotiate and shall adopt
26 the agreement by ordinance pursuant to ss. 166.043 and 125.66,
27 respectively.

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

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

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

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

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

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

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

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

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

29 2. The fiscal effects of annexations, including the
30 annexation of the area under consideration, on the ability of
31 the county and the municipality to provide services and

1 facilities to the area under consideration, the remainder of
2 the unincorporated area, and the incorporated area of the
3 participating municipality;

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

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

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

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

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

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

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

20 (g) The mediator may:

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

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

26 3. Determine fiscal compensation issues, including
27 requiring a single payment or payment over a term of years by
28 one of the parties to assure that fiscal responsibilities for
29 providing urban services can be met; and

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

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

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

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

9 3. Refuse to enter into an agreement.

10 (i) The Division of Administrative Hearings may adopt
11 mediation rules.

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

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

17 171.2007 Prohibited acts.--A county or municipality
18 may not approve any up-zoning of land use or any financial
19 inducements as a disincentive to annexation with respect to a
20 county or incentive to annexation with respect to a
21 municipality. However, such incentives or disincentives may be
22 offered with the agreement of the other local government.

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

25 171.2008 Transfer of powers.--This act is an
26 alternative provision otherwise provided by law as authorized
27 in s. 4, Art. VIII of the State Constitution for the transfer
28 of power resulting from an interlocal agreement for the
29 provision of services or the acquisition of public facilities
30 among a municipality, county, special district, or other
31 entity.

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

3 171.2009 Municipal extraterritorial power.--This act
4 authorizes a municipality to exercise extraterritorial powers
5 that include the authority to provide services and facilities
6 within the unincorporated area or within the territory of
7 another municipality as provided within a boundary adjustment
8 and service delivery interlocal agreement.

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

11 171.2010 County incorporated area power.--This act
12 authorizes a county to exercise powers within a municipality
13 which include the authority to provide services and facilities
14 within the unincorporated area or within the territory of
15 another municipality, as provided within a boundary adjustment
16 and service delivery interlocal agreement.

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

19 171.2011 Effect on existing interlocal agreement.--A
20 joint planning agreement between a municipality and a county
21 is not abrogated by this act. However, a county or
22 municipality may use this act, which may result in the repeal
23 or modification of the joint planning agreement.

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

26 171.2012 Interlocal agreement entitled to presumption
27 of validity.--In any litigation over the terms, conditions,
28 construction, or enforcement of an interlocal agreement
29 created pursuant to this act, the agreement is presumed valid
30 and the burden of proving its invalidity is on the challenger.

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

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

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

9 171.042 Prerequisites to annexation.--

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

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

19 171.044 Voluntary annexation.--

20 (6) Forty-five days prior to ~~Upon~~ publishing or
21 posting the ordinance notice required under subsection (2),
22 the governing body of the municipality must provide a copy of
23 the notice, via certified mail, to the board of the county
24 commissioners of the county wherein the municipality is
25 located. The notice provision provided in this subsection
26 shall ~~not~~ be the basis for a ~~of any~~ cause of action
27 invalidating ~~challenging~~ the annexation.

28 Section 17. Except as otherwise provided, this act
29 shall take effect July 1, 2004.

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SENATE SUMMARY

Provides for the annexation of internal enclaves through interlocal agreements by a county or municipality. Provides legislative intent regarding annexation of territory. Authorizes surrounding municipalities to negotiate an external enclave interlocal agreement. Provides that a municipality may adopt a resolution to indicate its intent to negotiate an external enclave interlocal agreement. Provides requirements for interlocal agreements. Provides for a dispute resolution process. Provides for boundary adjustment and service delivery interlocal agreements. Provides for the development of a process for reaching a boundary adjustment and service delivery interlocal agreement. Provides for a mediation process when an impasse is declared. Indicates prohibited acts of zoning. Provides an alternative provision for the transfer of power resulting from an interlocal agreement. Authorizes a municipality to exercise extraterritorial powers. Authorizes a county to exercise certain powers within a municipality. Provides that a joint planning agreement between a municipality and a county is not abrogated by this act. Provides that an interlocal agreement carries a presumption of validity. Provides for territorial jurisdiction. Provides a time period to commence annexation procedures. Provides a time period in which the governing body of a municipality must provide a copy of the ordinance notice to the board of the county commissioners. Provides for a cause of action for invalidating an annexation.