HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1495 Growth Management
SPONSOR(S): Johnson
TIED BILLS: **IDEN./SIM. BILLS:** SB 926

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Growth Management Committee		Grayson	Grayson
2) Local Government Council			
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1495 creates the "Interlocal Service Boundary Agreement Act" as part II of ch. 171, F.S., to provide an alternative process for annexation that allows counties and municipalities to negotiate in good faith to identify municipal service areas and unincorporated service areas, resolve which local government is responsible for providing services and facilities within the municipal service areas, and reduce the number of enclaves. The negotiating parties, however, are not required to reach an agreement.

The bill defines a "municipal service area" as an unincorporated area that has been identified by a municipality that is party to the agreement as an area to be annexed or to receive municipal services from a municipality or its designee. Land within a municipal service area may be annexed by a municipality if consent is obtained using a process for annexation consistent with part I of ch. 171, F.S., or a flexible process, as determined by the agreement, that includes one or more of the following:

- Petition for annexation signed by more than 50 percent of the registered voters in the area proposed for annexation;
- Petition for annexation signed by more than 50 percent of the property owners in the area proposed for annexation; or
- Approval by a majority of the registered voters in the area proposed for annexation.

The bill allows an enclave consisting of 20 acres or more within a designated municipal service area to be annexed if the consent requirements of part I of ch. 171, F.S., are met, one or more of the provisions for annexing land within a municipal service area are met, or the municipality receives a petition from one or more property owners who own real property in excess of 50 percent of the total real property in the area proposed for annexation. Enclaves consisting of less than 20 acres and with fewer than 100 registered voters, within a designated municipal service area, may be annexed using a flexible process for securing the consent of the voters, as provided in the interlocal service boundary agreement. No voter approval is required.

This bill creates part II of chapter 171, Florida Statutes, consisting of sections 171.20-171.212, and also creates section 171.094; and amends ss. 171.042, 171.044, 171.081, and 164.1058 of the Florida Statutes.

The bill does not appear to have a fiscal impact upon the state.

The bill has an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

HB 1495 creates the "Interlocal Service Boundary Agreement Act" as part II of ch. 171, F.S., (consisting of ss. 171.20-171213, F.S.), to provide an alternative process for annexation that allows counties and municipalities to jointly determine how services are provided to residents and property in the most efficient and effective manner. This bill is intended to encourage intergovernmental coordination in planning, service delivery, and boundary adjustments and to reduce intergovernmental conflicts and litigation between local governments. The negotiating parties, however, are not required to reach an agreement.

The bill also creates s. 171.094, F.S., and amends ss. 171.042, 171.044, 171.081, and 164.1058, F.S.

Interlocal Service Boundary Agreement Act

Definitions

Section 171.202, F.S., contains definitions for the following terms as used part II of ch. 171, F.S.: chief administrative officer, enclave, independent special district, initiating county, initiating local government, initiating municipality, initiating resolution, interlocal service boundary agreement, invited municipality, municipal service area, notified local government, participating resolution, requesting resolution, responding resolution, and unincorporated service area.

Specifically, the bill defines an "interlocal service boundary agreement" (interlocal agreement) as an agreement adopted under part II of chapter 171, F.S., between a county and one or more municipalities, which may include one or more independent special districts.

A "municipal service area" is defined as an unincorporated area that has been identified for annexation in an interlocal agreement by a municipality that is a party to the interlocal agreement. This term also includes an unincorporated area that has been identified in the agreement to receive municipal services from a municipality that is a part to the agreement or the municipality's designee.

The term "unincorporated service area" refers to an unincorporated area that has been identified in an interlocal service boundary agreement and which may not be annexed without the consent of the county. It may also refer to an unincorporated area or incorporated area, or both, that has been identified in an interlocal service boundary agreement to receive municipal services from the county, its designee, or an independent special district.

Process of Initiating an Interlocal Service Boundary Agreement

Section 171.203, F.S., authorizes the governing body of a county and one or more municipalities or independent special districts to enter into an interlocal service boundary agreement. The county, municipality, or independent special district may develop a process for reaching an interlocal service boundary agreement that meets certain requirements or use the process provided in this section.

Initiating Resolution

The process outlined in s. 171.203, F.S., provides that the negotiations for an interlocal service boundary agreement are initiated when a county or municipality adopts an initiating resolution. The initiating resolution must identify an unincorporated area or incorporated area, or both, and the issues to be negotiated. The initiating resolution must include a map or legal description of the unincorporated or incorporated area to be discussed. An independent special district may initiate an interlocal agreement for the sole purpose of dissolving the district. A county's initiating resolution must designate one more invited municipality. However, a municipality's inviting resolution may designate an invited municipality. An initiating resolution from a special district must designate one or more municipalities and invite the county.

Responding Resolution

Copies of a county's or municipality's initiating resolution must be provided to every invited municipality, each other municipality in the county, and each independent special district in the unincorporated area identified in the resolution. Within 60 days of receipt of an initiating resolution, the county or invited municipality must adopt a responding resolution. This responding resolution may identify additional unincorporated area, incorporated area, or issues for negotiation and it may also invite additional municipalities to negotiate. A municipality within the county that is not invited may request participation in the negotiations within a prescribed time frame and the county and invited municipality must consider this request.

After the parties to the negotiations have been determined through the adoption of various resolutions, the county, invited municipalities, participating municipalities, if any, and the independent special districts if they elect to participate, shall begin negotiations within 60 days after receipt of a responding or participating resolution, whichever occurs first. An invited municipality that does not adopt a responding resolution is deemed to have waived its right to participate and is bound by an interlocal service boundary agreement that results from the negotiations. Local governments are authorized to simultaneously negotiate more than one interlocal service boundary agreement. If the local governments successfully negotiate an interlocal service boundary agreement, they must adopt the agreement by ordinance and an independent special district that is a party must adopt the agreement using a method consistent with its charter.

Issues That May be Addressed in an Interlocal Service Boundary Agreement

The issues that may be addressed by an interlocal service boundary agreement may include, but are not limited to, the identification of a municipal service area and unincorporated service area. It may also include the identification of the local government responsible for the delivery or funding of the following services within those areas: public safety; fire, emergency rescue, and medical; water and wastewater; road ownership, construction, and maintenance; conservation, parks, and recreation; and stormwater management and drainage. The agreement may address other services and infrastructure not currently provided by an electric utility or a natural gas transmission company. It may establish a process and schedule for annexing an area within a designated municipal service area.

Additionally, the interlocal service boundary agreement may establish a process for land-use decisions consistent with part II of ch. 163, F.S., including joint land-use decisions of the county and municipality, and allowing a municipality to adopt land-use changes for areas that are scheduled to be annexed within the term of the interlocal service boundary agreement consistent with part II of ch. 163, F.S. It provides for an exemption to the twice-per-year limitation on the frequency of plan amendments. If the agreement addresses land use planning, it must provide procedures for the preparation and adoption of plan amendments, the administration of land development regulations, and the issuance of development orders.

The agreement may address other issues related to service delivery and include the transfer of services and infrastructure, fiscal compensation from one county, municipality, or independent special

district from another local government or special district, and provide for the joint use of facilities and collocation of services. Finally, the agreement may require the municipality to send the county a report on its planned service delivery.

Standing to Challenge Certain Plan Amendments

Each local government that is a party to the interlocal service boundary agreement is required to amend the intergovernmental coordination element of its comprehensive plan no later than 6 months following entry of the agreement consistent with s. 163.3177(6)(h)1., F.S. This amendment is exempt from the twice-per-year limitation. For purposes of challenging such plan amendment, an affected person includes persons owning real property, residing, or owning or operating a business within the boundaries of the municipal service area and owners of real property abutting real property within the municipal service area that is the subject of the plan amendment, in addition to those affected persons who would have standing under s. 163.3184.

Review by the State Land Planning Agency

A municipality that is party to an interlocal agreement and identifies an unincorporated area for annexation is required to adopt a plan amendment to address future possible annexation. The identified municipal service area must contain: a boundary map of the municipal service area, population projections for the area, and data supporting the provision of public services for the area. The amendment is subject to review by DCA for compliance with part II of ch. 163, F.S. However, DCA may not review or approve or disapprove a municipal ordinance relating to municipal annexation or contraction.

Conclusion of Negotiations on an Interlocal Service Boundary Agreement

An interlocal service boundary agreement may be for a term of 20 years or less and must include a provision requiring periodic review with renegotiations to begin at least 18 months prior to its termination date. Once an agreement has been reached, the county and municipality must adopt the agreement by ordinance. A special district that consents to the agreement shall adopt the agreement using a method consistent with its charter. Nothing in part II of ch. 171, F.S. that is created in this bill prohibits a local government from adopting an interlocal service boundary agreement without the consent of an independent special district.

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 and seek to resolve the issues through the conflict resolution procedures in ch. 164, F.S. If the local governments cannot agree at the conclusion of the dispute resolution process under ch. 164, F.S., the bill requires the local governments to hold a joint public hearing on the issues raised in the negotiations.

Further, for a period of 6 months following the failure of the local governments to reach an agreement, the initiating local government may not initiate negotiations to require the responding local government to negotiate the same issues with respect to the same unincorporated areas. Although a local government is not required under this bill to enter into an agreement, local governments are required to negotiate in good faith to the conclusion of the process once it has been initiated. Local governments may negotiate more than one interlocal agreement simultaneously. Local government officials are encouraged to participate actively and directly in the negotiation process for developing an agreement. In addition, the bill states that part II of ch. 171, F.S., does not impair any existing franchise agreement without the consent of the franchisee. Local governments retain their authority under this bill to negotiate franchise agreements for the use of public rights-of-way and providing service.

The provisions of s. 171.203, F.S., do no impair: any existing franchise agreement without the consent of the franchisee; existing territorial agreements between electric utilities or public utilities; or the determination of a territorial dispute by the Public Service Commission.

Annexation Procedures under an Interlocal Service Boundary Agreement

Sections 171.204 and 171.205, F.S., provide 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, he bill authorizes a municipality to annex any character of land, including an area that is not contiguous to the municipality's boundaries or creates an enclave if the area is urban in character as defined in s. 171.031(8), F.S. However, the agreement may not allow for the annexation of land within a municipality that is not a party to the agreement or another county.

Land within a municipal service area, as identified in the interlocal service boundary agreement, may be annexed by the municipality using a process for annexation consistent with part I of ch. 171, F.S., or using a flexible process established in the interlocal agreement. The flexible process may be used to secure the consent of property owners or registered voters residing in the area proposed for annexation with notice to these individuals.

Annexation with the municipal service area must meet the consent requirements in part I of ch. 171, F.S., or the annexation must be consented to by one ore more of the following: the filing of a petition for annexation signed by more than 50 percent of the registered voters in the area proposed for annexation, the filing of a petition for annexation signed by more than 50 percent of the property owners in the area proposed for annexation, or upon the approval by a majority of the registered voters in the area proposed for annexation voting in a referendum on the annexation.

The bill allows the annexation of enclaves consisting of 20 acres or more within a designated municipal service area using a flexible process for securing voter consent, as provided in the interlocal service boundary agreement, with notice to those property owners and residents within the area proposed for annexation. However, the interlocal service boundary agreement may not allow annexation unless the consent requirements of part I of ch. 171, F.S., are met, the provisions of subsection (1) as described above are met, or the municipality receives a petition from one or more property owners who own real property in excess of 50 percent of the total real property in the area proposed for annexation. For enclaves, consisting of less than 20 acres and with fewer than 100 registered voters within a designated municipal service area, those enclaves may be annexed using a flexible process for securing the consent of the voters, as provided in the interlocal service boundary agreement, with notice to the registered voters and property owners in the area to be annexed. The flexible process may include the one or more of the procedures in subsection (1) as described above or a referendum of the registered voters who reside in the area proposed to be annexed.

The bill provides two alternative requirements for accomplishing annexation of non contiguous lands or enclaves: 1) following review by the DCA; or 2) pursuant to t a joint planning agreement.

Chapter 171, F.S.	**Proposed Alternative to Chapter 171, F.S.**
Character of the Land	
An area proposed for annexation must be incorporated, contiguous, and reasonably compact.	As determined by the interlocal service boundary agreement, a municipality may annex any character of land within a municipal service area if it is urban in character, regardless of whether it is not contiguous or would create an enclave.
Involuntary Annexation	
Involuntary annexation requires approval by the registered electors in the area proposed for annexation. If more than 70	Land within a municipal service area may be annexed by a municipality if consent with part I of ch. 171, F.S., or a flexible process, as determined by the interlocal service boundary agreement between the county and municipality, that includes

percent of the property in a proposed area to be annexed is owned by person that are not registered electors, the owners of more than 50 percent of the land must consent to the annexation. The governing body of the annexing municipality may also submit the ordinance to a vote of the registered electors in the annexing municipality.	one or more of the following: • Petition for annexation signed by more than 50 percent of the registered voters in the area proposed for annexation; or • Petition for annexation signed by more than 50 percent of the property owners in the area proposed for annexation; or • Approval by a majority of the registered voters in the area proposed for annexation voting in a referendum on the annexation.
Voluntary Annexation	
A voluntary annexation occurs when 100 percent of the landowners in an area petition a municipality to be annexed.	Same procedures as ch 171, F.S.
Enclaves	
Same procedures as involuntary annexation.	Enclaves consisting of 20 acres or more than within a designated municipal service area may be annexed using a flexible process for securing voter consent, as provided in the interlocal service boundary agreement with notice to the registered voters and property owners in the area to be annexed. The agreement may not allow annexation unless the consent requirements of part 1 of ch. 171, F.S., are met, one or more of the provisions for annexing land within a municipal service area are met, or the municipality receives a petition for one or more property owners who own real property in excess of 50 percent of the total real property in the area proposed for annexation.
Small Enclaves	
Cities may annex enclaves of 10 acres or less by interlocal agreement with the county or by municipal ordinance is 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.	Enclaves consisting of less than 20 acres and with fewer than 100 registered voters within a designated municipal service area, may be annexed using a flexible process for securing the consent of the voters, as provided in the interlocal service boundary agreement. No voter approval is required.

Background

Immediate History. Municipal annexation provides for conflict and tension as between many county and municipal governments. The process of annexation often raises issues regarding delivery of services, boundary and land use, and the costs associated with the delivery of those services. During the last two Sessions, legislators in both the House and the Senate encouraged both the Florida League of Cities and the Florida Association of Counties to negotiate and to recommend a statutory resolution to these issues. Although a complete resolution was not agreed to as between these two organizations, a compromise was reached and reflected in the 2004, SB 1174 (engrossed). That compromise proposed a process by which a municipality and a county could work to negotiate the matters of conflict surrounding a particular annexation proposal. The present bill, HB 1495, and the companion SB 926, also reflect this compromised process.

Municipal Annexation of Contraction Act. The “Municipal Annexation or Contraction Act”, ch. 171, F.S., codifies the State’s annexation procedures and was enacted in 1974 to ensure sound urban

development, establish uniform methods for the adjustment of municipal boundaries, provide for efficient service delivery in areas that become urban, and limit annexation to areas where municipal services can be provided.1 At the time ch. 171, F.S., was created, the prevailing policy focused on the strength of county governments and regional planning agencies. Consequently, Florida's annexation statutes concentrate on the expansion and contraction of municipal boundaries.2 Current annexation policy in Florida has given rise to a number of issues: difficulty in planning to meet future service needs, confusion over logical service areas and maintenance of infrastructure, duplication of essential services, and zoning efforts thwarted by landowners shopping for the best development climate. While existing annexation procedures may adequately address the concerns of landowners within a proposed annex area, the residents of remaining unincorporated areas or residents of the municipality proposing the annexation may also be significantly affected by the potential loss of revenue or inefficiencies in service delivery.

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. Four parties to any annexation include the state, the municipality that is annexing the property, those property owners who remain in the unincorporated area along with the local government that represents them, and finally those property owners in the area that is the subject of the annexation. Current annexation procedures arguably provide the most process for property owners in the proposed annexation area.

An area proposed for annexation must be unincorporated, contiguous, and reasonably compact.3 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.4 "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.5

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. However, there is no requirement that a city amend its comprehensive plan prior to annexation.6 In the interim, a city must apply county regulations or wait to apply its own rules.

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 service boundary agreement, voluntary annexation, or involuntary annexation. First, annexation may be accomplished by a special act of the Legislature pursuant to Article VIII, section (2)(c) of the State Constitution. Annexation through a special act must meet the notice and referendum requirements of Article III, section 10 of the State Constitution applicable to all special acts.

Cities may annex enclaves of 10 acres or less 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 of 10 acres or less 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 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.7 Also, the voluntary annexation procedures in this section are considered supplemental to any other procedure contained in general or special law.8

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. The owners of more than 50 percent of the land in an area proposed for annexation must consent if more than 70 percent of the property in that 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.

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 years 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.

C. SECTION DIRECTORY:

Section 1. Creates ch. 171, Part II, F.S., the Interlocal Service Boundary Agreement Act.

Section 2. Amends ss. 171.042(2) and (3), F.S., relating to the prerequisites to annexation.

Section 3. Amends s. 171.044(6), F.S., relating to voluntary annexation.

Section 4. Creates s. 171.094, F.S., relating to the effect of interlocal service boundary agreements on annexations.

Section 5. Amends s. 171.081, F.S., relating to the appeal on annexation or contraction.

Section 6. Amends s. 164.1058, F.S., relating to penalties for certain governmental entities for failure to participate in good faith in a conflict assessment meeting.

Section 7. Requests the Division of Statutory Revision to designate specific sections as parts I and II of ch. 171, F.S.

Section 8. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Comments

Both the Florida League of Cities[1] and the Florida Association of Counties[2] support this bill.

[1] John Wayne Smith, Assistant Director, Legislative and Public Affairs, Florida League of Cities.
[2] Sarah M. Bleakley, Nabors, Giblin & Nickerson, P.A., Special Counsel to Florida Association of Counties.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2005, the Growth Management Committee adopted nine amendments as described below.

Amendment No. 1. Corrected the directory language of Section 1 of the bill by deleting an erroneous reference to s. 171.213, F.S., from line 54 of the bill.

Amendment No. 2. Added a definition for "invited local government" by inserting it between lines 107 and 108 of the bill.

Amendment No. 3. Corrected the numbering of subsection (10) at line 339 of the bill.

Amendment No. 4. Corrected a reference to statutes at line 619.

Amendment No. 5. Added a provision, at the end of line 274, to clarify that the provisions of s. 171.203, F.S., do not affect any territorial agreement between electric utilities or public utilities or the determination of a territorial dispute by the Public Service Commission.

Amendment No. 6. Deleted a sentence and replaced it with language to clarify that provisions of s. 171.203, F.S., do not impair any existing franchisee agreement without the consent of the franchisee; existing territorial agreement between electric certain utilities or public utilities; the jurisdiction of the Public Service Commission to resolve a territorial dispute involving certain electric utilities or public utilities. Further, the amendment provides that the section will not have an effect in territorial dispute proceeding before the Public Service Commission.

Amendment No. 7. Added language at the end of line 497 again clarifying the authorities of the Public Service Commission's jurisdiction.

Amendment No. 8. Replaced language at the end of line 283 to clarify when land use decisions may be made jointly by the county and the municipality, and when the municipality may act alone.

Amendment No. 9. Added language at the end of line 410 to provide for alternate requirements for the annexation of non contiguous lands and enclaves.