SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SBs 2362 and 3072

SPONSOR: Comprehensive Planning Committee, Senators Geller and Constantine

SUBJECT: Annexation

DATE: April 20, 2004 REVISED: _____ _____ _____ _____

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

I. Summary:

The committee substitute (CS) 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 CS defines a "municipal service area" as an unincorporated area that has been identified for annexation by a municipality, or has been identified to receive municipal services from a municipality or its designee, that is a party to an interlocal service boundary agreement. 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 CS allows an enclave consisting of 20 acres or more within a designated municipal service area to be annexed using a flexible process for securing voter consent, as provided in the interlocal service boundary agreement. The agreement may not allow annexation unless the consent requirements of part I of ch. 171, F.S., are met, 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.

In addition, the CS provides a citizen petition initiative process for certain enclaves. If the local governments are unable to reach an agreement on the annexation of an enclave that used the citizen petition process, the Division of Administrative Hearings will appoint an arbitrator and hold arbitration hearings. A recommendation by the arbitrator that results in a municipality agreeing to annex the enclave requires that a majority of the registered voters in the enclave approve the annexation. In addition this CS revises certain notice requirements for annexation under part I of ch. 171, F.S.

This CS creates part II of chapter 171, Florida Statutes, consisting of sections 171.20-171.23, and also creates section 171.094 and amends ss. 171.0413 and 171.042 of the Florida Statutes.

II. Present Situation:

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.

[1] S. 171.021, F.S.
[2] Lance deHaven-Smith, Ph.D., *FCCMA Policy Statement on Annexation*, Oct. 12, 2002, at 16-17, http://www.fccma.org/pdf/FCCMA_Paper_Final_Draft.pdf.

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 coterminus 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

[3] Ss. 171.0413-.043, F.S.
[4] S. 171.031(11), F.S.
[5] S. 171.031(12), F.S.
[6] 1000 Friends of Fla., Inc. v. Florida Dep't of Community Affairs, 824 So. 2d 989 (Fla. 4th DCA 2002).

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.

III. Effect of Proposed Changes:

Section 1 of the CS 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. This CS 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.

Section 171.202, F.S., contains definitions for part II of ch. 171, F.S. It defines an "interlocal service boundary agreement" as an agreement between a county and one or more municipalities which addresses certain issues , as required by part II, and which may include one or more independent special districts. A "municipal service area" is an unincorporated area that has been identified for annexation by a municipality, or has been identified to receive municipal services from a municipality or its designee, that is a party to an interlocal service boundary agreement. An 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

[7] S. 171.044(4), F.S.
[8] S. 171.044(4), F.S.

identified in an interlocal service boundary agreement to receive municipal services from the county or its designee.

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 and municipality may develop a process for reaching an interlocal service boundary agreement that meets certain requirements or use the process provided in this section.

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 a resolution inviting at least one other local government to enter into negotiations. The initiating resolution must identify an unincorporated area or incorporated area, or both, and the issues to be negotiated as part of the interlocal service boundary agreement. Copies of the 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 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.

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 and emergency rescue; water and wastewater; road ownership, construction, and maintenance; parks and recreation; and stormwater management and drainage. Additionally, the interlocal service boundary agreement may establish a process for land-use decisions consistent with part II of ch. 163, F.S., 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. The agreement may address other issues related to service delivery and include the transfer of services and infrastructure, fiscal compensation from one local government to another, and provide for the joint use of facilities and collocation of services. 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.

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. 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.

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. If the local governments cannot agree at the conclusion of the dispute resolution process under ch. 164, F.S., the CS 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. Local government officials are encouraged to participate actively and directly in the negotiation process for developing an agreement. In addition, the CS states that part II of ch. 171, F.S., does not impair any existing franchise agreement without the consent of the franchisee.

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, the CS 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.
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 that includes one or 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 CS 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. 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) 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, which may include a referendum of the registered voters who reside in the area proposed to be annexed.

Chapter 171, F.S.	Proposed Alternative to Chapter 171, F.S.
Character of the Land	
An area proposed for annexation must be unincorporated, 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, regardless of whether it is not contiguous, not compact, 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 percent of the property in a proposed area to be annexed is owned by persons 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.	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 interlocal service boundary agreement between the county and municipality, 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; 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 00 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 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. The agreement may not allow annexation unless the consent requirements of part I of ch. 171, F.S., are met, 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.
Small Enclaves	
Cities may annex enclaves of 10 acres or less by interlocal agreement with the county or by municipal ordinance if 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.

Effect of Interlocal Service Boundary Agreement

Section 171.206, F.S., provides that an interlocal service boundary agreement is binding on the parties. Section 171.207, F.S., provides that part II of ch. 171, F.S., is an alternative provision allowing for the transfer of power resulting from the interlocal service boundary agreement as authorized by s. 4, Art. VIII of the State Constitution. Section 171.208, F.S., authorizes a municipality to exercise extraterritorial powers, including the authority to provide services and facilities within the unincorporated area as provided for in the interlocal service boundary agreement. Similarly, s. 171.209, F.S., authorizes a county to provide services and facilities within a municipality according to the terms of the interlocal service boundary agreement.

Section 171.21, F.S., provides for the effect of an interlocal service boundary agreement on a county charter. Section 171.211, F.S., provides that an interlocal service boundary agreement is presumed valid and binding and places the burden of proving the agreement's invalidity on the challenger. Section 171.212, F.S., requires local governments to use ch. 164, F.S., to resolve disputes regarding the construction and effect of an interlocal service boundary agreement under this part. If the procedures in ch. 164, F.S., do not result in resolution of the conflict, a local government may file an action in circuit court not later than 30 days following the conclusion of those procedures.

Citizen Petition Initiative Process for Enclaves

Finally, s. 171.213, F.S., provides a citizen petition initiative process for enclaves that have been identified in a requesting or responding resolution. This petition process does not apply to any municipality having a population of 7,500 or fewer as of January 1, 2003, unless approved by a majority of its governing body. Also, it does not apply to a municipality having a population greater than 7,500 as of January 1, 2003, if the proposed area to be annexed will increase the municipal population by more than 10 percent unless approved by the majority of it s governing body. A municipality that is petitioned on two or more occasions may not increase the municipal population by more than 20 percent in any given year or 50 percent in a 5-year period. Such a petition may be initiated no sooner than 270 days after the joint public hearing required by this part. Under this section, the registered voters or the property owners of the area may initiate this process by notifying the municipality of one of the following:

- They have obtained consent of 50 percent or more of the registered voters in the enclave;
- They have obtained the consent of 50 percent of the property owners within the enclave;
- The board of directors of a condominium association, as defined in s. 718.103(2), F.S., or a homeowners' association, as defined in s. 720.301(7), F.S., has approved a resolution that has also been approved by a majority of the members of the association.

It provides procedures for collecting signatures on a petition. Not later than 60 days after certification of the petition, a municipality must notify the county of its intent to annex the enclave or, if it elects not to annex, notify and invite the county and any independent special district to negotiate. Alternatively, if the municipality does not annex the enclave within 60 days, the registered voters, property owners, condominium association, or homeowners' association may petition the county to initiate the interlocal service boundary agreement process for their enclave.

If the participating local governments fail to reach an agreement on annexing the enclave, the local governments may adopt an interlocal dispute resolution agreement or use the process provided in this part which includes an arbitrator appointed by the Division of Administrative Hearings. After considering certain factors, the arbitrator shall:

- Determine whether the enclave should remain unincorporated or be annexed. If the arbitrator finds the enclave should be annexed, the annexation must be approved by a majority of the registered voters that reside in the enclave.
- Determine service delivery responsibilities of the county, municipality, and independent special district.

- Determine fiscal compensation issues, including requiring a single payment or a payment over a term of years to ensure the fiscal responsibilities for providing urban services can be met.

The parties may accept the arbitrator's findings and enter into an agreement based on the award; negotiate and enter into an agreement differing from the award; or file an action rejecting the award, to set aside the award, or enforce it. Subsequent proceedings shall be governed by part III of ch. 684, F.S. It provides rulemaking authority to the Division of Administrative hearings for the arbitration process.

Section 2 amends s. 171.042, F.S., to require that an ordinance notice for annexation be provided to the county where the municipality is located not fewer than 15 days prior to commencing annexation procedures under s. 171.0413, F.S.

Section 3 amends s. 171.044, F.S., to require a municipality to send a copy of the ordinance notice for a voluntary annexation to the county where the municipality is located not fewer than 10 days prior to publishing or posting the notice. Failure to comply with this notice provision may be the basis for an action invalidating the annexation.

Section 4 creates s. 171.094, F.S., to provide that an interlocal service boundary agreement entered into pursuant to part II of ch. 171, F.S., is binding on the parties. A party may not take any action that violates the interlocal service boundary agreement without the consent of the county or an invited municipality.

Section 5 amends s. 171.081, F.S., to provide a time limit for initiating an appeal on annexation or contraction. The appeal may be initiated within 30 days following passage of the annexation or contraction ordinance or within 30 days following the dispute resolution process provided for in this section. Under this provision, the dispute resolution process under ch. 164, F.S., is applicable if the party affected is a governmental entity. Such governmental entity must initiate conflict resolution procedures within 30 days following the passage of an annexation or contraction ordinance.

Section 6 amends s. 164.1058, F.S., to provide that a primary disputing governmental entity that fails to participate in good faith in the conflict assessment meeting, mediation, or other remedies provided for in the Florida Governmental Conflict Resolution Act, shall be required to pay the attorney's fees and costs for that proceeding.

Section 7 requests the Division of Statutory Revision to designate ss. 171.011-171.094, F.S., as part I of ch. 171, F.S., and ss. 171.20-171.213, F.S., as part II of ch. 171, F.S.

Section 8 provides the CS shall take effect 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:

None.

C. Government Sector Impact:

There is an indeterminate fiscal impact associated with the CS's requirement that the Division of Administrative Hearings provide an arbitration process for certain disputes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.