ANALYSIS OF INTERLOCAL SERVICE BOUNDARY AGREEMENT ACT

ADAPTED FROM SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT FOR CS/SB1194, SIGNED INTO LAW AS Ch. 2006-218, LAWS OF FLORIDA

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OUTLINE

I. Summary and Purpose

The **"Interlocal Service Boundary Agreement Act", Part II of Ch. 171, F.S.**, enacted in 2006, provides an alternative to the process under Part I of Ch. 171, F.S., which provides standard procedures and criteria for annexation and contraction of municipal boundaries.

The Florida Senate Government Oversight Committee Staff Analysis accompanying the enacted legislation in 2006 noted that, "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."

The Legislative intent of the new Part II, in s. 171.201, F.S., states:

"The principal goal of this part is to encourage local governments to jointly determine how to provide services to residents and property in the most efficient and effective manner while balancing the needs and desires of the community. This part is intended to encourage intergovernmental coordination in planning, service delivery, and boundary adjustments and to reduce intergovernmental conflicts and litigation between local governments. It is the intent of this part to promote sensible boundaries that reduce the costs of local governments, avoid duplicating local services, and increase political

transparency and accountability. This part is intended to prevent inefficient service delivery and insufficient tax base to support the delivery of those services."

To accomplish this purpose, Part II 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.

II. Definitions of Key Terms

Section 171.202, F.S., contains definitions for the following terms as used in 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 local government, invited municipality, municipal service area, notified local government, participating resolution, requesting resolution, responding resolution, and unincorporated service area.

Definitions of some of the key terms are as follows:

"**Interlocal Service Boundary Agreement"** means an agreement adopted under this part, between a county and one or more municipalities, which may include one or more independent special districts as parties to the agreement.

"Initiating Local Government" means a county, municipality, or independent special district that commences the process for negotiating an interlocal service boundary agreement through the adoption of an initiating resolution.

"Initiating Resolution" means a resolution adopted by a county, municipality, or independent special district which commences the process for negotiating an interlocal service boundary agreement and which identifies the unincorporated area and other issues for discussion.

"Responding Resolution" means the resolution adopted by the county or an invited municipality which responds to the initiating resolution and which may identify an additional unincorporated area or another issue for discussion, or both, and may designate an additional invited municipality or independent special district.

"Invited Local Government" means an invited county, municipality, or special district and any other local government designated as such in an initiating resolution or a responding resolution that invites the local government to participate in negotiating an interlocal service boundary agreement.

"Requesting Resolution" means the resolution adopted by a municipality seeking to participate in the negotiation of an interlocal service boundary agreement.

"Municipal Service Area" means one or more of the following as designated in an interlocal service boundary agreement:

(a) An unincorporated area that has been identified in an interlocal service boundary agreement for municipal annexation by a municipality that is a party to the agreement.
(b) An unincorporated area that has been identified in an interlocal service boundary agreement to receive municipal services from a municipality that is a party to the agreement or from the municipality's designee.

"Unincorporated Service Area" means one or more of the following as designated in an interlocal service boundary agreement:

(a) An unincorporated area that has been identified in an interlocal service boundary agreement and that may not be annexed without the consent of the county.
(b) An unincorporated area or incorporated area, or both, which have been identified in an interlocal service boundary agreement to receive municipal services from a county or its designee or an independent special district.

III. Process for 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 within the county 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 (which cross reference s. 171.203(13) and Ch. 164, F.S. detailing conflict assessment and resolution procedures) 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*.

A **County's initiating resolution** *must designate one or more invited municipalities*, and be sent by certified mail to the chief administrative officer of every invited municipality, as well as each other municipality in the county.

A **municipality's initiating resolution** *may designate an invited municipality*, and must be sent by certified mail to the chief administrative officer of the county, the invited municipality, if any, and each other municipality in the county. An initiating resolution from an independent special district must designate one or more municipalities and invite the county.

Responding Resolution and Requesting Resolution

Within 60 days of receipt of an initiating resolution, *the county, invited municipality, and independent special district must adopt a* ***responding resolution***. The responding resolution from the county or municipality may identify additional unincorporated area, incorporated area, or additional issues for negotiation, or both, and it may also invite additional municipalities or an independent special district to negotiate.

A municipality within the county that is not invited may request participation in the negotiations by adopting a *requesting* resolution within 60 days after receipt of the initiating resolution , or within 10 days after receipt of the responding resolution, and the county and invited municipality shall consider whether to allow a requesting municipality to participate in the negotiations, and if they agree, the county and the municipality shall adopt a *participating resolution* allowing the municipality to participate in the negotiations.

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

that adopted a resolution to participate, shall begin negotiations within 60 days after receipt of a responding or participating resolution, whichever occurs later.

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.

IV. Issues That May be Addressed in an Interlocal Service Boundary Agreement

An interlocal service boundary agreement may address any issue concerning service delivery, fiscal responsibilities, or boundary adjustment. An ISBA may include, but is not limited to, identification or establishment of:

- A **municipal service area** and **unincorporated service area**

- A **process and schedule for annexing** an area **within a designated municipal service area**, which may include procedures for annexation of areas not meeting requirements for annexation under Part I and alternative processes for annexation

- 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; however, this process does not affect utilities or public utilities as defined in Ch. 366, F.S., or affect the determination of a territorial dispute by the Public Service Commission under s. 366.04, F.S.

- Other **service delivery issues**, including transfer of services and infrastructure and the fiscal compensation to one local government from another, joint use of facilities and colocation of services

- Procedures relating to responsibility for managing surface water pursuant to water management district or Department of Environmental Protection permits

- A requirement that the municipality prepare and send the county **an urban services report** on its planned service delivery, per s.171.042, F.S. or as otherwise determined by the agreement

- All fire and emergency medical services will be provided by the existing providers and remain part of the existing unit or district, unless there is agreement as to who will provide emergency services, or the county's comprehensive plan contains a fire-rescue services element, and the annexing municipality meets the criteria set forth.

- **Process for land-use planning decisions** consistent with Part II of Ch. 163, F.S., including those made jointly by the governing bodies of the county and the municipality, or allow a municipality to adopt land-use changes consistent with part II of Ch. 163, F.S. for areas that are scheduled to be annexed within the term of the interlocal agreement; however, the county comprehensive plan and land-development regulations control until the municipality annexes the property and amends its comprehensive plan accordingly.

V. Conclusion of Negotiations and Adoption of Interlocal Service Boundary Agreements

If six months have passed since negotiations began and 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 statute 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 the statute 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 statute states that Part II of Ch. 171, F.S., does not impair any existing franchise agreement without the consent of the franchisee, any existing territorial agreement between electric utilities or public utilities as defined in Ch. 366, F.S., or the jurisdiction of the Public Service Commission under s. 366.04, F.S., to resolve a territorial dispute involving electric utilities or public utilities in accordance with the criteria set out in that section. An interlocal agreement entered into under the section has no effect in a territorial dispute proceeding before the Public Service Commission. Local governments retain their authority under the statute to negotiate franchise agreements for the use of public rights-of-way and providing service.

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.

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 under s. 125.66 or s.166.041, F.S. respectively.

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 amendment identifying a 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 DEO for compliance with Part II of Ch. 163, F.S. However, DEO may not review or approve or disapprove a municipal ordinance relating to municipal annexation or contraction.

VI. Potential Alternative Annexation Procedures; Areas Not Meeting Part I Criteria Such As Creation of Enclaves and Non-Contiguous Areas; and Annexation of Enclaves

Sections 171.204 and 171.205, F.S., provide procedures under which land, which may include areas that may not be annexed by a municipality under Ch. 171. F.S., Part I, identified in interlocal service boundary agreement for annexation may be annexed by a municipality.

Specifically, the statute 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. *Before annexation of land that is not contiguous to the boundaries of the annexing municipality, land not currently served by water or sewer facilities, or an annexation that creates an enclave, one of the following options must be followed*:

- The municipality must transmit a comprehensive-plan amendment that proposes specific amendments relating to the property anticipated for annexation to the Department of Economic Opportunity for review under Ch. 163, F.S. After considering the department's review, the municipality may approve the annexation and comprehensive-plan amendment concurrently. Adoption of the annexation and comprehensive plan amendment may occur at the same hearing; however, the local government must take separate action on the annexation and comprehensive-plan amendment, but may take such action at a single public hearing; *or*

- A municipality and county must enter into a joint planning agreement under s. 163.3171, F.S., which is adopted into the municipal comprehensive plan. The joint planning agreement must identify the geographic areas anticipated for annexation, the future land uses that the municipality would seek to establish, necessary public facilities and services, including transportation and school facilities and how they will be provided and natural resources, including surface water and groundwater resources, and how they will be protected. Amendments to a comprehensive plan's future land use map that are consistent with the joint planning agreement must be considered small scale amendments.

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 statute allows **enclaves 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.

For **enclaves consisting of less than 20 acres** and not more 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.

VII. Effect of Interlocal Service Boundary Agreement

Section 171.206, F.S., (and s.171.094(a) on "Effect of Interlocal Service Boundary Agreements adopted under Part II on annexation under" Part I of Ch. 171) provides that **an interlocal service boundary agreement is binding on the parties** and a party may not take any action that violates the interlocal service boundary agreement. Subsection 171.094(b) also provides that "notwithstanding any other provision of this part", i.e. Part I Ch. 171, "without the consent of the county, the affected municipality, or affected independent special district by resolution, a county, an invited municipality, or independent special district may not take any action that violates an interlocal service boundary agreement."

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. It provides that local governments within a charter county may use the provisions of this part if the interlocal agreement is consistent with the approved charter or the charter provision is repealed or modified.

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.

Other Constitutional Issues Referred to in the Senate Staff Analysis Include:

Section 4, Art. VIII of the State Constitution, 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 171.207, F.S., declares that the provisions created in the statute are an alternative provision otherwise provided by law as authorized by s. 4, Art. VIII of the State Constitution.