Growth Management Committee

Tuesday, April 4, 2006
2:00 PM – 3:00 PM
212 Knott Building

Allan G. Bense
Speaker

Randy Johnson
Chair

Florida House of Representatives
Growth Management Committee

Allan Bense
Speaker

Randy Johnson
Chair

AGENDA

GROWTH MANAGEMENT COMMITTEE
Tuesday, April 4, 2006
2:00 PM – 3:00 PM
212 Knott Building

I. Meeting Called to Order

II. Opening Remarks by Chairman

III. Consideration of the following bill(s):

HB 703 by Rep. Justice – Municipal Annexation
HB 835 CS Rep. Attkisson Affordable Housing
HB 949 by Rep. Arza – Municipalities
HB 1187 CS Rep. Murzin – Florida Building Code
HB 1357 by Rep. Altman – Growth Management
HB 1431 by Rep. Cretul – Impact Fees
HB 1583 CS by Rep. Davis M. – Community Redevelopment

IV. Meeting Adjourned

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300 (850) 488-1489
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HB 703

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 703 Municipal Annexation
SPONSOR(S): Justice and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	Nelson	Hamby
2) Growth Management Committee		Grayson	Grayson
3) Agriculture & Environment Appropriations Committee			
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

HB 703 amends the statutory involuntary annexation procedure by excluding state-owned land from provisions which require the consent of the owners of more than 50% of the land owners where more than 70% of the property in an area proposed for annexation is owned by individuals, corporations or legal entities which are not registered electors. Thus, the consent of the Board of Trustees of the Internal Improvement Trust (the Governor and Cabinet) would not be required with regard to the annexation of any state-owned land.

The fiscal impact of the bill is indeterminate. While the state is immune from taxation, it could experience higher costs associated with certain services (e.g., utilities) depending on whether its property remains in unincorporated territory or is included within a municipality.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty

If the state is not considered in the consent process for involuntary annexations, private owners of the unincorporated areas under consideration will have more control over the annexation of their property.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Constitutional/Statutory Provisions Relating to Annexation[1]

Section 2 (c), Art. VIII of the State Constitution provides that "[m]unicipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law." This provision authorizes the Legislature to annex unincorporated property into a municipality by special act. It also authorizes the Legislature to establish procedures in general law for the annexation of property.

The Legislature established local annexation procedures by general law in 1974, with the enactment of ch. 171, F. S., the "Municipal Annexation or Contraction Act." This act describes the way in which property may be annexed or de-annexed by cities without legislative action. The purpose of the act is to set forth procedures for adjusting the boundaries of municipalities through annexations or contractions of corporate limits, and criteria for determining when annexations or contractions may take place so as to:

- ensure sound urban development and accommodation to growth;
- establish uniform legislative standards throughout the state for the adjustment of municipal boundaries;
- ensure the efficient provision of urban services to areas that become urban in character; and
- ensure that areas are not annexed unless municipal services can be provided to those areas.

Statutory Requirements for Annexation

Before local annexation procedures may begin, pursuant to s. 171.042, F.S., the governing body of the municipality must prepare a report containing plans for providing urban services to any area to be annexed. A copy of the report must be filed with the board of county commissioners where the municipality is located. This report must include appropriate maps, plans for extending municipal services, timetables and financing methodologies. It must certify that the area proposed to be annexed is appropriate for annexation because it meets the following standards and requirements described by s. 171.043, F.S.:

[1] The term "annexation" is defined in the Florida Statutes to mean "the adding of real property to the boundaries of an incorporated municipality, such addition making such real property in every way a part of the municipality." See, s. 171.031(1), F.S. For an annexation to be valid under ch. 171, F. S., the annexation must take place within the boundaries of a single county. See, s. 171.045, F.S.

- The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality.[2]
- The area to be annexed must be reasonably compact.[3]
- No part of the area to be annexed may fall within the boundary of another incorporated municipality.
- Part or all of the land to be annexed must be developed for urban purposes.[4]
- Alternatively, if the proposed area is not developed for urban purposes, it can either border at least 60 percent of a developed area, or provide a necessary bridge between two urban areas for the extension of municipal services.

Annexed areas are declared to be subject to taxation (and existing indebtedness) for the current year on the effective date of the annexation, unless the annexation takes place after the municipal governing body levies such tax for that year. In the case of municipal contractions, the city and county must reach agreement on the transfer of indebtedness or property—the amount to be assumed, its fair value and the manner of transfer and financing.[5]

Types of Annexations

Voluntary Annexation

If the property owners of a reasonably compact, unincorporated area desire annexation into a contiguous municipality, they can initiate voluntary annexation proceedings. Section 171.044 (4), F. S., provides that the procedures for voluntary annexation are "supplemental to any other procedure provided by general law or special law." The following process governs voluntary annexations in every county, except for those counties with charters providing an exclusive method for municipal annexation:

- submission of a petition—signed by all property owners in the area proposed to be annexed—to the municipal governing body; and
- adoption of an ordinance by the governing body of the municipality to annex the property after publication of a notice—which sets forth the proposed ordinance in full—at least once a week for two consecutive weeks.

The governing body of the municipality also must provide a copy of the notice to the board of county commissioners of the county where the municipality is located.

In addition, the annexation must not create enclaves. An enclave is: (a) any unincorporated, improved or developed area that is enclosed within and bounded on all sides by a single municipality; or (b) any unincorporated, improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.[6]

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[2] This means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. There are specified exceptions for cases in which an area is separated from the city's boundary by a publicly owned county park, right-of-way or body of water.

[3] Section 171.031(12), F.S., defines "compactness" as concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state is required to be designed in such a manner as to ensure that the area will be reasonably compact.

[4] An area developed for urban purposes is defined as an area which meets any one of the following standards: (a) a total resident population equal to at least two persons per acre; (b) a total resident population equal to at least one person per acre, with at least 60 percent of subdivided lots one acre or less; or (c) at least 60 percent of the total lots used for urban purposes, with at least 60 percent of the total urban residential acreage divided into lots of five acres or less.

[5] See, s. 171.061, F.S.

[6] Section 171.031(13), F.S.

Involuntary Annexation

A municipality may annex property where the property owners have not petitioned for annexation pursuant to s. 171.0413, F. S. This process is referred to as "involuntary" annexation. In general, the requirements for an involuntary annexation are:

- the adoption of an annexation ordinance by the annexing municipality's governing body;
- at least two advertised public hearings held by the governing body of the municipality prior to the adoption of the ordinance, with the first hearing on a weekday at least seven days after the first advertisement and the second hearing held on a weekday at least five days after the first advertisement; [7] and
- submission of the ordinance to a vote of the registered electors of the area proposed for annexation once the governing body has adopted the ordinance.[8]

Any parcel of land which is owned by one individual, corporation or legal entity, or owned collectively by one or more individuals, corporations or legal entities, proposed to be annexed can not be severed, separated, divided or partitioned by the provisions of the ordinance, unless the owner of such property waives this requirement.

If there is a majority vote in favor of annexation in the area proposed to be annexed, the area becomes part of the city. If there is no majority vote, the area cannot be made the subject of another annexation proposal for two years from the date of the referendum.

If more than 70 percent of the land in an area proposed to be annexed is owned by individuals, corporations or legal entities which are not registered electors of such area, the area can not be annexed unless the owners of more than 50 percent of the land in such area consent to the annexation. This consent must be obtained by the parties proposing the annexation prior to the referendum.

If the area proposed to be annexed does not have any registered electors on the date the ordinance is finally adopted, a vote of electors of the area proposed to be annexed is not required. The area may not be annexed unless the owners of more than 50 percent of the parcels of land in the area proposed to be annexed consent to the annexation. If the governing body does not choose to hold a referendum of the annexing municipality, then the property owner consents must be obtained by the parties proposing the annexation prior to the final adoption of the ordinance.

Effect of Annexation on an Area

Upon the effective date of an annexation, the area becomes subject to all laws, ordinances and regulations in force in the annexing municipality. An exception occurs pursuant to s. 171.062(2), F.S., in that if the area annexed was subject to a county land use plan and county zoning or subdivision regulations, these regulations remain in effect until the municipality adopts a comprehensive plan amendment that includes the annexed area. In contractions, excluded territory is immediately subject to county laws, ordinances and regulations.

Any changes in municipal boundaries require revision of the boundary section of the municipality's charter. Such changes must be filed as a charter revision with the Department of State within 30 days of the annexation or contraction.[9]

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[7] This new requirement was passed by the 1999 Legislature.

[8] In 1999, the Florida Legislature removed the requirement of a dual referendum in specific circumstances. Previously, in addition to a vote by the electors in the proposed annexed area, the annexation ordinance was submitted to a separate vote of the registered electors of the annexing municipality if the total area annexed by a municipality during any one calendar year period cumulatively exceeded more than five percent of the total land area of the municipality or cumulatively exceeded more than five percent of the municipal population. The holding of a dual referendum is now at the discretion of the governing body of the annexing municipality.

[9] Section 171.091, F.S.

Appeal of Annexation or Contraction

Affected persons who believe they will suffer material injury because of the failure of a city to comply with annexation or contraction laws as applied to their property can appeal the annexation ordinance. They may file a petition within 30 days following the passage of the ordinance with the circuit court for the county in which the municipality is located seeking the court's review by certiorari. If an appeal is won, the petitioner is entitled to reasonable costs and attorney's fees.[10]

State-Owned Land

Chapter 253, F.S., is entitled "State Lands." Section 253.001, F.S., establishes that pursuant to the provisions of s. 7, Art. II, and s. 11, Art. X of the State Constitution, all lands held in the name of the Board of Trustees of the Internal Improvement Trust Fund are held in trust for the use and benefit of the people of the state of Florida.

The Governor and the Cabinet sit as the Board of Trustees of the Internal Improvement Trust Fund. Pursuant to s. 253.03, F.S., the Board is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection and disposition of all lands owned by, or which may hereafter inure to, the state or any of its agencies, departments, boards or commissions, excluding certain properties. The Division of State Lands of the Department of Environmental Protection performs staff duties and functions related to the acquisition, administration and disposition of those lands in which title is vested in the Board. See, s. 253.002(1), F.S

EFFECT OF PROPOSED CHANGES

HB 703 amends the involuntary annexation procedure contained in s. 171.0413, F.S., by excluding state-owned land from the consent processes provided in that section. Thus, it prevents the Board of Trustees of the Internal Improvement Trust Fund from participating in these annexation decisions.

In some instances, the Board currently does not have the ability to participate in annexation decisions regarding land that it owns as it is not a registered elector who can vote on a proposed ordinance. However, pursuant to s. 171.0413(5), F.S., if more than 70 percent of an area proposed to be annexed is owned by entities which are not registered electors of the area, a requirement is triggered which calls for the consent of the owners of more than 50 percent of the land in such area prior to the referendum. This provision allows the Board to participate in the decision making process in instances where it is a land owner in an area proposed for annexation. Section 171.0413(6), F.S., also allows the Board to take part in the decision-making process if the area proposed for annexation has no registered electors by requiring consent from the owners of more than 50 percent of the parcels of land in the area.

The Department of Environmental Protection has indicated that generally the Board is in favor of annexation of state land. In instances where the state owns over 50 percent of the land in an area proposed for involuntary annexation under s. 171.0413, F.S., the state's consent assures annexation without regard to the wishes of other landowners. The bill addresses this potential outcome by removing the Board from the consent equation. Under the bill's provisions, these types of annexations would be decided by landowners other than the state; and would disallow the Board of Trustees of the Internal Improvement Trust Fund from exercising their constitutional and statutory duties as trustee over property held for the use and benefit of the people of the state of Florida

[10] Section 171.081, F.S.

C. SECTION DIRECTORY:

Section 1: Amends s. 171.0413, F.S., to exclude state-owned land from an annexation procedure.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

While the state is immune from taxation, it could experience higher costs associated with certain services (e.g., utilities) depending on whether its property remains unincorporated territory or is included within a municipality.

1. Revenues:

Unknown.

2. Expenditures:

Unknown.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

C. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

A representative of The Florida Department of Environmental Regulation has indicated that, as a matter of policy, the agency opposes this bill. The Board of Trustees represents the citizens of the state of Florida, and this bill would essentially eliminate their right to weight in on these issues. [11]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[11] Telephone conversation with Ryder Rudd, Legislative Affairs, March 2, 2006.

1 A bill to be entitled
2 An act relating to municipal annexation; amending s.
3 171.0413, F.S.; excluding state-owned land from certain
4 municipal annexation procedures; providing an effective
5 date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Subsection (5) of section 171.0413, Florida
10 Statutes, is amended to read:
11 171.0413 Annexation procedures.--Any municipality may
12 annex contiguous, compact, unincorporated territory in the
13 following manner:
14 (5) If more than 70 percent of the land in an area
15 proposed to be annexed is owned by individuals, corporations, or
16 legal entities which are not registered electors of such area,
17 such area shall not be annexed unless the owners of more than 50
18 percent of the land in such area, excluding state-owned land,
19 consent to such annexation. Such consent shall be obtained by
20 the parties proposing the annexation prior to the referendum to
21 be held on the annexation.
22 Section 2. This act shall take effect July 1, 2006.

HB 835

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 835 CS Affordable Housing
SPONSOR(S): Attkisson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 934

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	15 Y, 2 N, w/CS	Livingston	Liepshutz
2) Growth Management Committee		Grayson	Grayson
3) Transportation & Economic Development Appropriations Committee			
4) Commerce Council			
5)			

SUMMARY ANALYSIS

HB 835 addresses two aspects of the state's affordable housing issue by addressing the relocation of mobile homes when a land use change results in the eviction from a mobile home park; and by providing homeownership assistance to certain K-12 classroom teachers. Specifically, the bill creates and amends law to accomplish the following:

Mobile Home Parks

- Requires local governments and community development agencies to provide incentives to encourage continued use of mobile home parks and to use all available funding sources to assist in the relocation of mobile homes resulting from the redevelopment of mobile home parks.
- Provides a late fee for a mobile home park owners' untimely payment of a relocation fee into the Florida Mobile Home Relocation Trust Fund.
- Provides a 1 year time limit during which a mobile home owner who has been required to move from a mobile home park may file a claim for relocation expenses from the Florida Mobile Home Relocation Corporation. Under certain conditions the time limit is extended to 2 years.
- Provides Legislative intent encouraging mobile home owners to organize as a homeowners' association for the purpose of negotiating a right of first refusal with a mobile home park owner on the sale of a mobile home park.
- Requires certain documentation and public disclosure when a governmental entity approves an application for rezoning, or other official action, that results in the removal or relocation of mobile home owners residing in a mobile home park.

Homeownership Assistance for K-12 Classroom Teachers

- Establishes a program to provide homeownership down payment assistance to K-12 classroom teachers who are certified in a critical need area of exceptional student education, mathematics, science, or reading.
- Appropriates $50 million from the State Housing Trust Fund to the Florida Homeownership Assistance Program.

The fiscal impact of the bill to local governments is indeterminate regarding: the use of incentives to encourage continued use of mobile home parks and the use of available funding sources to assist in mobile home relocation; and the creation of documentation relating to the approval of a rezoning application or other official action that results in the removal or relocation of mobile home owners.

The bill has an effective date of upon becoming law, except for the appropriation which has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill increases benefits for potential homeownership within the current framework that is designed to support affordable housing goals.

Ensure lower taxes - The bill imposes late fees for failure to make timely payments to the Florida Mobile Home Relocation Corporation.

Safeguard individual liberty - The bill increases the options of some individuals in the conduct of their own affairs by making affordable housing opportunities available to them.

Empower families - The bill provides affordable housing opportunities thereby serving to benefit families.

B. EFFECT OF PROPOSED CHANGES:

Present Situation – Affordable Housing

Due to dramatic increases in housing costs coupled with modest rises in incomes, many low income and moderate income Florida families find it increasingly more difficult to find safe, decent and affordable rental and single family housing. For many individuals and families, mobile homes provide an affordable housing opportunity.

Chapter 420, F.S., the "State Housing Strategy Act" provides a goal of ensuring by 2010 that decent and affordable housing is available for all state residents. The chapter establishes law and provides a series of programs to achieve the goal. The chapter also establishes the Florida Housing Finance Corporation.

The Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC) was created by the Legislature as an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental function of financing or refinancing housing and related facilities in Florida. The FHFC administers various programs which facilitate the development and purchase of affordable housing for Floridians. These programs are financed through a variety of state, federal and local sources. One such program is the Florida Homeownership Assistance Program (HAP).

Florida Homeownership Assistance Program

The HAP was created by s. 420.5088, F.S., for the purpose of assisting low-income persons in purchasing a home by reducing the cost of the home with below-market construction financing; by reducing the amount of down payment and closing costs paid by the borrower to a maximum of five percent of the purchase price; or by reducing the monthly payment to an affordable amount for the purchaser. Loans are made available at an interest rate not to exceed three percent. The balance of any loan is due at closing if the property is sold or transferred.

Present Situation – Mobile Home Housing

Florida Mobile Home Park Regulation – In General

The landlord-tenant relationship between a mobile home park owner and a mobile home owner in a mobile home park is a unique relationship. Traditional landlord-tenant concepts are thought inapplicable where the land is owned by the park and the homes on the property are owned by the home owner. This relationship is impacted by the high cost of moving a mobile home. Chapter 723, F.S, the "Florida Mobile Home Act" governs the relationship between mobile home park owners and mobile home owners, including financial assistance to home owners who are displaced when the property, under certain circumstances, is no longer used as a mobile home park.

A mobile home park of 9 or fewer lots is not regulated by ch. 723, F.S. Currently, there are 321,549 mobile home lots and 2,601 mobile home parks filed with the Division of Land Sales, Condominiums, and Mobile Homes, Department of Business and Professional Regulation (DBPR).

Financial Assistance for Mobile Home Relocation Expenses

Section 723.0612, F.S., relates to a change in use of the land comprising a mobile home park, or a change in the portion upon which the tenant resides. It also addresses relocation expenses and payments by a mobile home park owner. This section provides that if a mobile home owner is required to move due to a change in use of the mobile home park property, and the mobile home owner meets certain conditions, then the mobile home owner is entitled to financial assistance to help offset certain moving expenses.

Florida Mobile Home Relocation Trust Fund

Section 723.06115, F.S., establishes the Florida Mobile Home Relocation Trust Fund within DBPR. The relocation trust fund was created to provide revenues for payments to mobile home owners under the relocation program and for the administrative costs associated with managing the trust fund.

Section 723.007, F.S., imposes an annual assessment of $4.00 per lot on mobile home lots located within mobile home parks. The fee is collected by the mobile home park owner and is paid to the Division of Land Sales, Condominiums, and Mobile Homes. These revenues are deposited into the Florida Land Sales, Condominiums, and Mobile Homes Trust Fund to partially fund operations of the division. Additionally, this section imposes a one dollar surcharge on the annual assessment for deposit in the relocation trust fund. Section 320.08015, F.S., relating to motor vehicles, imposes an additional one dollar annual license tax on mobile homes for deposit in the relocation trust fund.

Florida Mobile Home Relocation Corporation

Section 723.0611, F.S., relates to the Florida Mobile Home Relocation Corporation (Corporation). The Corporation is administered by a board of directors made up of six members. The Corporation is authorized to manage the relocation trust fund.

Currently, as a result of being required to relocate due to a change in the use of the mobile home park, an owner of a mobile home has the option of being reimbursed for moving expenses, or under s. 723.0612(7), F.S., a mobile home owner may elect to sell the mobile home rather than move it. When the mobile home owner makes application for payment and is approved by the Corporation, the mobile home owner is then authorized to receive compensation from the Corporation which is paid out of the relocation trust fund.

The amount of the payment is the actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park, or $3,000 for a single-section mobile home, or $6,000 for a multi-section mobile home, whichever is less. Moving expenses are defined to include the cost of taking down, moving, and setting up the mobile home in a new location. The mobile home park owner is required to make payment to the corporation in the amount of $2,750 per single-section mobile home and $3,750 per multi-section mobile home for each application for moving expenses due

to a change in land use. These payments are due within 30 days after receipt of the invoice from the Corporation. Payments received by the Corporation are deposited in the relocation trust fund.

Sale of a Mobile Home Park

The mobile home owners in a mobile home park have a statutory right of first refusal to purchase the mobile home park under certain circumstances. In a mobile home park where the mobile home owners have created a homeowners' association, if the mobile home park owner "offers [the] mobile home park for sale", the mobile home park owner must notify the homeowners' association of the offer. This requirement applies when the mobile home park is offered for sale by the owner to the general public or another individual. A mobile home park owner who receives an unsolicited offer to purchase the mobile home park is under no duty to offer the homeowners' association the opportunity to purchase the mobile home park.

Local Zoning Requirements

Section 723.083, F.S., prohibits any local or state government agency from rezoning (or taking "any other official action") which would result in the removal or relocation of mobile home owners residing in mobile home parks, unless the agency first determines that there are adequate mobile home parks or other suitable facilities in existence for relocating the mobile home owners. In an informal opinion issued to Pinellas County, the Attorney General advised that the phrase "adequate mobile home parks or other suitable facilities" means the local government must consider all facilities suitable for the relocation of the mobile home owners, not their mobile homes. See Informal Opinion of Attorney General Jim Smith (January 3, 1986). The opinion includes apartments, trailer parks, and boarding houses as examples of "other suitable facilities" which a government may consider for the relocation of owners.

Present Situation - State Teacher Shortage

Historically, two trends have determined the need for classroom teachers: teacher turnover and student enrollment. The Florida Department of Education's official teacher recruiting website[1] currently lists four programs that provide housing assistance to teachers:

1. The TEACHER NEXT DOOR PROGRAM offers federal Department of Housing and Urban Development-owned, single family homes to public and private school teachers at a 50 percent discount. To be eligible, teachers must be employed full-time and agree to make the home their sole residence for three years following the purchase. In addition, teachers must work in the area in which the home is located.

2. The TEACHER ZERO DOWN PROGRAM, sponsored by Bank of America, helps teachers overcome one of the biggest obstacles to home ownership—the down payment. This program provides zero percent financing with little or no cash at closing.

3. The TEACHER FLEX PROGRAM, a Bank of America program, provides teachers with home loans that do not require a large savings or an extensive credit history. This program requires a three percent down payment with $500 from personal funds and little cash at closing.

4. The APARTMENT ASSISTANCE/RESIDENTIAL SUBSIDIES PROGRAM, created by Equity Residential Properties Trust, in partnership with the Department of Education, reduces teachers' rent by providing a zero application fee, taking $300 off move-in fees, and providing $500 credit towards the purchase of a home.

Teachers also may qualify for various FHFC programs, depending on their income and location.

[1] http://www.teachinflorida.com

Effect of proposed changes – Mobile Homes

Disclosure notice

The bill requires a mobile home park owner to expand the current 6 month notice of the projected change in the use of the park which is required to be given to affected home owners, to include a statement of the existence of the corporation and the relocation trust fund. The notice must also state that the resident may be entitled to receive financial assistance from the fund and information regarding the program may be obtained from the DBPR.

Sources of assistance

The bill recognizes the loss of affordable housing which results when the land use for a mobile home park changes and its residents are forced to relocate. The bill requires a local government or community redevelopment area (CRA) with a mobile home park within its jurisdiction which is closing due to a change in the use of land to use available funding sources to help offset the financial impacts. Funds are to be used to assist with the cost of relocating mobile homes, assist with the purchase of a new mobile home if relocation of the existing home is not possible, and assist the homeowner in relocating to other types of housing.

The bill specifies that the financial assistance be made as a supplement to payments provided under the relocation trust fund. Additionally, the bill requires that in order to receive supplemental assistance from the local government or CRA, the displaced mobile home owner must qualify as a very low income, low income, or moderate income person as defined by statute.

The bill requires a local government or CRA to use tax increment financing, urban infill and redevelopment funds, general revenue, housing loan assistance program funds, documentary stamp tax revenues from the redevelopment of the mobile home park property which is available to the local government, and impact and permit fees derived from the redevelopment of the park property. The local government or CRA may also use other available sources.

The bill requires local governments to approve the rezoning of property for the development of mobile home parks to provide new homes, affordable housing, or to accommodate the relocation of mobile home owners from a park that is closing due to a change in land use. A local government or CRA is authorized to enter into a development agreement that has a term of 10 years or less with the owner of a mobile home park to encourage the continued use of the mobile home park for affordable housing and may contain incentives, such as, transferable development credits to the community, tax incentives, or housing assistance to the mobile home park owner.

The Department of Community Affairs is required to provide technical assistance to local governments that wish to promote housing assistance for mobile home park owners who provide affordable housing to park residents.

Relocation payments

The bill imposes a late fee if a mobile home park owner who is changing the land use for a mobile home park fails to make the required payment to the relocation trust fund for each single-section and multi-section mobile home for which the home owner has made application for moving expenses. The late fee ranges from 10 percent to 25 percent depending on when the payment is made and the fee is imposed beginning 30 days after receipt of the invoice for payment.

The bill prohibits a mobile home owner from making an application for funding if the applicant has settled a claim or cause of action against the corporation, park owner, or the park owner's successors

in interest directly related to the change in the use of the land for the mobile home park. The bill limits the period for filing an application for moving expenses to 1 year after the expiration of the eviction period as established in the notice of the change of land use.

Documentation

The bill requires a governmental entity to prepare a written document substantiating that adequate mobile home parks or other suitable facilities exist for the relocation of the home owners before the governmental entity may approve an application for rezoning or take any other official action that would result in the removal or relocation of home owners living in a mobile home park. It also requires the governmental entity considering the rezoning or official action to prepare a good-faith estimate of the fiscal costs and benefits of the proposed change in land use. The written document substantiating the existence of adequate mobile home parks or facilities for relocation and the good-faith estimate must be available for public inspection and copying at least 10 days prior to the meeting during which the rezoning or other official act is scheduled to be considered.

Effect of Proposed Changes – Teacher Recruitment and Retention

The bill amends the statutory guidelines of the HAP to provide a funding mechanism for certain classroom teachers to help offset any down payment required to purchase a home. To qualify for financial assistance the individual must be employed as a K-12 classroom teacher and be certified in a critical need area of exceptional student education, mathematics, science, or reading in the state.

The FHFC is authorized by the bill to establish additional eligibility criteria, including:

- homestead residency, and
- a commitment of no less than five years of full-time, permanent employment as a teacher.

The bill mandates payment from HAP funds in the amount of $4,000 as down payment financial assistance under two scenarios:

> (1) "if all [local government jurisdictions] within which an eligible recipient is employed and resides waives any impact fees that occur incidental to the recipient's home purchase;"

and, in addition to the funds made available in (1) above,

> (2) "...the [HAP] program shall provide matching funds up to $4,000 as down payment assistance if the county within which an eligible recipient is employed provides State Housing Initiatives Partnership Program [SHIP] funds to the eligible recipient..."

The bill includes a "statement of encouragement" directed to each county to develop an annual county housing plan that emphasizes the recruitment and retention of classroom teachers certified in critical need areas.

The bill appropriates the sum of $50,000,000 for fiscal year 2006-2007 from the State Housing Trust Fund to the HAP to provide funding for the K-12 classroom teacher program created in the bill.

C. SECTION DIRECTORY:

Section 1. Amends s. 163.31772 F.S., to cite legislative findings and intent relating to changes in land use affecting mobile home parks; to specify requirements regarding funding sources, rezoning, development agreements, and housing assistance.

Section 2. Amends s. 420.5088, F.S., to provide down payment assistance under HAP funding to certain K-12 classroom teachers; requiring the FHFC to develop eligibility criteria; and encouraging counties to develop annual county housing plans that emphasize the recruitment and retention of classroom teachers.

Section 3. Amends s. 723.061, F.S., to require that the notice of change of the use of the mobile home park include a statement of the existence of the relocation trust fund and that the affected resident may be entitled to receive financial assistance from that fund.

Section 4. Amends s. 723.06116, F.S., to authorize late fees to be imposed if a mobile home park owner does not make timely payments to the Florida Mobile Home Relocation Corporation.

Section 5. Amends s. 723.0612, F.S., to create time frames for submitting and processing applications for funding for relocation expenses by the relocation corporation.

Section 6. Amends s. 723.071, F.S., to specify legislative findings relating to the sale of mobile home parks and encourages owners to organize as homeowners' associations to negotiate with a park owner.

Section 7. Amends s. 723.072, F.S., to correct cross-references.

Section 8. Amends s. 723.083, F.S., to require local governments to document in writing the existence of facilities available for relocation of residents of a mobile home park and a written estimate of fiscal costs and benefits.

Section 9. Provides an appropriation of $50 million from the State Housing Trust Fund.

Section 10. Effective date - Section 8 of the bill takes effect July 1, 2006. The remainder of the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Not anticipated to be significant.

2. Expenditures:

   Not anticipated to be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Florida Mobile Home Relocation Corporation estimates that the imposition of the graduated late fee will reduce the percentage of late payments to 12 percent, as compared to the 25 percent for fiscal year 2004-2005, and the total late fees collected would be $7,560 per year.

2. Expenditures:

   Current law requires a local government to determine that adequate mobile home parks or other suitable facilities exist for the relocation of the home owners before approving a rezoning application for a mobile home park. The bill requires the determination to be in the form of a written document. The bill also requires the governmental entity considering the rezoning or official action to prepare a good-faith estimate of the fiscal costs and benefits of such a change in land use.

The DCA is required to provide technical assistance to a local government or CRA that wishes to offer a transfer of development rights program or financial assistance as incentives for mobile home park owners to continue to provide affordable housing. There are costs associated with the research and development of these technical assistance programs, implementation, and outreach. The DCA is in the process of estimating these costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Mobile home owners would benefit if local governments provide funding for relocation expenses when the owners are evicted from a park that is undergoing a change in land use. The mobile home park owners would benefit from any financial assistance provided by the local government.

D. FISCAL COMMENTS:

This bill requires a local government or CRA, having a mobile home park within its jurisdiction which is closing due to a change in the use of land, to use available funding sources to provide relocation assistance to the mobile home owners displaced by the change. The bill does not specify the amount of assistance that must be provided to the mobile home owners.

The bill appears to shift funding not create new revenues. The bill specifies in part "notwithstanding any other provision of law, a local government or community redevelopment agency is authorized to and shall....use revenues derived from sources that include...."

The bill is not anticipated to have a significant fiscal impact on state or local government. Funding for the operations of services should reflect a shift of appropriations from program to program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills important state interest and unless; funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989 ...the law requiring such expenditure is approved by two-thirds of the membership of each house of the Legislature...

Article VII, Section 18(d) of the Florida Constitution, exempts laws having insignificant fiscal impacts from the requirements of the section. For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents.

The bill does not provide an additional revenue source or an appropriation to fund compliance with its terms. However, under the bill's provisions the overall fiscal impact on counties and municipalities should be insignificant. As a result, the bill would appear to be exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill specifically authorizes the Department of Community Affairs to adopt rules to promote the transfer of development rights for mobile home park owners who provide affordable housing.

The bill also specifically authorizes the Department of Community Affairs to adopt rules to promote housing assistance to mobile home park owners who provide affordable housing in urban areas.

The bill, beginning on line 178, specifies that

> "the corporation [Florida Housing Finance Corporation] shall develop criteria to determine which persons are eligible to receive down payment assistance..."

The authority of the corporation may be clearer if the bill specifies that the criteria requirements be adopted by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

NA.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 9, 2006, the Business Regulation Committee adopted a strike all amendment and voted the bill favorably with CS. The changes include the following:

- Specifies that any financial assistance paid by the local authorities is supplemental to the funding received by the mobile home owners from the relocation trust fund;
- Specifies that only very low, low, and moderate income individuals may receive financial assistance from the local authorities;
- Requires that the notice of change of the use of the mobile home park include a statement of the existence of the relocation trust fund and that the affected resident may be entitled to receive financial assistance from that fund; and
- Amends the fiscal impact study that must be completed by local governments to include "costs", as well as, benefits of the change in the use of the park property.

CHAMBER ACTION

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1 The Business Regulation Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to affordable housing; creating s.
7 163.31772, F.S.; providing legislative findings and intent
8 relating to changes in land use affecting mobile home
9 parks; providing definitions; providing requirements for
10 local governments and community redevelopment agencies
11 regarding specified funding sources to provide financial
12 assistance to certain mobile home owners; providing
13 requirements for mobile home owners to qualify for
14 financial assistance; requiring local governments to
15 permit and approve rezoning of property for the
16 development of new mobile home parks; providing that a
17 local government or redevelopment agency may enter into a
18 development agreement with the owner of a mobile home park
19 to encourage its continued use for affordable housing;
20 limiting the length of certain development agreements;
21 amending s. 420.5088, F.S.; providing down payment
22 assistance under the Florida Homeownership Assistance
23 Program to certain persons employed as K-12 classroom

24 teachers in the schools in this state; requiring the
25 Florida Housing Finance Corporation to develop eligibility
26 criteria; providing conditions for counties under which
27 funds may be distributed; providing for a lien to be
28 placed on a recipient's property if the recipient does not
29 fulfill a specified commitment; encouraging counties to
30 develop annual county housing plans that emphasize the
31 recruitment and retention of certain classroom teachers;
32 requiring the corporation to encourage and review county
33 housing plans; amending s. 723.061, F.S.; providing notice
34 requirements to certain mobile home lot tenants regarding
35 entitlement to compensation from the Florida Mobile Home
36 Relocation Trust Fund; amending s. 723.06116, F.S.;
37 providing for late fees if a mobile home park owner does
38 not make payments to the Florida Mobile Home Relocation
39 Corporation within the required time period; amending s.
40 723.0612, F.S.; prohibiting approval of certain
41 applications for funding submitted by persons who have
42 settled certain claims or causes of action; providing
43 certain time periods within which an application for
44 funding for relocation expenses must be submitted to the
45 corporation; amending s. 723.071, F.S.; providing
46 legislative findings relating to the sale of mobile home
47 parks; amending s. 723.072, F.S., relating to an affidavit
48 of compliance by an owner of a mobile home park;
49 conforming cross-references; amending s. 723.083, F.S.;
50 requiring an agency of municipal, local, county, or state
51 government to provide a report that substantiates the

52 existence of adequate mobile home parks before approving
53 the removal or relocation of a park; requiring a written
54 estimate of fiscal costs and benefits; requiring certain
55 reports to be made available to the public within a
56 specified time period; providing an appropriation;
57 providing effective dates.
58
59 Be It Enacted by the Legislature of the State of Florida:
60
61 Section 1. Section 163.31772, Florida Statutes, is created
62 to read:
63 163.31772 Mobile home parks; change in use of land;
64 legislative findings and intent.--
65 (1) The Legislature finds that:
66 (a) Mobile home parks provide safe and affordable housing
67 to many residents of this state;
68 (b) The rising price of real estate in this state is
69 causing significant loss of affordable housing, including mobile
70 home parks;
71 (c) Some mobile home park residents are being evicted and
72 forced to relocate from their communities due to the change in
73 the use of land from mobile home park rentals to some other use;
74 (d) The loss of this type of affordable housing is of
75 statewide concern; and
76 (e) Local governments benefit from the redevelopment of
77 these mobile home parks through increased local and state tax
78 revenues but may not have authority to use all available funding
79 and revenue sources to assist these displaced residents.

80 (2) It is the intent of the Legislature that local
81 governments and redevelopment agencies assist in the relocation
82 of and the provision of assistance to mobile home owners and are
83 authorized to use all available funding sources to further this
84 intent.
85 (3) As used in this section, the term:
86 (a) "Affordable" has the same meaning as provided in s.
87 420.602.
88 (b) "Community redevelopment agency" has the same meaning
89 as provided in s. 163.340.
90 (c) "Local government" means a county or municipality.
91 (d) "Mobile home park" has the same meaning as provided in
92 s. 723.003.
93 (4) Any local government or community redevelopment agency
94 having jurisdiction over a mobile home park that is being closed
95 due to a change in the use of land shall provide financial
96 assistance to any mobile home resident who is displaced as a
97 result of the change in use and who meets the requirements of
98 subsection (5) to:
99 (a) Assist the homeowner with the cost of relocating his
100 or her home;
101 (b) Assist the homeowner in purchasing a new manufactured
102 or mobile home if the home he or she is currently occupying is
103 not capable of being moved to another location; and
104 (c) Assist the homeowner in relocating to any other
105 adequate and suitable housing.
106

107 The financial assistance provided under this subsection to each
108 qualified homeowner shall be made as a supplement to the funds
109 provided to each qualified homeowner under the Florida Mobile
110 Home Relocation Trust Fund.
111 (5) In order to receive supplemental financial assistance
112 under subsection (4) from the local government or community
113 redevelopment agency, the displaced mobile home owner must
114 qualify as a very-low-income, low-income, or moderate-income
115 person as defined in s. 420.0004.
116
117 Notwithstanding any other provision of law, a local government
118 or community redevelopment agency is authorized to and shall,
119 for the purposes described in subsection (4), use revenues
120 derived from sources that include, but need not be limited to,
121 tax increment financing pursuant to s. 163.387, urban infill and
122 redevelopment funds pursuant to s. 163.2523, general revenue
123 funding, housing loan assistance programs, documentary stamp tax
124 revenues derived from the redevelopment of the property which
125 are available to the local government, and impact and permit
126 fees derived from the redevelopment of the property.
127 (6) A local government shall take action to permit and
128 approve the rezoning of property for development of new mobile
129 home parks for the purpose of providing new homes or affordable
130 housing or for the relocation of mobile home owners who are
131 displaced by a change in the use of land.
132 (7) Any local government or community redevelopment agency
133 having jurisdiction over a mobile home park providing affordable
134 housing as defined in this section may enter into a development

135 agreement with the owner of the mobile home park to encourage
136 the continued use of the mobile home park for affordable housing
137 by incentives, including, but not limited to:
138 (a) Awarding transferable development credits to the
139 community. The Department of Community Affairs shall provide
140 technical assistance to local governments in order to promote
141 the transfer of development rights for mobile home park owners
142 who provide affordable housing. The department may adopt rules
143 pursuant to ss. 120.536(1) and 120.54 to administer this
144 paragraph;
145 (b) Providing tax incentives, such as property tax
146 abatement, for providing affordable housing; and
147 (c) Providing housing assistance to the mobile home park
148 owner for the difference between the lot rental amount paid by
149 the homeowners and either the lot rental amount charged in
150 comparable mobile home parks that have similar facilities,
151 services, amenities, and management or based upon the rental
152 value of the property being dedicated to affordable housing
153 based upon the property's fair market value. The Department of
154 Community Affairs shall provide technical assistance to local
155 governments in order to promote housing assistance to mobile
156 home park owners who provide affordable housing in urban areas.
157 The department shall adopt rules pursuant to ss. 120.536(1) and
158 120.54 to administer this paragraph.
159
160 Any development agreement entered into under this subsection
161 shall have a term that does not exceed 10 years.

162 Section 2. Subsection (7) is added to section 420.5088,
163 Florida Statutes, to read:
164 420.5088 Florida Homeownership Assistance Program.--There
165 is created the Florida Homeownership Assistance Program for the
166 purpose of assisting low-income persons in purchasing a home by
167 reducing the cost of the home with below-market construction
168 financing, by reducing the amount of down payment and closing
169 costs paid by the borrower to a maximum of 5 percent of the
170 purchase price, or by reducing the monthly payment to an
171 affordable amount for the purchaser. Loans shall be made
172 available at an interest rate that does not exceed 3 percent.
173 The balance of any loan is due at closing if the property is
174 sold or transferred.
175 (7)(a) The program shall provide down payment assistance
176 to each person who is employed as a K-12 classroom teacher and
177 certified in a critical need area in this state.
178 (b) The corporation shall develop criteria to determine
179 which persons are eligible to receive down payment assistance,
180 including the following criteria:
181 1. The person shall be employed as a K-12 classroom
182 teacher in this state.
183 2. The person shall be state certified in a critical need
184 area of exceptional student education, mathematics, science, or
185 reading.
186 3. The person shall declare his or her homestead and
187 maintain residency at his or her homestead.
188 4. The person shall be employed in a full-time, permanent
189 capacity.

190 5. The person shall demonstrate a 5-year minimum
191 commitment to continued employment as a K-12 classroom teacher
192 in a school within the county of current employment.
193 (c)1. The program shall provide $4,000 as down payment
194 assistance if all city, county, or appropriate governmental
195 subdivisions or agencies within which an eligible recipient is
196 employed and resides waives any impact fees that occur
197 incidental to the recipient's home purchase.
198 2. In addition to the amount provided under subparagraph
199 1., the program shall provide matching funds up to $4,000 as
200 down payment assistance if the county within which an eligible
201 recipient is employed provides State Housing Initiatives
202 Partnership Program funds to the eligible recipient under ss.
203 420.907-420.9079.
204 (d) A lien shall be placed on the recipient's property if
205 the recipient does not fulfill his or her 5-year commitment
206 specified in subparagraph (b)5.
207 (e) Each county is encouraged to develop an annual county
208 housing plan that emphasizes the recruitment and retention of
209 classroom teachers certified in critical need areas. The
210 corporation shall review and encourage such plans as a part of
211 the overall housing assistance effort of counties. Such plans
212 shall not affect any formulas relating to low-income or very-
213 low-income assistance programs approved by the corporation.
214 Section 3. Paragraph (d) of subsection (1) of section
215 723.061, Florida Statutes, is amended to read:
216 723.061 Eviction; grounds, proceedings.--

217 (1) A mobile home park owner may evict a mobile home
218 owner, a mobile home tenant, a mobile home occupant, or a mobile
219 home only on one or more of the grounds provided in this
220 section.
221 (d) Change in use of the land comprising the mobile home
222 park, or the portion thereof from which mobile homes are to be
223 evicted, from mobile home lot rentals to some other use,
224 provided all tenants affected are given at least 6 months'
225 notice of the projected change of use and of their need to
226 secure other accommodations. The notice shall include in a font
227 no smaller than the body of the notice: YOU MAY BE ENTITLED TO
228 COMPENSATION FROM THE FLORIDA MOBILE HOME RELOCATION TRUST FUND,
229 ADMINISTERED BY THE FLORIDA MOBILE HOME RELOCATION CORPORATION
230 (FMHRC); FMHRC CONTACT INFORMATION IS AVAILABLE FROM THE FLORIDA
231 DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION. The park
232 owner may not give a notice of increase in lot rental amount
233 within 90 days before giving notice of a change in use.
234 Section 4. Subsection (1) of section 723.06116, Florida
235 Statutes, is amended to read:
236 723.06116 Payments to the Florida Mobile Home Relocation
237 Corporation.--
238 (1) If a mobile home owner is required to move due to a
239 change in use of the land comprising a mobile home park as set
240 forth in s. 723.061(1)(d), the mobile home park owner shall,
241 upon such change in use, pay to the Florida Mobile Home
242 Relocation Corporation for deposit in the Florida Mobile Home
243 Relocation Trust Fund $2,750 for each single-section mobile home
244 and $3,750 for each multisection mobile home for which a mobile

245 home owner has made application for payment of moving expenses.
246 The mobile home park owner shall make the payments required by
247 this section and by s. 723.0612(7) to the corporation within 30
248 days after receipt from the corporation of the invoice for
249 payment. Failure to make such payment within the required time
250 period shall result in a late fee being imposed.
251 (a) If payment is not submitted within 30 days after
252 receipt of the invoice, a 10-percent late fee shall be assessed.
253 (b) If payment is not submitted within 60 days after
254 receipt of the invoice, a 15-percent late fee shall be assessed.
255 (c) If payment is not submitted within 90 days after
256 receipt of the invoice, a 20-percent late fee shall be assessed.
257 (d) Any payment received 120 days or more after receipt of
258 the invoice shall include a 25-percent late fee.
259 Section 5. Subsection (9) of section 723.0612, Florida
260 Statutes, is amended, and subsection (12) is added to that
261 section, to read:
262 723.0612 Change in use; relocation expenses; payments by
263 park owner.--
264 (9) Any person whose application for funding pursuant to
265 subsection (1) or subsection (7) is approved for payment by the
266 corporation shall be barred from asserting any claim or cause of
267 action under this chapter directly relating to or arising out of
268 the change in use of the mobile home park against the
269 corporation, the park owner, or the park owner's successors in
270 interest. No application for funding pursuant to subsection (1)
271 or subsection (7) shall be approved by the corporation if the
272 applicant has ~~either~~ filed a claim or cause of action, is

273 actively pursuing a claim or cause of action, has settled a
274 claim or cause of action, or has a judgment against the
275 corporation, the park owner, or the park owner's successors in
276 interest under this chapter directly relating to or arising out
277 of the change in use of the mobile home park, unless such claim
278 or cause of action is dismissed with prejudice.
279 (12) An application to the corporation for compensation
280 under subsection (1) or subsection (7) must be received within 1
281 year after the expiration of the eviction period as established
282 in the notice required under s. 723.061(1)(d). If the applicant
283 files a claim or cause of action that disqualifies the applicant
284 under subsection (9) and the claim is subsequently dismissed,
285 the application must be received within 6 months following
286 filing of the dismissal with prejudice as required under
287 subsection (9). However, such an applicant must apply within 2
288 years after the expiration of the eviction period as established
289 in the notice required under s. 723.061(1)(d).
290 Section 6. Section 723.071, Florida Statutes, is amended
291 to read:
292 723.071 Sale of mobile home parks; legislative findings.--
293 (1) The Legislature finds that a right of first refusal to
294 purchase a mobile home park is a property right that should be
295 negotiated between two parties at arm's length and for due
296 consideration. The Legislature further finds that this chapter
297 does not preclude mobile home owners from purchasing a right of
298 first refusal from a willing park owner. The Legislature
299 therefore encourages mobile home owners to organize as a
300 homeowners' association in accordance with this chapter for the

301 purpose of negotiating a right of first refusal with a park
302 owner.
303 (2) ~~(1)~~(a) If a mobile home park owner offers a mobile home
304 park for sale, she or he shall notify the officers of the
305 homeowners' association created pursuant to ss. 723.075-723.079
306 of the offer, stating the price and the terms and conditions of
307 sale.
308 (b) The mobile home owners, by and through the association
309 defined in s. 723.075, shall have the right to purchase the
310 park, provided the home owners meet the price and terms and
311 conditions of the mobile home park owner by executing a contract
312 with the park owner within 45 days, unless agreed to otherwise,
313 from the date of mailing of the notice and provided they have
314 complied with ss. 723.075-723.079. If a contract between the
315 park owner and the association is not executed within such 45-
316 day period, then, unless the park owner thereafter elects to
317 offer the park at a price lower than the price specified in her
318 or his notice to the officers of the homeowners' association,
319 the park owner has no further obligations under this subsection,
320 and her or his only obligation shall be as set forth in
321 subsection (3) ~~(2)~~.
322 (c) If the park owner thereafter elects to offer the park
323 at a price lower than the price specified in her or his notice
324 to the home owners, the home owners, by and through the
325 association, will have an additional 10 days to meet the price
326 and terms and conditions of the park owner by executing a
327 contract.

328 (3) ~~(2)~~ If a mobile home park owner receives a bona fide
329 offer to purchase the park that she or he intends to consider or
330 make a counteroffer to, the park owner's only obligation shall
331 be to notify the officers of the homeowners' association that
332 she or he has received an offer and disclose the price and
333 material terms and conditions upon which she or he would
334 consider selling the park and consider any offer made by the
335 home owners, provided the home owners have complied with ss.
336 723.075-723.079. The park owner shall be under no obligation to
337 sell to the home owners or to interrupt or delay other
338 negotiations and shall be free at any time to execute a contract
339 for the sale of the park to a party or parties other than the
340 home owners or the association.
341 (4) ~~(3)~~ (a) As used in subsections (2) ~~(1)~~ and (3) ~~(2)~~, the
342 term "notify" means the placing of a notice in the United States
343 mail addressed to the officers of the homeowners' association.
344 Each such notice shall be deemed to have been given upon the
345 deposit of the notice in the United States mail.
346 (b) As used in subsection (2) ~~(1)~~, the term "offer" means
347 any solicitation by the park owner to the general public.
348 (5) ~~(4)~~ This section does not apply to:
349 (a) Any sale or transfer to a person who would be included
350 within the table of descent and distribution if the park owner
351 were to die intestate.
352 (b) Any transfer by gift, devise, or operation of law.
353 (c) Any transfer by a corporation to an affiliate. As used
354 herein, the term "affiliate" means any shareholder of the
355 transferring corporation; any corporation or entity owned or

356 controlled, directly or indirectly, by the transferring
357 corporation; or any other corporation or entity owned or
358 controlled, directly or indirectly, by any shareholder of the
359 transferring corporation.
360 (d) Any transfer by a partnership to any of its partners.
361 (e) Any conveyance of an interest in a mobile home park
362 incidental to the financing of such mobile home park.
363 (f) Any conveyance resulting from the foreclosure of a
364 mortgage, deed of trust, or other instrument encumbering a
365 mobile home park or any deed given in lieu of such foreclosure.
366 (g) Any sale or transfer between or among joint tenants or
367 tenants in common owning a mobile home park.
368 (h) Any exchange of a mobile home park for other real
369 property, whether or not such exchange also involves the payment
370 of cash or other boot.
371 (i) The purchase of a mobile home park by a governmental
372 entity under its powers of eminent domain.
373 Section 7. Subsection (1) of section 723.072, Florida
374 Statutes, is amended to read:
375 723.072 Affidavit of compliance with statutory
376 requirements.--
377 (1) A park owner may at any time record, in the official
378 records of the county where a mobile home park is situated, an
379 affidavit in which the park owner certifies that:
380 (a) With reference to an offer by him or her for the sale
381 of such park, he or she has complied with the provisions of s.
382 723.071(2) ~~(1)~~;

383 (b) With reference to an offer received by him or her for
384 the purchase of such park, or with reference to a counteroffer
385 which he or she intends to make, or has made, for the sale of
386 such park, he or she has complied with the provisions of s.
387 723.071(3) ~~(2)~~;
388 (c) Notwithstanding his or her compliance with the
389 provisions of either subsection (2) ~~(1)~~ or subsection (3) ~~(2)~~ of
390 s. 723.071, no contract has been executed for the sale of such
391 park between himself or herself and the park homeowners'
392 association;
393 (d) The provisions of subsections (2) ~~(1)~~ and (3) ~~(2)~~ of
394 s. 723.071 are inapplicable to a particular sale or transfer of
395 such park by him or her, and compliance with such subsections is
396 not required; or
397 (e) A particular sale or transfer of such park is exempted
398 from the provisions of this section and s. 723.071.
399
400 Any party acquiring an interest in a mobile home park, and any
401 and all title insurance companies and attorneys preparing,
402 furnishing, or examining any evidence of title, have the
403 absolute right to rely on the truth and accuracy of all
404 statements appearing in such affidavit and are under no
405 obligation to inquire further as to any matter or fact relating
406 to the park owner's compliance with the provisions of s.
407 723.071.
408 Section 8. Section 723.083, Florida Statutes, is amended
409 to read:

410 723.083 Governmental action affecting removal of mobile
411 home owners.--
412 (1) No agency of municipal, local, county, or state
413 government shall approve any application for rezoning, or take
414 any other official action, which would result in the removal or
415 relocation of mobile home owners residing in a mobile home park
416 without first determining that adequate mobile home parks or
417 other suitable facilities exist for the relocation of the mobile
418 home owners. The existence of adequate mobile home parks or
419 other suitable facilities shall be substantiated in a written
420 document provided by the agency.
421 (2) The agency of municipal, local, county, or state
422 government considering an application for rezoning or other
423 official action shall make a written good faith estimate of the
424 fiscal costs and benefits of rezoning or official action. The
425 good faith estimate shall include, but need not be limited to,
426 annual increases in property taxes or other revenue sources and
427 any nonrecurring revenues or fees, including, but not limited
428 to, impact fees, permit fees, connection fees, utility charges,
429 or other revenues.
430 (3) The written reports required under this section shall
431 be made available to the public for inspection and copying at
432 least 10 days prior to the scheduled meeting for consideration
433 of any such rezoning or other official act.
434 Section 9. The sum of $50,000,000 is appropriated for
435 fiscal year 2006-2007 from the State Housing Trust Fund to the
436 Florida Homeownership Assistance Program for the purposes of s.

437 420.5088(7), Florida Statutes, as created by this act. This
438 section shall take effect July 1, 2006.
439 Section 10. Except as otherwise expressly provided in this
440 act, this act shall take effect upon becoming a law.

HB 949

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 949 Municipalities
SPONSOR(S): Arza
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	6 Y, 2 N	Camechis	Hamby
2) Growth Management Committee		Grayson	Grayson
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

This bill limits the applicability of existing and future county charter provisions, countywide county ordinances, county land development regulations, and countywide special acts governing the use, development or redevelopment of land, or providing an exclusive method of municipal annexation.

Existing charter provisions, ordinances, land development regulations, and special acts governing the use, development or redevelopment of land, or providing an exclusive method of municipal annexation are no longer applicable in or to a municipality within a county unless approved by a majority vote of the electors within the municipality or the municipal governing board. Charter provisions, ordinances, land development regulations, and special acts governing the use, development or redevelopment of land, or providing an exclusive method of municipal annexation that are adopted after the effective date of this bill may not be applied to a municipality within the county unless first approved by a majority vote of the electors within the municipality or the municipal governing board.

This bill appears to be retroactive because it provides that existing county charter ordinances, county ordinances, county land development regulations, and countywide special acts are no longer applicable in or to municipalities within the county unless approved by the electors within the municipality or the municipal governing board.

This bill does not appear to have a fiscal impact on the state.

Local Mandate Analysis
The bill requires a county to amend or repeal a charter, ordinance, or land development regulation that preempts municipalities within the county with regard to land use, development or redevelopment of land, or that provides an exclusive method for annexation unless the preemption is approved by the municipality. Amendment or repeal of existing provisions will require counties to expend county funds. This expenditure may qualify as a mandate under Art. VII, s. 18 of the Florida Constitution; however, if the aggregate statewide fiscal impact on counties is less than $1.9 million, the bill is exempt from the mandates requirements. Although the fiscal impact has not been determined, this bill may require an expenditure of funds that exceeds $1.9 million. If the fiscal impact of the bill is greater than $1.9 million, the Legislature must find an important state interest and the bill must pass by a two-thirds vote of each house to effectively bind the counties.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: If a county contains multiple cities, and all those cities reject a countywide provision governing land use, development or redevelopment of land, or voluntary annexation, the result could be multiple ordinances governing the same subjects within the county. For example, Broward County contains 31 cities. Each of these cities may choose to enact independent ordinances governing land use in the area.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

County Government

Although the state's first counties were established in 1821, the Florida Constitution of 1861 gave counties constitutional status for the first time. Counties were recognized as legal subdivisions of the state and the Legislature was granted the power to create new counties and alter county boundaries. By 1925, county boundaries were fixed and have, with a few minor changes, remained unchanged. Today, there are 67 counties in Florida. Home rule charters have been adopted in 19 counties, and 75% of the state's population resides in a charter county.[1] Nine charter counties contain more than nine municipalities, while Broward and Palm Beach contain 30 or more.

Article VIII, section 1 of the State Constitution requires the state to be divided by law into political subdivisions called "counties". Counties may be created, abolished, or the boundaries modified by law. The State Constitution recognizes two types of county government in Florida: 1) counties that are not operating under a county charter (non-charter counties) and 2) counties that are operating under a county charter adopted by the electors of the county in a countywide special election called for that purpose.

Article VIII, sections 1(f) and (g) of the State Constitution, respectively address non-charter and charter county powers as follows:

> (f) Non-charter government. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.
>
> (g) Charter government. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. *The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.* [Emphasis added]

[1] The following counties have adopted charters: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Miami-Dade (a consolidated city), Duval, Hillsborough, Lee, Leon, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Volusia.

Perhaps the most significant difference between non-charter and charter county powers is that the constitution provides a direct constitutional grant of the power of self-government to a county operating under a charter approved by the electors of the county, whereas a non-charter county has only those powers the Legislature provides by general or special law.

Further, the Florida Supreme Court has concluded that section 1(g) "was intended to specifically give charter counties two powers unavailable to non-charter counties: the power to preempt conflicting municipal ordinances, and the power to avoid intervention of the legislature by special laws. The power to preempt is the power to exercise county power to the exclusion of municipal power. Preemption is a transfer of power, from exclusive municipal authority or concurrent authority, to exclusive county authority".[2]

Under this constitutional grant of power, a county's charter may authorize the county to regulate an activity on a countywide basis and provide that the county regulation prevails over any conflicting municipal ordinance.[3] The Florida Supreme Court has concluded that section 1(g) permits "regulatory preemption by counties" and that a charter county may preempt a municipal regulatory power in such areas when county-wide uniformity will best further the ends of government.[4] In addition to this grant of power, however, is the limitation imposed by the constitution, which grants charter counties all powers of self-government "not inconsistent with general law". The interrelationship between the grant of power to determine which ordinances prevails and the limitation of charter county authority by general law is unclear and has not been directly addressed by the Florida courts. Therefore, the constitutionality of a general law that limits a charter county's power to determine that county ordinances prevail over any conflicting municipal ordinances is uncertain.

Adoption of County Charters

A county that does not have a charter form of government may locally initiate and adopt a county home rule charter pursuant to the provisions of ss. 125.60-125.64, F.S. In addition to satisfying multiple statutory requirements, the charter must be adopted by a majority vote of the qualified electors of the county.

Upon petition by 15 percent of the qualified electors of a county or following adoption of a resolution by the board of county commissioners requesting that a charter commission be established, the charter commission must be appointed. The commission must conduct a comprehensive study of the operation of county government and of the ways it could be improved or reorganized. The commission must conduct three public hearings, vote upon a proposed charter at its last hearing, and forward the proposed charter to the board of county commissioners for the holding of a referendum election. Immediately after the commission submits a proposed charter, the board of county commissioners must call a special election within a specified time frame to determine whether the qualified electors of the county approve the proposed charter. If a majority of those voting disapprove the proposed charter, a new referendum may not be held for two years. Once adopted, the charter may be amended only by vote of the county electors.

Alternatively, the board of county commissioners may propose by ordinance a charter that is consistent with Part IV of ch. 125, F.S., the "Optional Charter County Law." Section 125.86, F.S., specifies the powers and duties of the charter county, which include all powers of local self-government "not inconsistent with general law as recognized by the Constitution and laws of the state and which have not been limited by the charter."

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[2] *Broward County v. City of Fort Lauderdale*, 480 So.2d 631 (Fla. 1985).
[3] *Broward County v. City of Fort Lauderdale*, 480 So.2d 631 (Fla. 1985); *City of New Smyrna Beach v. County of Volusia*, 518 So.2d 1379 (Fla. 1988).
[4] *City of New Smyrna Beach v. County of Volusia*, 518 So.2d 1379 (Fla. 1988), citing *Broward County v. City of Fort Lauderdale*, 480 So.2d 631 (Fla. 1985).

County Statutory Home Rule Powers

Section 125.01, F.S., grants broad home rule powers to non-charter and charter counties. These powers include the power to:

- Prepare and enforce comprehensive plans for the development of the county;
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public;
- Adopt, by reference or in full, and enforce housing and related technical codes and regulations; establish and administer programs of housing, slum clearance, community redevelopment, conservation, flood and beach erosion control, air pollution control, and navigation and drainage and cooperate with governmental agencies and private enterprises in the development and operation of such programs; and
- Provide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs.

The section specifically provides that the legislative purpose is to be liberally construed to grant all counties broad home rule powers authorized in the State Constitution. Under this broad grant of general law powers, specific statutory authority to enact ordinances or to deliver services to residents of the counties is not required. All counties have home rule authority to enact ordinances for any county purpose absent a general law limitation.

Section 125.86(7), F.S., vests the powers of a charter county in the board of county commissioners. One power explicitly granted to the board of county commissioners of a charter county is the power to "[a]dopt, pursuant to the provisions of the charter, such ordinances of countywide force and effect as are necessary for the health, safety, and welfare of the residents. It is the specific legislative intent to recognize that a county charter may properly determine that certain governmental areas are more conducive to uniform countywide enforcement and may provide the county government powers in relation to those areas as recognized and as may be amended from time to time by the people of that county".

County Provisions Regarding Land Use[5]

In recent years, some charter counties have amended their charter to provide an exclusive method for annexation. Some counties have also enacted building height limitations that apply in municipal jurisdictions that are within the county. In addition, some counties exercise land use planning responsibility, in varying degrees, for municipalities located within the county and certain land use decisions within such municipalities may require county approval. These types of charter provisions or ordinances have the effect of preempting municipal authority with respect to land use planning.

For example, voters in Palm Beach and Seminole counties approved charter provisions relating to annexation in 2004. The Palm Beach county provision gave county commissioners the ability to set annexation guidelines by ordinance. Several municipalities challenged the charter amendment in circuit court.12 The circuit court held, in part, that the provisions allowing the county to define the exclusive method for voluntary annexation, by ordinance, violates the requirement in s. 171.044(4), F.S., that an exclusive method of annexation be contained in the charter itself.13 Seminole County voters approved a charter amendment that would give the county final authority over land-use changes and development densities in certain portions of east Seminole County. This provision is currently on appeal.

[5] *Senate Staff Analysis and Economic Impact Statement for SB 1608*, prepared by the Senate Community Affairs Committee, p. 4 (March 15, 2006).

Municipal Government

The municipal form of government has been recognized in Florida since 1821. Historically, counties have provided state services such as courts, tax collections, sheriff functions, health and welfare services uniformly throughout the county, while municipalities are created to perform additional functions and provide additional services for the particular benefit of the population within the municipality. Currently, there are 408 municipalities in Florida.

Article VIII, section 2 of the State Constitution provides that "[m]unicipalities may be established or abolished and their charters amended pursuant to general or special law." Municipal home rule powers are provided in that section as follows:

> Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

In general, a municipality may exercise any power for municipal purposes except as otherwise provided by general or special law. In 1972, the Legislature enacted ch. 166, F.S., granting municipalities broad governmental, corporate, and proprietary powers necessary to enable municipalities to independently function and provide services to residents.

Growth Management and Land Use Generally[6]

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985 ("Act"), ss. 163.3161-163.3246, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements element; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, the Department of Community Affairs adopted by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan.

Annexation[7]

Section (2)(c), Art. VIII 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 agreement, voluntary annexation, or involuntary annexation. Annexation through a special act must meet the notice and referendum requirements of section 10, Art. III of the State Constitution, which are applicable to all special acts.

The "Municipal Annexation or Contraction Act" in 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.[8] At the time ch. 171, F.S., was created, the prevailing policy focused on the strength of county governments and regional

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[6] *Id.* at p. 1.
[7] *Id.* at p. 2 (With modifications.)
[8] s. 171.021, F.S.

planning agencies. Consequently, Florida's annexation statutes concentrate on the expansion and contraction of municipal boundaries.[9]

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.

An area proposed for annexation must be unincorporated, contiguous, and reasonably compact.[10] 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.[11] "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.[12]

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.[13] In the interim, a city must apply county regulations or wait to apply its own rules.

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 county charter provides the exclusive method for voluntary annexation.[14] Also, the voluntary annexation procedures in this section are considered supplemental to any other procedure contained in general or special law.[15]

EFFECT OF PROPOSED CHANGES

This bill creates s. 163.3172, F.S., to address the application to municipalities of countywide provisions regarding land use, development or redevelopment of land, and voluntary annexation. This new section provides legislative findings as follows:

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[9] See 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.
[10] ss. 171.0413-171.043, F.S.
[11] s. 171.031(11), F.S.
[12] s. 171.031(12), F.S.
[13] See *1000 Friends of Fla., Inc. v. Florida Dep't of Community Affairs*, 824 So. 2d 989 (Fla. 4th DCA 2002).
[14] s. 171.044(4), F.S.
[15] s. 171.044(4), F.S.

- Municipalities are the units of local self-government closest to the people they serve and thereby are best situated to determine the unique needs of their communities;
- Municipalities provide their residents a true voice as to the character and values of their local communities;
- There have been increasing and numerous preemptions of municipal democratic powers by other forms of local government;
- Municipalities must retain the authority to perform the functions that are of most immediate concern to their citizens.

Existing Charter Counties: An existing charter county *charter provision* governing the use, development, or redevelopment of land, or providing an exclusive method of annexation will not be applicable in or to a municipality within the county unless:

(1) the city commission approves its application within the city, or
(2) the voters of the city approve its application within the city.

An existing charter county *ordinance, land development regulation, or county wide special act* governing the use, development, or redevelopment of land, or providing an exclusive method of annexation will not be applicable in or to a municipality within the county unless:

(1) the city commission approves its application within the city, or
(2) the voters of the city approve its application within the city, and
(3) the voters of the county approve the provision.

Future Charter Counties: In charter counties in which the charter is adopted by the voters after the effective date of the bill, every countywide charter provision, ordinance, land development regulation, or county wide special act governing the use, development, or redevelopment of land, or providing an exclusive method of annexation will not apply in or to a city within the county unless:

(1) the city commission approves its application within the city, or
(2) the voters of the city approve its application within the city, and
(3) the voters of the county approve the provision.

Existing Non-Charter Counties: In non-charter counties, every ordinance, land development regulation, or county wide special act governing the use, development, or redevelopment of land does not apply in or to a city within the county unless:

(1) the city commission approves its application within the city, or
(2) the voters of the city approve its application within the city, and
(3) the voters of the county approve the provision.

Specifically, the new section provides that, notwithstanding ch. 163, F.S., ch. 125, F.S., and s. 171.044(4), F.S.:

- Any existing or future charter county charter provision, ordinance, land development regulation, or countywide special act that governs the use, development, or redevelopment of land is not effective within and does not apply to any municipality in the county;
- A charter county charter provision, ordinance, land development regulation, or countywide special act may not provide an exclusive method of municipal annexation unless the provision, ordinance, regulation, or special act is approved by a majority vote of the electors within the county and a majority vote of the electors within the municipality at a duly held municipal election or is approved by a majority vote of the municipality's governing board; and

- Existing charter county charter provisions and countywide special acts that have been approved by referendum prior to the effective date of the bill must be readopted in accordance with this section.

By "notwithstanding" chs. 163 and 125, and s. 171.044(4), F.S., the bill is, in effect, a "preemption" of those general laws previously enacted by the Legislature. Therefore, any provision in those statutes that authorize or provide for countywide application of county ordinances or regulations governing the use, development, or redevelopment of land are no longer applicable. The full impact of "notwithstanding" these general laws is unknown due to the broad range of subjects potentially covered by these provisions. For example, ch. 163, F.S., broadly governs intergovernmental programs, including:

- Miscellaneous Programs, such as the Florida Interlocal Cooperation Act of 1969;
- Growth Policy and County and Municipal Planning;
- Land Development Regulation;
- Community Redevelopment;
- Neighborhood Improvement Districts; and
- Regional Transportation Authorities.

Chapter 125, F.S., sets forth the broad Legislative grant of home rule powers to charter and non-charter counties and generally relates to county governance, including provisions regarding:

- Powers and Duties of County Commissioners;
- Self-Government of Counties, which grants general and specific powers to non-charter and charter counties;
- County Administration; and
- Optional County Charters.

Chapter 171, F.S., is known as the "Municipal Annexation or Contraction Act." The purposes of the act are to provide procedures for adjusting the boundaries of municipalities through annexations or contractions of corporate limits and to set forth criteria for determining when annexations or contractions may take place. Section 171.044, F.S., establishes a method of "voluntary annexation" whereby "[t]he owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality." Section 171.044(4), F.S., provides that "[t]he method of annexation provided by this section shall be supplemental to any other procedure provided by general or special law, except that this section shall not apply to municipalities in counties *with charters which provide for an exclusive method of municipal annexation.*" This bill essentially preempts subsection (4) so that any existing or future county charter provision that provides an exclusive method of voluntary annexation must be approved by the city commission or the qualified electors of a city prior to application of the provision to the city.

The bill explicitly exempts from its provisions any county as defined in s. 125.011, F.S., which only includes Miami-Dade County.[16]

C. SECTION DIRECTORY:

Section 1. Creates s. 163.3172, F.S., limiting application of countywide provisions governing land use, development and redevelopment of land, and voluntary annexation to cities with counties.

[16] The term "county" is defined in s. 125.011, F.S., as "any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county."

Section 2. Providing an effective date.

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: This bill does not have a direct impact on local government revenues.

2. Expenditures: Please see Mandates Analysis below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: All countywide provisions governing land use, redevelopment and development of land, are no longer applicable within boundaries of a municipality unless the city commission or the voters of the city approve. Cities may enact ordinances governing land use, regardless of a countywide ordinance, as long as the city complies with state land use requirements. This may result in less stringent permitting and land use regulations within some cities, benefiting private entities wishing to development land in these areas. On the other hand, cities would be authorized to enact more stringent ordinances than those that currently apply on a countywide basis.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This bill would require a county to amend or repeal a charter, ordinance, or land development regulation that preempts municipalities within the county with regard to land use, development, or redevelopment, or that provides an exclusive method for annexation unless the preemption is approved by the municipality. This may be a Type A mandate because the provision requires counties to expend funds and is subject to analysis under Article VII, Section 18 of the Florida Constitution. There are several exemptions and exceptions in Article VII, Section 18.

One of the exemptions under Article VII, Section 18 covers a bill that has an insignificant fiscal impact. Although the fiscal impact has not been determined, this bill may require an expenditure of funds that exceeds $1.9 million. This bill does not appear to meet any other exemption or one of the exceptions. Therefore, the Legislature must find an important state interest and the bill must pass by a two-thirds vote of each house to effectively bind the counties.

2. Other: Article VIII, s. 1(g) of the State Constitution grants charter counties the power to determine, in the county charter, which ordinances prevail in the event of conflict between county and municipal ordinances.[17] This constitutional provision permits regulatory preemption by counties of municipal

[17] "The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances." Art. VIII, s. 1(g), Fla. Const.

regulatory power if countywide uniformity will best further the ends of government.[18] However, in addition to granting charter counties the express power to provide, by charter, that county ordinances prevail in the event of a conflict with municipal ordinances, the constitution also provides that charter counties have all powers of self-government "not inconsistent with general law".[19] The question is this: Is the Legislature authorized to establish a process by general law to determine which ordinances prevail in the event of a conflict between charter county and municipal ordinances, or does the constitution grant that power exclusively to charter counties?

The interrelationship between the express constitutional grant of power to charter counties to determine which ordinances prevail, and the Legislature's authority to limit the powers of charter counties by general law has not been directly addressed by the Florida courts. The fact that the Legislature is authorized to limit municipal and charter county home rule authority by general law is undisputed and well-settled in case law; however, the Florida courts have not addressed the question of whether the Legislature may limit a charter county's direct grant of constitutional authority to determine whether county ordinances prevail over municipal ordinances. Therefore, the constitutionality of a general law preemption of charter county authority to determine whether county ordinances prevail over municipal ordinances is uncertain until directly addressed by the courts.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: The provisions of this bill are retroactive. A county that has a charter, ordinance, or land development regulation that currently preempts municipalities within the county with regard to land use, development or redevelopment of land, or that provides an exclusive method for annexation, must be repealed or amended unless it is approved by a municipality as provided for in this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

[18] *Broward County v. City of Fort Lauderdale*, 480 So.2d 631 (Fla. 1985).

[19] "Counties operating under county charters shall have all powers of local self-government not inconsistent with general law...." Art. VIII, s. 1(g), Fla. Const.

1 A bill to be entitled
2 An act relating to municipalities; creating s. 163.3172,
3 F.S.; providing legislative findings; prohibiting effect
4 or application of certain county provisions within
5 municipalities unless approved by county and municipal
6 electors or the municipal governing board; providing for
7 readoption of certain county provisions under certain
8 circumstances; providing for nonapplication to certain
9 counties; providing an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Section 163.3172, Florida Statutes, is created
14 to read:
15 163.3172 Municipalities; county authority limitations.--
16 (1) The Legislature finds that municipalities are the
17 units of local self-government closest to the people they serve
18 and thereby are best situated to determine the unique needs of
19 their communities. Municipalities provide their residents a true
20 voice as to the character and values of their local communities.
21 The Legislature recognizes there have been increasing and
22 numerous preemptions of municipal democratic powers by other
23 forms of local government and concludes that municipalities must
24 retain the authority to perform the functions that are of most
25 immediate concern to their citizens.
26 (2) Notwithstanding this chapter, chapter 125, and s.
27 171.044(4), any existing or future charter county charter
28 provision, ordinance, land development regulation, or countywide

29 special act that governs the use, development, or redevelopment
30 of land is not effective within and does not apply to any
31 municipality in the county and a charter county charter
32 provision, ordinance, land development regulation, or countywide
33 special act may not provide an exclusive method of municipal
34 annexation unless the provision, ordinance, regulation, or
35 special act is approved by a majority vote of the electors
36 within the county and a majority vote of the electors within the
37 municipality at a duly held municipal election or is approved by
38 a majority vote of the municipality's governing board. Existing
39 charter county charter provisions and countywide special acts
40 that have been approved by referendum prior to the effective
41 date of this act must be readopted in accordance with this
42 section. This section shall not apply to any county as defined
43 in s. 125.011.
44 Section 2. This act shall take effect July 1, 2006.

HB 1187

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1187 CS Florida Building Code
SPONSOR(S): Murzin
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N, w/CS	Smith	Hamby
2) Growth Management Committee		Strickland B.S.	Grayson
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

The Florida Building Code (Code) was authorized by the 1998 Florida Legislature to be the sole document incorporating all building standards adopted by all enforcement agencies and state agencies that license different types of facilities. The Code was developed and is updated and maintained by the Florida Building Commission (Commission).

HB 1187 w/CS authorizes the Commission to amend the wind design standards contained in the Code subject to the amendatory requirements contained in section 553.73, F.S. In addition, the bill specifically authorizes the Commission to identify within the Code those areas of the state from the eastern border of Franklin County to the Florida-Alabama line (the Panhandle region) that are subject to the windborne debris requirements of the Code. The Commission's initial designation of windlines for this region must address the results of the Florida Panhandle Windborne Debris Region study and is only subject to the rule adoption procedures contained in chapter 120, F.S. The bill stipulates that new windborne debris requirements for the Panhandle region may not take effect for six months following completion of rule-making or May 31, 2007, whichever is sooner. This authorization expressly supersedes the limitations contained in section 109 of ch. 2000-141, L.O.F.

This bill repeals the statutory definition of "Exposure category C," leaving that determination to the Commission's authority to define the term within the Code development process.

This bill corrects a reference to the International Code Council as it relates to adoption of the foundation codes of the updated Code.

The bill provides for the Commission to expedite the adoption and implementation of the triennial update of the Code pursuant only to the provisions of chapter 120, F.S. The special update and amendment requirements of section 553.73, F.S., and the administrative rule requiring additional delay time between adoption and implementation of such Code are waived. The bill restricts the types of amendments that may be adopted through this process.

This bill prohibits interpretations under section 553.775, F.S., of the Florida Accessibility Code for Building Construction and chapter 11 of the Code, providing that this section of law has no effect on the Commission's authority to waive the accessibility Code provided by section 553.512, F.S.

This bill revises certain requirements relating to the use of private providers for building inspection services.

The bill has an indeterminate fiscal impact on the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill allows the Commission to adopt wind-design standards for Northwest Florida. The bill authorizes the Commission to utilize rule-making procedures in chapter 120, F.S., rather than section 553.73, F.S., in implementing certain provisions within this bill. The bill prohibits interpretations of the Accessibility Code for Building Construction and chapter 11 of the Code.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Building Code - Building codes establish minimum safety standards for the design and construction of buildings by addressing such issues as structural integrity, mechanical, plumbing, electrical, lighting, heating, air conditioning, ventilation, fireproofing, exit systems, safe materials, energy efficiency, and accessibility by persons with physical disabilities. In doing so, these regulations protect lives and property, promote innovation and new technology, and help to ensure economic viability through the availability of safe and affordable buildings and structures.

Section 553.73, F.S., provides for the Florida Building Code. The Code was authorized by the 1998 Florida Legislature to be the sole document incorporating all building standards adopted by all enforcement agencies and state agencies that license different types of facilities. The Code was developed and is updated and maintained by the Florida Building Commission (Commission) that works towards consistency of standards throughout the state and full accessibility to information on the standards. The law allows for differences in the standards in different locales based on compelling differences in physical conditions. However, the law establishes procedures for administration of the Code at all levels that will constrain unwarranted differences and ensure the availability of information on local differences to all parties throughout the state.

The law established the Commission as the body which is responsible for the development of the Code and the other elements of the system which support its implementation. The Commission has 23 members, appointed by the Governor, representing engineers, architects, contractors, building owners and insurers, state and local governments and persons with disabilities.

The Code is updated every three years by the Commission. The Commission may amend the Code once each year to incorporate interpretations and update standards upon a finding that delaying the application of the amendment would be contrary to the health, safety, and welfare of the public, or the amendment provides an economic advantage to the consumer. A proposed amendment must include a fiscal impact statement which documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement are established by rule and must include the impact to local government relative to enforcement, the impact to property and building owners, as well as to industry, relative to the cost of compliance. The 2004 Florida Building Code is scheduled to take effect on July 1, 2005.

The Commission also is authorized to hear appeals from decisions of local boards regarding the interpretation of the Code; issue declaratory statements relating to the Code; determine the types of products requiring approval for local or statewide use and provide for the evaluation and approval of such products, materials, devices, and method of construction for statewide use; and develop a Building Code Training Program.

Non-Binding Interpretations of the Florida Building Code - The 2002 Legislature provided an additional mechanism for guidance when interpreting the Code.[1] It authorized the Commission to recognize an outside entity to consult with Code officials and industry, and to issue nonbinding advisory opinions. These advisory opinions were to be developed by licensed code enforcement officials. The Commission selected the Building Officials Association of Florida (BOAF) as the entity to work with toward this end.

Requests for opinions are received through the Commission's Internet site, and are then forwarded to BOAF and its experts on varied subject matters from industry and local building departments. The advice of these experts is directed to an experienced building official who drafts a response and forwards it to a select group of licensed and active building Code enforcement officials familiar with the subject matter as assigned by BOAF. These officials make the final determination of the response, which then is forwarded to the questioner and posted on both the BOAF site and in the Commission's Building Code Information System. The electronic information system can be queried for advisory opinions and declaratory statements by subject area for any section of the Code. The Commission reports that more than 1,000 advisory opinions have been issued through this process since its inception.

Because the Code is an administrative rule, interpretations of the Code that are of general applicability must comply with the provisions of ss. 120.536 and 120.54, F.S. The consensus of opinion by stakeholders was that necessary binding interpretations of the Code require a more expedited resolution than is afforded by the Code amendment and update process or the rulemaking provisions of ch. 120, F.S.

The 2005 Legislature created section 553.775, F.S., which allows the Commission, by rule, to establish an informal process of rendering interpretations of the Code. This section also provides that local building departments may approve minor changes to state approved plans under the prototype building program.

Current law sets forth a procedure for the Commission to review decisions of local building officials and local enforcement agencies regarding interpretations of the Code. Local agencies retain the primary responsibility for interpreting the Code, consistent with declaratory statements and interpretations by the Commission. While anyone may petition the Commission to issue a declaratory statement, review of local interpretations of the Code must be appealed through the following system:

- First, the Commission is directed to coordinate with the Building Officials Association of Florida, Inc. (BOAF), a statewide organization of municipal and county codes enforcement officials, to designate panels composed of five hearing officers to hear requests to review decisions of local building officials. These hearing officers must be members of a statewide organization of code enforcement officials and licensed as building code administrators and have experience interpreting and enforcing provisions of the Code.

- The request to review a decision of a local building official's interpretation of the Code may be initiated by any substantially affected person. Requests for review, or petitions, must be submitted to the Commission, who then forwards the information to a panel of hearing officers and to the local building official, and posts the petition on the Building Code Information System. The local building official then provides a written response to the panel. The petitioner then replies to the hearing officers addressing the information provided by the local building official. The panel must then conduct a proceeding to resolve the issue and publish its interpretation. The panel has 21 days after the date the petition is filed to complete the review.

[1] Chapter 2002-193, s. 16, L.O.F.

- The petitioner may then file an appeal of the decision to the Commission. The burden of proof in any proceeding is on the party who initiated the appeal. Local decisions declaring structures to be unsafe and subject to repair or demolition are not subject to review under this process. These local decisions may not be appealed to the Commission if the local governing body finds that there is an immediate danger to the health and safety of the public. Similarly, the Commission only has advisory powers with respect to any decision of the State Fire Marshal made under chapter 633, F.S.

The Commission also may establish an informal process of rendering non-binding interpretations of the Code. The Commission may refer interpretive issues to organizations that represent those engaged in the construction industry. The resulting interpretations are advisory only and nonbinding on the parties and the Commission.

The Commission is authorized to impose a fee not to exceed $250 for binding interpretations for each request for review or interpretation. For third-party proceedings the payment may be made directly to the third-party who must remit to the DCA that portion of the fee necessary to cover the DCA's costs.

Accessibility Code - Accessibility Code - Prior to its integration into the Florida Building Code in 2002, the Accessibility Code was statutorily adopted within ch. 553, F.S. Avenues of interpretation of the code were specifically and definitively restrictive based on concerns by advocates for the disabled that the authority to interpret conferred the power to limit the implementation of the accessibility provisions within that Code. Upon its integration, however, the Accessibility Code became subject to interpretation by Declaratory Statement by the Commission, and subsequently by non-binding and binding opinion by a third-party.

Hurricane Protection - The Commission established standards for hurricane protection in the Code that are based on a national model building code, federal regulations, and standards evolving out of southeast Florida's experience with Hurricane Andrew. Specifically, for protection against hurricane waters, the Code incorporates the flood plain management standards of the Federal Emergency Management Agency's National Flood Insurance Program for the entire state. For coastal construction it incorporates the Florida "coastal building zone" storm surge protection standards.

The Code requires that new homes throughout the state be designed to resist external wind speeds that the American Society of Civil Engineers standard (ASCE 7-98) predicts will experience sometime within a 50 to 100-year time period. In November of 1999, the Commission agreed with the developers of ASCE 7 and applied additional requirements in what is called the "wind-borne debris region" to ensure that buildings inside this region also will be able to withstand internal wind pressure caused by the penetration of flying debris. This region includes areas expected to experience winds of 120 mph or greater as well as areas within one mile of the coast that experience at least 110 mph winds.

Subsection (3) of section 109 of chapter 2000-141, L.O.F., directs the Commission to adopt for areas of the state not within the high velocity hurricane zone, pursuant to section 553.73, F.S., the wind protection requirements of the ASCE, Standard 7, 1998 edition as modified by the Commission in its February 15, 2000, adoption of the Code.[2] However, the Legislature stipulated that from the eastern

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[2] Subsection (3), section 109, Ch. 2000-141, L.O.F., states: *For areas of the state not within the high velocity hurricane zone, the commission shall adopt, pursuant to s. 553.73, F.S., the wind protection requirements of the American Society of Civil Engineers, Standard 7, 1998 edition as implemented by the International Building Code, 2000 edition, and as modified by the commission in its February 15, 2000, adoption of the Florida Building Code for rule adoption by reference in Rule 9B-3.047, Florida Administrative Code. However, from the eastern border of Franklin County to the Florida-Alabama line, only land within 1 mile of the coast shall be subject to the windborne-debris requirements adopted by the commission. The exact location of wind speed lines shall be established by local ordinance, using recognized physical landmarks such as major roads, canals, rivers, and lake shores, wherever possible. Buildings constructed in the windborne debris region must be either designed for internal pressures that may result inside a building when a window or door is broken or a hole is created in its walls or roof by large debris, or be designed with protected openings. Except in the high velocity hurricane zone, local governments may not prohibit the option of designing buildings to resist internal pressures.*

border of Franklin County to the Florida-Alabama line, only land within one mile of the coast is subject to the windborne-debris requirements adopted by the Commission. This subsection provides for the exact location of wind speed lines to be established by ordinance using specified physical landmarks, and provides that buildings constructed within the windborne debris region must be either designed for internal pressures resulting from a broken window or door or a hole in the walls or roof, or be designed with protected openings. The subsection further provides that except in the high velocity hurricane zone, local governments may not prohibit the option of designing buildings to resist internal pressures.

The ASCE 7 standard considers both wind speeds that can be developed by hurricanes and factors such as terrain and shielding by other buildings which affect the strength of those winds when they impact buildings. Exposure A is characteristic of large cities with large expanses of tall buildings. Exposure B is characteristic of suburban areas with large expanses of short and medium height buildings and wooded areas. Exposure C is characteristic of areas of exposed expanses of open terrain or open water. Section 553.71, F.S., defines "exposure category C" to mean, except in the high velocity hurricane zone, that area which lies within 1,500 feet of the coastal construction control line, or within 1,500 feet of the mean high tide line, whichever is less. On barrier islands, exposure category C is applicable in the coastal building zone set forth in section 161.55(5), F.S.

Commission Recommendations - In January of 2005, the Commission issued a report entitled, *The Florida Building Code Commission Report to the 2005 Legislature*. This report contained a number of recommendations to improve the effectiveness of the Code. The report included the following specific recommendations relating to wind protection provisions:

- Eliminate the edition designation and referenced amendments of the ASCE Standard 7 currently in section 109, ch. 2000-141, L.O.F., and allow updated editions of the standard to be adopted through updates to the Code.
- Eliminate the designation of the wind-borne debris region for the Panhandle region of Florida from ch. 2000-141, L.O.F., and allow the wind-borne debris region for that area to be determined by the Code.
- Eliminate the definition of the wind exposure class C from section 553.73, F.S., and allow the definition of ASCE 7, as adopted by the Code, to be used.
- Authorize the Commission to make determinations related to designing for internal pressures.

Changes Enacted During the 2005 Legislative Session – During the 2005 Regular Session, the Legislature addressed several issues relating to wind-design standards. Chapter 2005-147, L.O.F., directed the Commission to update the Code with the most recent and relevant design standards for wind resistance of buildings issued by the ASCE, notwithstanding subsection (3) of section 109, ch. 2000-141, L.O.F. However, the bill specified that this provision was intended to *explicitly supersede only the first sentence of that law.*[3] As a result, the bill effectively exempted the Panhandle region from the requirement that the Commission utilize the most current edition of the wind protection requirements contained in ASCE 7.

The bill also instructed the Commission and local building officials to evaluate the damage from Hurricane Ivan and make recommendations to the Legislature for changes to the Code as it relates to the region from the eastern border of Franklin County to the Florida-Alabama line. Finally, the bill required the Commission to evaluate the definition of "exposure category C" as currently defined in section 553.71(10), F.S., and make recommendations for a new definition that more accurately depicts the Florida-specific conditions prior to the 2006 Legislative Session.

Post-Session Commission Deliberations – Pursuant to the requirements of Chapter 2005-147, L.O.F., the Commission convened several workshops to solicit input from local building officials and other stakeholders in the Panhandle region of the state. Much of the discussion centered on the extent to which property damage resulted from hurricane-related storm surges versus windborne debris.

[3] *Id.*

Similarly, considerable discussion focused on the impact of revised windborne debris protection requirements on the costs of housing in the region. At the conclusion of the initial workshop, there was consensus for the strategy of conducting a study on the treed environment effects and historical wind data affects, prior to making recommendations to the Legislature regarding the existing definition and whether to recommend changes.[4]

At the second workshop, the Commission representatives voted unanimously to contract with a consultant to conduct an engineering-based risk assessment of hurricane windborne debris protection options for the Panhandle in order to analyze the risks, costs, and benefits of windborne debris protection for the region. The research would focus on factors unique to the Panhandle region including treed areas inland of the coast, and consider historical wind data affects. The requested funding authorization was approved, and the preliminary research results will be presented to the Commission in March of 2006, and subsequently input will be solicited at a follow-up workshop. Following the workshop, the Commission will use the study results and stakeholder input, to make its recommendations to the 2006 Legislature as required by law.[5]

Private Providers of Inspection Services – Section 553.791, F.S., authorizes a fee owner or the fee owner's contractor to use a private provider to provide code inspection services. This section specifies that the owner or contractor must notify the local building official at the time of permit application, or no less than 7 business days prior to the first scheduled inspection by the local building official or building code enforcement agency for a private provider performing required inspections of construction on a form to be adopted by the Commission. This section also specifies information which must be included in the required notice.

Effect of Proposed Changes

This bill authorizes the Commission to amend the wind design standards contained in the Code subject to the amendatory requirements contained in section 553.73, F.S. In addition, the bill specifically authorizes the Commission to identify within the Code those areas of the state from the eastern border of Franklin County to the Florida-Alabama line (the Panhandle region) that are subject to the windborne debris requirements of the Code. The Commission's initial designation of windlines for this region must address the results of the Florida Panhandle Windborne Debris Region study and is only subject to the rule adoption procedures contained in chapter 120, F.S. The bill stipulates that new windborne debris requirements for the Panhandle region may not take effect for six months following completion of rule-making or May 31, 2007, whichever is sooner. This authorization expressly supersedes the limitations contained in section 109 of ch. 2000-141, L.O.F.

The bill allows the Commission to eliminate or revise the existing "Panhandle exception" (limiting wind-borne debris requirements to within 1 mile of the coast) and amend the wind design standards applicable to the Panhandle region to incorporate the current edition of the national model building code engineering standard (American Society of Civil Engineers Standard 7, 2002 Edition). This would subject new construction in the Panhandle region to the same windborne debris requirements (enhanced door and window protection) applicable to other areas of the state. The bill also authorizes the Commission to utilize expedited rule-making procedures pursuant to chapter 120, F.S., rather than section 553.73, F.S., in implementing this provision.

This bill repeals the statutory definition of "Exposure category C," leaving that determination to the Commission's authority to define the term within the Code development process.

This bill corrects a reference to the International Code Council as it relates to adoption of the foundation codes of the updated Code.

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[4] *Report to the Florida Building Commission*, Florida Panhandle Windborne Debris Region Workshop I, September 14, 2005.
[5] *Report to the Florida Building Commission*, Florida Panhandle Windborne Debris Region Workshop II, February 16, 2006.

The bill provides for the Commission to expedite the adoption and implementation of the triennial update of the Code pursuant only to the provisions of chapter 120, F.S. The special update and amendment requirements of section 553.73, F.S., and the administrative rule requiring additional delay time between adoption and implementation of such Code are waived. The bill provides that the Commission shall approve amendments pursuant to this provision only to the extent necessary to address: conflicts within the updated Code, conflicts between the updated Code and the Florida Fire Prevention Code adopted pursuant to chapter 633, F.S., omission of previously adopted Florida-specific amendments to the updated Code if the omission is not supported by a specific recommendation of a technical advisory committee or particular action by the Commission, or unintended results from the integration of previously adopted Florida-specific amendments with the model Code.

This bill prohibits interpretations under section 553.775, F.S., of the Florida Accessibility Code for Building Construction and chapter 11 of the Code, providing that this section of law has no effect on the Commission's authority to waive the accessibility Code provided by section 553.512, F.S.

This bill provides that once construction has commenced and a local building official is unable to provide inspection services in a timely manner, the building owner or his or her contractor may elect to use a private provider for building inspection services. The owner or contractor must notify the local building official of their intention to use a private provider at least 7 business days prior to the next scheduled inspection and must comply with existing notice requirements.

C. SECTION DIRECTORY:

Section 1: Authorizes the Florida Building Commission to amend the wind design standards addition, the bill specifically authorizes the Commission to identify within the code those areas of the state from the eastern border of Franklin County to the Florida-Alabama line (the Panhandle region) that are subject to the windborne debris requirements of the code. The Commission's initial designation of windlines for this region must address the results of the Florida Panhandle Windborne Debris Region study and is only subject to the rule adoption procedures contained in ch. 120, F.S. The bill stipulates that new windborne debris requirements for the Panhandle region may not take effect for six months following completion of rule-making or May 31, 2007, whichever is sooner. This authorization expressly supersedes the limitations contained in section 109 of ch. 2000-141, L.O.F.

Section 2: Amends subsections (10) and (11) of section 553.71, F.S., deleting the statutory definition of "Exposure category C."

Section 3: Amends subsection (6) of section 553.73(6)(a), F.S., providing that the *applicable model code entity* adopts the foundation codes of the updated Code instead of the International Code Council; creating a process that addresses issues identified by the Commission to amend the updated Code pursuant only to the rule adoption procedures contained in chapter 120, F.S.; providing authorities that have jurisdiction to enforce the Code may enforce the recommended corrections to the Code after approval; providing amendment approval pursuant only to: conflicts within the updated Code, conflicts between the updated Code and the Florida Fire Prevention Code adopted pursuant to chapter 633, F.S., omission of previously adopted Florida-specific amendments to the updated Code if the omission is not supported by a specific recommendation of a technical advisory committee or particular action by the Commission, or unintended results from the integration of previously adopted Florida-specific amendments with the model Code.

Section 4: Creates section 553.775, F.S., restricting interpretations of the Florida Accessibility Code for Building Construction and chapter 11 of the Code.

Section 5: Amends s. 553.791, F.S., to provide that once construction has commenced and a local building official is unable to provide inspection services in a timely manner, the building owner or his or her contractor may elect to use a private provider for building inspection services. The owner or contractor must notify the local building official of their intention to use a private provider at least 7 business days prior to the next scheduled inspection and must comply with existing notice requirements.

Section 6: Provides an effective date of July 1, 2006, except for as otherwise provided for in this act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact of the bill on homebuilders, and ultimately, home buyers is indeterminate. To the extent the bill results in increased construction costs associated with enhanced window and door protection, homebuilders and homebuyers could be adversely impacted. However, these costs could be offset by benefits, primarily in the form of reduced hurricane-related property damage.

D. FISCAL COMMENTS:

According to the Department of Community Affairs, increased cost of construction is likely, but dependent on the Commission's utilization of the authority granted. Design and construction to withstand internal pressure results in minimal cost increase of a home, and use of shutters and other impact resistant openings can likely be achieved at a cost of around $2,000. These costs will ultimately be passed on to the consumer in the sales price of the building, but should be offset over time by savings on insurance.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable, because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to

raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

There do not appear to be other constitutional issues with the bill.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Commission to utilize expedited rule-making procedures in chapter 120, F.S., rather than section 553.73, F.S., in implementing certain provisions within this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Council on Local Government adopted one strike-all amendment on March 22, 2006. The amendment conforms to the Senate companion to stipulate that new windborne debris requirements for the Panhandle region may not take effect for six months following completion of rule-making or May 31, 2007, whichever is sooner. The amendment also provides that once construction has commenced and a local building official is unable to provide inspection services in a timely manner, the building owner or his or her contractor may elect to use a private provider for building inspection services. The owner or contractor must notify the local building official of their intention to use a private provider at least 7 business days prior to the next scheduled inspection and must comply with existing notice requirements. The bill, as amended, was reported favorably with committee substitute.

CHAMBER ACTION

1 The Local Government Council recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to the Florida Building Code; authorizing
7 the Florida Building Commission to update and modify
8 certain wind-design standards; providing criteria,
9 requirements, and limitations; providing for delayed
10 effect; superseding certain provisions of law; amending s.
11 553.71, F.S.; deleting the definition of "exposure
12 category C"; amending s. 553.73, F.S.; authorizing the
13 Florida Building Commission to make certain limited
14 amendments to the Florida Building Code pursuant to rule
15 adoption procedures for certain purposes after triennial
16 updates; authorizing authorities to enforce such
17 amendments; specifying amendment criteria; amending s.
18 553.775, F.S.; prohibiting interpretation and review of
19 certain accessibility provisions of certain codes under
20 certain procedures; amending s. 553.791, F.S.; providing
21 for the use of private providers of building code
22 inspection services under certain circumstances;
23 conforming cross-references; providing effective dates.

24
25 Be It Enacted by the Legislature of the State of Florida:
26
27 Section 1. Notwithstanding subsection (3) of section 109
28 of chapter 2000-141, Laws of Florida, the Florida Building
29 Commission may update or modify the wind-design standard
30 applicable to construction in this state as adopted within the
31 Florida Building Code in accordance with the requirements of s.
32 553.73, Florida Statutes. The Florida Building Commission is
33 specifically authorized to identify within the Florida Building
34 Code those areas of the state from the eastern border of
35 Franklin County west to the Florida-Alabama line that are
36 subject to the windborne-debris requirements of the code. The
37 Florida Building Commission's initial designation of wind lines
38 for this region shall address the results of the study required
39 by section 39 of chapter 2005-147, Laws of Florida. The initial
40 designation of those areas after July 1, 2006, is subject to
41 only the rule adoption procedures of chapter 120, Florida
42 Statutes, notwithstanding the code-development procedures of
43 chapter 553, Florida Statutes. This section shall not take
44 effect for 6 months following the completion of rulemaking or
45 until May 31, 2007, whichever occurs sooner. The provisions of
46 subsection (3) of section 109 of chapter 2000-141, Laws of
47 Florida, are expressly superseded.
48 Section 2. Subsections (10) and (11) of section 553.71,
49 Florida Statutes, are amended to read:
50 553.71 Definitions.--As used in this part, the term:

51 ~~(10) "Exposure category C" means, except in the high~~
52 ~~velocity hurricane zone, that area which lies within 1,500 feet~~
53 ~~of the coastal construction control line, or within 1,500 feet~~
54 ~~of the mean high tide line, whichever is less. On barrier~~
55 ~~islands, exposure category C shall be applicable in the coastal~~
56 ~~building zone set forth in s. 161.55(5).~~
57 (10) ~~(11)~~ "Prototype building" means a building constructed
58 in accordance with architectural or engineering plans intended
59 for replication on various sites and which will be updated to
60 comply with the Florida Building Code and applicable laws
61 relating to firesafety, health and sanitation, casualty safety,
62 and requirements for persons with disabilities which are in
63 effect at the time a construction contract is to be awarded.
64 Section 3. Subsection (6) of section 553.73, Florida
65 Statutes, is amended to read:
66 553.73 Florida Building Code.--
67 (6)(a) The commission, by rule adopted pursuant to ss.
68 120.536(1) and 120.54, shall update the Florida Building Code
69 every 3 years. When updating the Florida Building Code, the
70 commission shall select the most current version of the
71 International Building Code, the International Fuel Gas Code,
72 the International Mechanical Code, the International Plumbing
73 Code, and the International Residential Code, all of which are
74 adopted by the International Code Council, and the National
75 Electrical Code, which is adopted by the National Fire
76 Protection Association, to form the foundation codes of the
77 updated Florida Building Code, if the version has been adopted
78 by the applicable model code entity ~~International Code Council~~

79 and made available to the public at least 6 months prior to its
80 selection by the commission.
81 (b) Codes regarding noise contour lines shall be reviewed
82 annually, and the most current federal guidelines shall be
83 adopted.
84 (c) The commission may modify any portion of the
85 foundation codes only as needed to accommodate the specific
86 needs of this state, maintaining Florida-specific amendments
87 previously adopted by the commission and not addressed by the
88 updated foundation code. Standards or criteria referenced by the
89 codes shall be incorporated by reference. If a referenced
90 standard or criterion requires amplification or modification to
91 be appropriate for use in this state, only the amplification or
92 modification shall be set forth in the Florida Building Code.
93 The commission may approve technical amendments to the updated
94 Florida Building Code after the amendments have been subject to
95 the conditions set forth in paragraphs (3)(a)-(d). Amendments to
96 the foundation codes which are adopted in accordance with this
97 subsection shall be clearly marked in printed versions of the
98 Florida Building Code so that the fact that the provisions are
99 Florida-specific amendments to the foundation codes is readily
100 apparent.
101 (d) The commission shall further consider the commission's
102 own interpretations, declaratory statements, appellate
103 decisions, and approved statewide and local technical amendments
104 and shall incorporate such interpretations, statements,
105 decisions, and amendments into the updated Florida Building Code
106 only to the extent that they are needed to modify the foundation

107 codes to accommodate the specific needs of the state. A change
108 made by an institute or standards organization to any standard
109 or criterion that is adopted by reference in the Florida
110 Building Code does not become effective statewide until it has
111 been adopted by the commission. Furthermore, the edition of the
112 Florida Building Code which is in effect on the date of
113 application for any permit authorized by the code governs the
114 permitted work for the life of the permit and any extension
115 granted to the permit.
116 (e) A rule updating the Florida Building Code in
117 accordance with this subsection shall take effect no sooner than
118 6 months after publication of the updated code. Any amendment to
119 the Florida Building Code which is adopted upon a finding by the
120 commission that the amendment is necessary to protect the public
121 from immediate threat of harm takes effect immediately.
122 (f) Upon the conclusion of a triennial update to the
123 Florida Building Code, notwithstanding the provisions of this
124 subsection or subsection (3), the commission may address issues
125 identified in this subsection by amending the code pursuant only
126 to the rule adoption procedures contained in chapter 120.
127 Following the approval of any amendments to the Florida Building
128 Code by the commission and publication of the amendments on the
129 commission's website, authorities having jurisdiction to enforce
130 the Florida Building Code may enforce the amendments. The
131 commission may approve amendments that are needed to address:
132 1. Conflicts within the updated code;
133 2. Conflicts between the updated code and the Florida Fire
134 Prevention Code adopted pursuant to chapter 633;

135 3. The omission of previously adopted Florida-specific
136 amendments to the updated code if such omission is not supported
137 by a specific recommendation of a technical advisory committee
138 or particular action by the commission; or
139 4. Unintended results from the integration of previously
140 adopted Florida-specific amendments with the model code.
141 Section 4. Subsection (5) is added to section 553.775,
142 Florida Statutes, to read:
143 553.775 Interpretations.--
144 (5) Notwithstanding the other provisions of this section,
145 the Florida Accessibility Code for Building Construction and
146 chapter 11 of the Florida Building Code may not be interpreted
147 by and are not subject to review under any of the procedures
148 specified in this section. This subsection has no effect upon
149 the commission's authority to waive the Florida Accessibility
150 Code for Building Construction as provided by s. 553.512.
151 Section 5. Paragraphs (f) and (h) of subsection (1) of
152 section 553.791, Florida Statutes, are amended, subsections (5),
153 (7)-(10), (12), (13), (15), (16), and (18) of that section are
154 renumbered as subsections (6), (8)-(11), (13), (14), (16), (17),
155 and (19), respectively, a new subsection (5) is added to that
156 section, and present subsections (6), (11), (14), and (17) of
157 that section are amended, to read:
158 553.791 Alternative plans review and inspection.--
159 (1) As used in this section, the term:
160 (f) "Permit application" means a properly completed and
161 submitted application for the requested building or construction
162 permit, including:

163 1. The plans reviewed by the private provider.
164 2. The affidavit from the private provider required
165 pursuant to subsection (6) ~~(5)~~.
166 3. Any applicable fees.
167 4. Any documents required by the local building official
168 to determine that the fee owner has secured all other government
169 approvals required by law.
170 (h) "Request for certificate of occupancy or certificate
171 of completion" means a properly completed and executed
172 application for:
173 1. A certificate of occupancy or certificate of
174 completion.
175 2. A certificate of compliance from the private provider
176 required pursuant to subsection (11) ~~(10)~~.
177 3. Any applicable fees.
178 4. Any documents required by the local building official
179 to determine that the fee owner has secured all other government
180 approvals required by law.
181 (5) After construction has commenced and if the local
182 building official is unable to provide inspection services in a
183 timely manner, the fee owner or the fee owner's contractor may
184 elect to use a private provider to provide inspection services
185 by notifying the local building official of the owner's or
186 contractor's intention to do so no less than 7 business days
187 prior to the next scheduled inspection using the notice provided
188 for in paragraphs (4)(a)-(c).
189 (7) ~~(6)~~(a) No more than 30 business days after receipt of a
190 permit application and the affidavit from the private provider

191 required pursuant to subsection (6) ~~(5)~~, the local building
192 official shall issue the requested permit or provide a written
193 notice to the permit applicant identifying the specific plan
194 features that do not comply with the applicable codes, as well
195 as the specific code chapters and sections. If the local
196 building official does not provide a written notice of the plan
197 deficiencies within the prescribed 30-day period, the permit
198 application shall be deemed approved as a matter of law, and the
199 permit shall be issued by the local building official on the
200 next business day.
201 (b) If the local building official provides a written
202 notice of plan deficiencies to the permit applicant within the
203 prescribed 30-day period, the 30-day period shall be tolled
204 pending resolution of the matter. To resolve the plan
205 deficiencies, the permit applicant may elect to dispute the
206 deficiencies pursuant to subsection (13) ~~(12)~~ or to submit
207 revisions to correct the deficiencies.
208 (c) If the permit applicant submits revisions, the local
209 building official has the remainder of the tolled 30-day period
210 plus 5 business days to issue the requested permit or to provide
211 a second written notice to the permit applicant stating which of
212 the previously identified plan features remain in noncompliance
213 with the applicable codes, with specific reference to the
214 relevant code chapters and sections. If the local building
215 official does not provide the second written notice within the
216 prescribed time period, the permit shall be issued by the local
217 building official on the next business day.

218 (d) If the local building official provides a second
219 written notice of plan deficiencies to the permit applicant
220 within the prescribed time period, the permit applicant may
221 elect to dispute the deficiencies pursuant to subsection (13)
222 ~~(12)~~ or to submit additional revisions to correct the
223 deficiencies. For all revisions submitted after the first
224 revision, the local building official has an additional 5
225 business days to issue the requested permit or to provide a
226 written notice to the permit applicant stating which of the
227 previously identified plan features remain in noncompliance with
228 the applicable codes, with specific reference to the relevant
229 code chapters and sections.
230 (12) ~~(11)~~ No more than 2 business days after receipt of a
231 request for a certificate of occupancy or certificate of
232 completion and the applicant's presentation of a certificate of
233 compliance and approval of all other government approvals
234 required by law, the local building official shall issue the
235 certificate of occupancy or certificate of completion or provide
236 a notice to the applicant identifying the specific deficiencies,
237 as well as the specific code chapters and sections. If the local
238 building official does not provide notice of the deficiencies
239 within the prescribed 2-day period, the request for a
240 certificate of occupancy or certificate of completion shall be
241 deemed granted and the certificate of occupancy or certificate
242 of completion shall be issued by the local building official on
243 the next business day. To resolve any identified deficiencies,
244 the applicant may elect to dispute the deficiencies pursuant to

245 subsection (13) ~~(12)~~ or to submit a corrected request for a
246 certificate of occupancy or certificate of completion.
247 (15) ~~(14)~~ (a) No local enforcement agency, local building
248 official, or local government may adopt or enforce any laws,
249 rules, procedures, policies, qualifications, or standards more
250 stringent than those prescribed by this section.
251 (b) A local enforcement agency, local building official,
252 or local government may establish, for private providers and
253 duly authorized representatives working within that
254 jurisdiction, a system of registration to verify compliance with
255 the licensure requirements of paragraph (1)(g) and the insurance
256 requirements of subsection (16) ~~(15)~~.
257 (c) Nothing in this section limits the authority of the
258 local building official to issue a stop-work order for a
259 building project or any portion of such order, as provided by
260 law, if the official determines that a condition on the building
261 site constitutes an immediate threat to public safety and
262 welfare.
263 (18) ~~(17)~~ Each local building code enforcement agency may
264 audit the performance of building code inspection services by
265 private providers operating within the local jurisdiction. Work
266 on a building or structure may proceed after inspection and
267 approval by a private provider if the provider has given notice
268 of the inspection pursuant to subsection (9) ~~(8)~~ and, subsequent
269 to such inspection and approval, the work may not be delayed for
270 completion of an inspection audit by the local building code
271 enforcement agency.

272 Section 6. Except as otherwise expressly provided in this
273 act, this act shall take effect July 1, 2006.

HB 1357

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1357 Growth Management
SPONSOR(S): Altman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	Nelson	Hamby
2) Growth Management Committee		Grayson	Grayson
3) Transportation & Economic Development Appropriations Committee			
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

HB 1357 creates the "Interlocal Service Boundary Agreement Act" 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 bill defines a "municipal service area" as an unincorporated area that has been identified by a municipality that is a party to an interlocal service boundary agreement as an area to be annexed or to receive municipal services from the 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 current statutes, or a process, as determined by the agreement, that includes one or more of the following:

- a petition for annexation signed by more than 50 percent of the registered voters in the area proposed for annexation;
- a 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 statutory consent requirements 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 process for securing the consent of the voters, as provided in the interlocal service boundary agreement. No voter approval is required.

The bill does not appear to have a fiscal impact upon the state. However, it may have an unknown fiscal impact on local governments.

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:

Present Situation

The "Municipal Annexation or Contraction Act," ch. 171, F.S., codifies the state's annexation procedures[1] 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.[2] 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.[3]

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 annexation area, the residents of remaining unincorporated areas or residents of the municipality proposing the annexation also may be significantly affected by the potential loss of revenue or inefficiencies in service delivery.

An area proposed for annexation must be unincorporated, contiguous and reasonably compact.[4] 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.[5] "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 "finger areas in serpentine patterns."[6]

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 municipality's 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.[7] In the interim, a city must apply county regulations or wait to apply its own rules.

The effective date of the annexation determines who receives certain funds. The county share of revenue sharing and the half-cent sales tax is 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

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[1] Section (2)(c), Art. VIII 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. Annexation through a special act must meet the notice and referendum requirements of s. 10, Art. III, of the State Constitution.
[2] Section 171.021, F.S.
[3] See, Lance deHaven-Smith, Ph.D., *FCCMA Policy Statement on Annexation*, October 12, 2002, at 16-17, http://www.fccma.org/pdf/FCCMA_Paper_Final_Draft.pdf.
[4] Sections 171.0413-.043, F.S.
[5] Section 171.031(11), F.S.
[6] Section 171.031(12), F.S.
[7] See, 1000 Friends of Fla., Inc. v. Florida Dept. of Community Affairs, 824 So. 2d 989 (Fla.4th DCA 2002).

city millage, but excluded from the municipal service taxing unit. If a county has not levied its non-ad valorem assessments before annexation, the county loses those assessments.

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 also can 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.

Section 171.044, F.S., provides the procedure 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.[8] Also, the voluntary annexation procedures in this section are considered supplemental to any other procedure contained in general or special law.[9]

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 an 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 four 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 four 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.

Municipal annexation provides for conflict and tension between many county and municipal governments. The process of annexation often raises issues regarding delivery of services and the costs associated with the delivery of those services, boundaries and land use. During the past two legislative sessions, the Florida League of Cities and the Florida Association of Counties have recommended a statutory resolution to these issues. This 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 1357, and its companion, SB 1194, also reflect this compromise.

Proposed Changes

HB 1357 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 jointly determine how services are provided to residents and property. The bill is intended to establish a more flexible process for adjusting municipal boundaries and to address a wider range of the effects of annexation. This bill also is intended to encourage intergovernmental coordination in planning, service delivery, and

[8] Section 171.044(4), F.S.
[9] *Id.*

boundary adjustments and to reduce intergovernmental conflicts and litigation between local governments.

Interlocal Service Boundary Agreement Act: ss. 171.20—171.212, F.S.

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 local government, 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" 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 party 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 also may 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, or removing more than 10 percent of the taxable or assessable value of the district. A county's initiating resolution must designate one more invited municipality, while a municipality's initiating 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, all other municipalities 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 an additional unincorporated area, incorporated area, or issues for negotiation, and also may invite an additional municipality or independent special district 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 any independent special districts that elect to participate, are required to 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. Counties and municipalities that successfully negotiate an interlocal service boundary agreement must adopt the agreement by ordinance; an independent special district 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; the identification of the local government responsible for the delivery or funding of public safety, fire, emergency rescue and medical, water and wastewater, road ownership, construction and maintenance, conservation, parks and recreation, and stormwater management and drainage services within the area; and other services and infrastructure not currently provided by an electric utility or a natural gas transmission company, as long as it does not affect any territorial agreement between electric utilities or pubic utilities, or affect the determination of a territorial dispute by the Florida Public Service Commission. The interlocal service boundary agreement may establish a process and schedule for annexing an area within a designated municipal service area. The agreement also may provide for a procedure by which the local government responsible for water and wastewater services applies for necessary permit modifications to reflect changes in surface water management operating entity responsibilities.

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. 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 to 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 six 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, F.S.

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 the DCA for compliance with part II of ch. 163, F.S. However, the

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 is required to adopt the agreement using a method consistent with its charter. Nothing in part II of ch. 171, F.S. (which is created by this bill) prohibits a local government from adopting an interlocal service boundary agreement without the consent of an independent special district.

If an interlocal service boundary agreement has not been reached six months after negotiations have commenced, 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, the bill requires the local governments to hold a joint public hearing on the issues raised in the negotiations.

For a period of six 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.

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.

Annexation Procedures under an Interlocal Service Boundary Agreement
Sections 171.204 and 171.205, F.S., provide procedures under which land identified in an interlocal service boundary agreement for annexation may be annexed by a municipality. These land areas may include areas that may not be annexed by a municipality under existing ch. 171, F.S. Specifically, the bill authorizes a municipality to annex 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 of land that is within 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 within the municipal service area must meet the consent requirements in part I of ch. 171, F.S., or the annexation may be achieved by 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. If the area to be annexed includes a privately owned solid waste disposal facility, the annexing municipality must set forth in its plan the impacts the annexation of the facility will have on other local governments.

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 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. 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, with notice to the registered voters and property owners in the area to be annexed. The flexible process may include one or more of described procedures or a referendum of the registered voters who reside in the area proposed to be annexed.

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.

The bill also amends current provisions in ch. 171, 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.;
- provide that failure to provide such notice may be the basis for a cause of action invalidating the annexation;
- 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;
- provide that an interlocal service boundary agreement entered into pursuant to part II of ch. 171, F.S., is binding on the parties;
- provide a time limit for initiating an appeal on annexation or contraction; and
- 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.

The bill provides an effective date of upon becoming a law.

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 percent of the property in a proposed area to be annexed is owned by persons who 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 also may 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 attained 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 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 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 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.

C. SECTION DIRECTORY:

Section 1: Creates part II of ch. 171, F.S., the "Interlocal Service Boundary Agreement Act."

Section 2: Provides for the designation of ss. 171.011-171.093, F.S., and s. 171.094, F.S., as part I of chp. 171, F.S.

Section 3: Amends s. 171.011, F.S.

Section 4: Amends s. 171.031, F.S.

Section 5: Amends ss. 171.042(2) and adds (3), F.S., relating to the prerequisites to annexation.

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

Section 7: Amends s. 171.045, F.S.

Section 8: Amends s. 171.081, F.S., relating to appeal on annexation or contraction.

Section 9: Creates s. 171.094, F.S., relating to the effect of interlocal service boundary agreements on annexations.

Section 10: Amends s. 163.01(11), F.S., relating to the Florida Interlocal Cooperation Act of 1969.

Section 11: 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 12: Provides an effective date.

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:

   Unknown. See, FISCAL COMMENTS, below.

2. Expenditures:

   Unknown. See, FISCAL COMMENTS, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Any fiscal impacts to local governments as a result of the bill will depend on the types of actions taken and agreements reached.

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:

Section 4, Art. VIII of the State Constitution provides:

> 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 bill are an alternative provision otherwise provided by law as authorized by s. 4, Art. VIII of the State Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Comments

Both the Florida League of Cities[10] and the Florida Association of Counties[11] support this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[10] John Wayne Smith, Assistant Director, Legislative and Public Affairs, Florida League of Cities.
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1 A bill to be entitled
2 An act relating to growth management; creating part II of
3 ch. 171, F.S., the "Interlocal Service Boundary Agreement
4 Act"; providing legislative intent with respect to
5 annexation and the coordination of services by local
6 governments; providing definitions; providing for the
7 creation of interlocal service boundary agreements by a
8 county and one or more municipalities or independent
9 special districts; specifying the procedures for
10 initiating an agreement and responding to a proposal for
11 agreements; identifying issues the agreement may or must
12 address; requiring local governments that are a party to
13 the agreement to amend their comprehensive plans;
14 providing for review of the amendment by the state land
15 planning agency; providing an exception to the limitation
16 on plan amendments; specifying those persons who may
17 challenge a plan amendment required by the agreement;
18 providing for negotiation and adoption of the agreement;
19 providing for preservation of certain agreements and
20 powers regarding utility services; providing for
21 preservation of existing contracts; providing
22 prerequisites to annexation; providing a process for
23 annexation; providing for the effect of an interlocal
24 service boundary area agreement on the parties to the
25 agreement; providing for a transfer of powers; authorizing
26 a municipality to provide services within an
27 unincorporated area or territory of another municipality;
28 authorizing a county to exercise certain powers within a

29 municipality; providing for effect on interlocal
30 agreements and county charters; providing a presumption of
31 validity; providing a procedure to settle a dispute
32 regarding an interlocal service boundary agreement;
33 designating ss. 171.011-171.094 as part I of chapter 171,
34 F.S.; amending ss. 171.011, 171.031, and 171.045, F.S., to
35 conform; amending s. 171.042, F.S.; revising the time
36 period for filing a report; providing for a cause of
37 action to invalidate an annexation; requiring
38 municipalities to provide notice of proposed annexation to
39 certain persons; amending s. 171.044, F.S.; revising the
40 time period for providing a copy of a notice; providing
41 for a cause of action to invalidate an annexation;
42 amending s. 171.081, F.S.; requiring a governmental entity
43 affected by annexation or contraction to initiate conflict
44 resolution procedures under certain circumstances;
45 providing for initiation of judicial review and
46 reimbursement of attorney's fees and costs regarding
47 certain annexations or contractions; creating s. 171.094,
48 F.S.; providing for the effect of interlocal service
49 boundary agreements adopted under the act; amending s.
50 163.01, F.S.; providing for the place of filing an
51 interlocal agreement in certain circumstances; amending s.
52 164.1058, F.S.; providing that a governmental entity that
53 fails to participate in conflict resolution procedures
54 shall be required to pay attorney's fees and costs under
55 certain conditions; providing an effective date.
56

57 Be It Enacted by the Legislature of the State of Florida:
58
59 Section 1. Part II of chapter 171, Florida Statutes,
60 consisting of sections 171.20, 171.201, 171.202, 171.203,
61 171.204, 171.205, 171.206, 171.207, 171.208, 171.209, 171.21,
62 171.211, and 171.212, is created to read:
63 171.20 Short title.--This part may be cited as the
64 "Interlocal Service Boundary Agreement Act."
65 171.201 Legislative intent.--The Legislature intends to
66 provide an alternative to part I for local governments regarding
67 the annexation of territory into a municipality and the
68 subtraction of territory from the unincorporated area of the
69 county. The principal goal of this part is to encourage local
70 governments to jointly determine how to provide services to
71 residents and property in the most efficient and effective
72 manner while balancing the needs and desires of the community.
73 This part is intended to establish a more flexible process for
74 adjusting municipal boundaries and to address a wider range of
75 the effects of annexation. This part is intended to encourage
76 intergovernmental coordination in planning, service delivery,
77 and boundary adjustments and to reduce intergovernmental
78 conflicts and litigation between local governments. It is the
79 intent of this part to promote sensible boundaries that reduce
80 the costs of local governments, avoid duplicating local
81 services, and increase political transparency and
82 accountability. This part is intended to prevent inefficient
83 service delivery and an insufficient tax base to support the
84 delivery of those services.

85 171.202 Definitions.--As used in this part, the term:
86 (1) "Chief administrative officer" means the municipal
87 administrator, municipal manager, county manager, county
88 administrator, or other officer of the municipality, county, or
89 independent special district who reports directly to the
90 governing body of the local government.
91 (2) "Enclave" has the same meaning as provided in s.
92 171.031.
93 (3) "Independent special district" means an independent
94 special district, as defined in s. 189.403, which provides fire,
95 emergency medical, water, wastewater, or stormwater services.
96 (4) "Initiating county" means a county that commences the
97 process for negotiating an interlocal service boundary agreement
98 through the adoption of an initiating resolution.
99 (5) "Initiating local government" means a county,
100 municipality, or independent special district that commences the
101 process for negotiating an interlocal service boundary agreement
102 through the adoption of an initiating resolution.
103 (6) "Initiating municipality" means a municipality that
104 commences the process for negotiating an interlocal service
105 boundary agreement through the adoption of an initiating
106 resolution.
107 (7) "Initiating resolution" means a resolution adopted by
108 a county, municipality, or independent special district which
109 commences the process for negotiating an interlocal service
110 boundary agreement and which identifies the unincorporated area
111 and other issues for discussion.
112 (8) "Interlocal service boundary agreement" means an

113 agreement adopted under this part, between a county and one or
114 more municipalities, which may include one or more independent
115 special districts as parties to the agreement.
116 (9) "Invited local government" means an invited county,
117 municipality, or special district and any other local government
118 designated as such in an initiating resolution or a responding
119 resolution that invites the local government to participate in
120 negotiating an interlocal service boundary agreement.
121 (10) "Invited municipality" means an initiating
122 municipality and any other municipality designated as such in an
123 initiating resolution or a responding resolution that invites
124 the municipality to participate in negotiating an interlocal
125 service boundary agreement.
126 (11) "Municipal service area" means one or more of the
127 following as designated in an interlocal service boundary
128 agreement:
129 (a) An unincorporated area that has been identified in an
130 interlocal service boundary agreement for municipal annexation
131 by a municipality that is a party to the agreement.
132 (b) An unincorporated area that has been identified in an
133 interlocal service boundary agreement to receive municipal
134 services from a municipality that is a party to the agreement or
135 from the municipality's designee.
136 (12) "Notified local government" means the county or a
137 municipality, other than an invited municipality, that receives
138 an initiating resolution.
139 (13) "Participating resolution" means the resolution
140 adopted by the initiating local government and the invited local

141 government.
142 (14) "Requesting resolution" means the resolution adopted
143 by a municipality seeking to participate in the negotiation of
144 an interlocal service boundary agreement.
145 (15) "Responding resolution" means the resolution adopted
146 by the county or an invited municipality which responds to the
147 initiating resolution and which may identify an additional
148 unincorporated area or another issue for discussion, or both,
149 and may designate an additional invited municipality or
150 independent special district.
151 (16) "Unincorporated service area" means one or more of
152 the following as designated in an interlocal service boundary
153 agreement:
154 (a) An unincorporated area that has been identified in an
155 interlocal service boundary agreement and that may not be
156 annexed without the consent of the county.
157 (b) An unincorporated area or incorporated area, or both,
158 which have been identified in an interlocal service boundary
159 agreement to receive municipal services from a county or its
160 designee or an independent special district.
161 171.203 Interlocal service boundary agreement.--The
162 governing body of a county and one or more municipalities or
163 independent special districts within the county may enter into
164 an interlocal service boundary agreement under this part. The
165 governing bodies of a county, a municipality, or an independent
166 special district may develop a process for reaching an
167 interlocal service boundary agreement which provides for public
168 participation in a manner that meets or exceeds the requirements

169 of subsection (12), or the governing bodies may use the process
170 established in this section.
171 (1) A county, a municipality, or an independent special
172 district desiring to enter into an interlocal service boundary
173 agreement shall commence the negotiation process by adopting an
174 initiating resolution. The initiating resolution must identify
175 an unincorporated area or incorporated area, or both, to be
176 discussed and the issues to be negotiated. The identified area
177 must be specified in the initiating resolution by a descriptive
178 exhibit that includes, but need not be limited to, a map or
179 legal description of the designated area. The issues for
180 negotiation must be listed in the initiating resolution and may
181 include, but need not be limited to, the issues listed in
182 subsection (6). An independent special district may initiate the
183 interlocal service boundary agreement for the purposes of
184 dissolving an independent special district or removing more than
185 10 percent of the taxable or assessable value of an independent
186 special district.
187 (a) The initiating resolution of an initiating county must
188 designate one or more invited municipalities. The initiating
189 resolution of an initiating municipality may designate an
190 invited municipality. The initiating resolution of an
191 independent special district must designate one or more invited
192 municipalities and invite the county.
193 (b) An initiating county shall send the initiating
194 resolution by certified mail to the chief administrative officer
195 of every invited municipality and each other municipality within
196 the county. An initiating municipality shall send the initiating

197 resolution by certified mail to the chief administrative officer
198 of the county, the invited municipality, if any, and each other
199 municipality within the county.
200 (c) The initiating local government shall also send the
201 initiating resolution to the chief administrative officer of
202 each independent special district in the unincorporated area
203 designated in the initiating resolution.
204 (2) Within 60 days after the receipt of an initiating
205 resolution, the county or the invited municipality, as
206 appropriate, shall adopt a responding resolution. The responding
207 resolution may identify an additional unincorporated area or
208 incorporated area, or both, for discussion and may designate
209 additional issues for negotiation. The additional identified
210 area, if any, must be specified in the responding resolution by
211 a descriptive exhibit that includes, but need not be limited to,
212 a map or legal description of the designated area. The
213 additional issues designated for negotiation, if any, must be
214 listed in the responding resolution and may include, but need
215 not be limited to, the issues listed in subsection (6). The
216 responding resolution may also invite an additional municipality
217 or independent special district to negotiate the interlocal
218 service boundary agreement.
219 (a) Within 7 days after the adoption of a responding
220 resolution, the responding county shall send the responding
221 resolution by certified mail to the chief administrative officer
222 of the initiating municipality, each invited municipality, if
223 any, and the independent special district that received an
224 initiating resolution.

225 (b) Within 7 days after the adoption of a responding
226 resolution, an invited municipality shall send the responding
227 resolution by certified mail to the chief administrative officer
228 of the initiating county, each invited municipality, if any, and
229 each independent special district that received an initiating
230 resolution.
231 (c) An invited municipality that was invited by a
232 responding resolution shall adopt a responding resolution in
233 accordance with paragraph (b).
234 (d) Within 60 days after receipt of the initiating
235 resolution, any independent special district that received an
236 initiating resolution and that desires to participate in the
237 negotiations shall adopt a resolution indicating that the
238 district intends to participate in the negotiation process for
239 the interlocal service boundary agreement. Within 7 days after
240 the adoption of the resolution, the independent special district
241 shall send the resolution by certified mail to the chief
242 administrative officer of the county, the initiating
243 municipality, each invited municipality, if any, and each
244 notified local government.
245 (3) A municipality within the county which is not an
246 invited municipality may request participation in the
247 negotiations for the interlocal service boundary agreement. Such
248 a request must be accomplished by adopting a requesting
249 resolution within 60 days after receipt of the initiating
250 resolution or within 10 days after receipt of the responding
251 resolution. Within 7 days after adoption of the requesting
252 resolution, the requesting municipality shall send the

253 resolution by certified mail to the chief administrative officer
254 of the initiating local government and each invited
255 municipality. The county and the invited municipality shall
256 consider whether to allow a requesting municipality to
257 participate in the negotiations, and, if the county and invited
258 municipality agree, the county and invited municipality shall
259 adopt a participating resolution allowing the requesting
260 municipality to participate in the negotiations.
261 (4) The county, the invited municipalities, the
262 participating municipalities, if any, and the independent
263 special districts, if any have adopted a resolution to
264 participate, shall begin negotiations within 60 days after
265 receipt of the responding resolution or a participating
266 resolution, whichever occurs later.
267 (5) An invited municipality that fails to adopt a
268 responding resolution shall be deemed to waive its right to
269 participate in the negotiation process and shall be bound by an
270 interlocal agreement resulting from such negotiation process, if
271 any is reached.
272 (6) An interlocal service boundary agreement may address
273 any issue concerning service delivery, fiscal responsibilities,
274 or boundary adjustment. The agreement may include, but need not
275 be limited to, provisions that:
276 (a) Identify a municipal service area.
277 (b) Identify an unincorporated service area.
278 (c) Identify the local government responsible for the
279 delivery or funding of the following services within the
280 municipal service area or the unincorporated service area:

281 1. Public safety.
282 2. Fire, emergency rescue, and medical.
283 3. Water and wastewater.
284 4. Road ownership, construction, and maintenance.
285 5. Conservation, parks, and recreation.
286 6. Stormwater management and drainage.
287 (d) Address other services and infrastructure not
288 currently provided by an electric utility as defined in s.
289 366.02 or a natural gas transmission company as defined in s.
290 368.103. However, this paragraph does not affect any territorial
291 agreement between electrical utilities or public utilities under
292 chapter 366 or affect the determination of a territorial dispute
293 by the Public Service Commission under s. 366.04.
294 (e) Establish a process and schedule for annexation of an
295 area within the designated municipal service area consistent
296 with s. 171.205.
297 (f) Establish a process for land-use decisions consistent
298 with part II of chapter 163, including those made jointly by the
299 governing bodies of the county and the municipality, or allow a
300 municipality to adopt land-use changes consistent with part II
301 of chapter 163 for areas that are scheduled to be annexed within
302 the term of the interlocal agreement; however, the county
303 comprehensive plan and land-development regulations shall
304 control until the municipality annexes the property and amends
305 its comprehensive plan accordingly. Comprehensive plan
306 amendments to incorporate the process established by this
307 paragraph are exempt from the twice-per-year limitation under s.
308 163.3187.

309 (g) Address other issues concerning service delivery,
310 including the transfer of services and infrastructure and the
311 fiscal compensation to one county, municipality, or independent
312 special district from another county, municipality, or
313 independent special district.
314 (h) Provide for the joint use of facilities and the
315 colocation of services.
316 (i) Include a requirement for a report to the county of
317 the municipality's planned service delivery, as provided in s.
318 171.042, or as otherwise determined by agreement.
319 (j) Establish a procedure by which the local government
320 that is responsible for water and wastewater services shall
321 apply, within 30 days after the annexation or subtraction of
322 territory, for any modifications to permits of the water
323 management district or the Department of Environmental
324 Protection which are necessary to reflect changes in the entity
325 that is responsible for managing surface water under such
326 permits.
327 (7) If the interlocal service boundary agreement addresses
328 responsibilities for land-use planning under chapter 163, the
329 agreement must also establish the procedures for preparing and
330 adopting comprehensive plan amendments, administering land-
331 development regulations, and issuing development orders.
332 (8) Each local government that is a party to the
333 interlocal service boundary agreement shall amend the
334 intergovernmental coordination element of its comprehensive
335 plan, as described in s. 163.3177(6)(h)1., no later than 6
336 months following entry of the interlocal service boundary

337 agreement consistent with s. 163.3177(6)(h)1. Plan amendments
338 required by this subsection are exempt from the twice-per-year
339 limitation under s. 163.3187.
340 (9) An affected person for the purpose of challenging a
341 comprehensive plan amendment required by paragraph (6)(f)
342 includes a person who owns real property, resides, or owns or
343 operates a business within the boundaries of the municipal
344 service area, and a person who owns real property abutting real
345 property within the municipal service area that is the subject
346 of the comprehensive plan amendment, in addition to other
347 affected persons who would have standing under s. 163.3184.
348 (10)(a) A municipality that is a party to an interlocal
349 service boundary agreement that identifies an unincorporated
350 area for municipal annexation under s. 171.202(11)(a) shall
351 adopt a municipal service area as an amendment to its
352 comprehensive plan to address future possible municipal
353 annexation. The state land planning agency shall review the
354 amendment for compliance with part II of chapter 163. A
355 municipal service area must contain:
356 1. A boundary map of the municipal service area.
357 2. Population projections for the area.
358 3. Data and analysis supporting the provision of public
359 facilities for the area.
360 (b) This part does not authorize the state land planning
361 agency to review, evaluate, determine, approve, or disapprove a
362 municipal ordinance relating to municipal annexation or
363 contraction.
364 (c) Any amendment required by paragraph (a) is exempt from

365 the twice-per-year limitation under s. 163.3187.
366 (11) An interlocal service boundary agreement may be for a
367 term of 20 years or less. The interlocal service boundary
368 agreement must include a provision requiring periodic review.
369 The interlocal service boundary agreement must require
370 renegotiations to begin at least 18 months before its
371 termination date.
372 (12) No earlier than 6 months after the commencement of
373 negotiations, either of the initiating local governments or
374 both, the county, or the invited municipality may declare an
375 impasse in the negotiations and seek a resolution of the issues
376 under ss. 164.1053-164.1057. If the local governments fail to
377 agree at the conclusion of the process under chapter 164, the
378 local governments shall hold a joint public hearing on the
379 issues raised in the negotiations.
380 (13) When the local governments have reached an interlocal
381 service boundary agreement, the county and the municipality
382 shall adopt the agreement by ordinance under s. 166.041 or s.
383 125.66, respectively. An independent special district, if it
384 consents to the agreement, shall adopt the agreement by final
385 order, resolution, or other method consistent with its charter.
386 The interlocal service boundary agreement shall take effect on
387 the day specified in the agreement or, if there is no date, upon
388 adoption by the county or the invited municipality, whichever
389 occurs later. This part does not prohibit a county or
390 municipality from adopting an interlocal service boundary
391 agreement without the consent of an independent special
392 district, unless the agreement provides for the dissolution of

393 an independent special district or the removal of more than 10
394 percent of the taxable or assessable value of an independent
395 special district.
396 (14) For a period of 6 months following the failure of the
397 local governments to consent to an interlocal service boundary
398 agreement, the initiating local government may not initiate the
399 negotiation process established in this section to require the
400 responding local government to negotiate an agreement concerning
401 the same identified unincorporated area and the same issues that
402 were specified in the failed initiating resolution.
403 (15) This part does not authorize one local government to
404 require another local government to enter into an interlocal
405 service boundary agreement. However, when the process for
406 negotiating an interlocal service boundary agreement is
407 initiated, the local governments shall negotiate in good faith
408 to the conclusion of the process established in this section.
409 (16) This section authorizes local governments to
410 simultaneously engage in negotiating more than one interlocal
411 service boundary agreement, notwithstanding that separate
412 negotiations concern similar or identical unincorporated areas
413 and issues.
414 (17) Elected local government officials are encouraged to
415 participate actively and directly in the negotiation process for
416 developing an interlocal service boundary agreement.
417 (18) This part does not impair any existing franchise
418 agreement without the consent of the franchisee, any existing
419 territorial agreement between electric utilities or public
420 utilities under chapter 366, or the jurisdiction of the Public

421 Service Commission to resolve a territorial dispute involving
422 electric utilities or public utilities in accordance with s.
423 366.04. In addition, an interlocal agreement entered into under
424 this section has no effect in a proceeding before the Public
425 Service Commission involving a territorial dispute. A
426 municipality or county shall retain all existing authority, if
427 any, to negotiate a franchise agreement with any private service
428 provider for use of public rights-of-way or the privilege of
429 providing a service.
430 (19) This part does not impair any existing contract
431 without the consent of the parties.
432 171.204 Prerequisites to annexation under this part.--The
433 interlocal service boundary agreement may describe the character
434 of land that may be annexed under this part and may provide that
435 the restrictions on the character of land that may be annexed
436 pursuant to part I are not restrictions on land that may be
437 annexed pursuant to this part. As determined in the interlocal
438 service boundary agreement, any character of land may be
439 annexed, including, but not limited to, an annexation of land
440 not contiguous to the boundaries of the annexing municipality,
441 an annexation that creates an enclave, or an annexation where
442 the annexed area is not reasonably compact; however, such area
443 must be urban in character as defined in s. 171.031. The
444 interlocal service boundary agreement may not allow for
445 annexation of land within a municipality that is not a party to
446 the agreement or of land that is within another county. Before
447 annexation of land that is not contiguous to the boundaries of
448 the annexing municipality, an annexation that creates an

449 enclave, or an annexation of land that is not currently served
450 by water or sewer utilities, one of the following options must
451 be followed:
452 (1) The municipality shall transmit a comprehensive plan
453 amendment that proposes specific amendments relating to the
454 property anticipated for annexation to the Department of
455 Community Affairs for review under chapter 163. After
456 considering the department's review, the municipality may
457 approve the annexation and comprehensive plan amendment
458 concurrently. The local government must adopt the annexation and
459 the comprehensive plan amendment as separate and distinct
460 actions, but may take such actions at a single public hearing;
461 or
462 (2) A municipality and county shall enter into a joint
463 planning agreement under s. 163.3171, which is adopted into the
464 municipal comprehensive plan. The joint planning agreement must
465 identify the geographic areas anticipated for annexation, the
466 future land uses that the municipality would seek to establish,
467 necessary public facilities and services, including
468 transportation and school facilities and how such facilities
469 will be provided, and natural resources, including surface water
470 and groundwater resources, and how such resources will be
471 protected. An amendment to the future land-use map of a
472 comprehensive plan which is consistent with the joint planning
473 agreement must be considered a small-scale amendment.
474 171.205 Consent requirements for annexation of land under
475 this part.--Notwithstanding part I, an interlocal service
476 boundary agreement may provide a process for annexation

477 consistent with this section or with part I.
478 (1) For all or a portion of the area within a designated
479 municipal service area, the interlocal service boundary
480 agreement may provide a flexible process for securing the
481 consent of persons who are registered voters or own property in
482 the area proposed for annexation, or of both such voters and
483 owners, for the annexation of property within a municipal
484 service area, with notice to such voters or owners as required
485 in the interlocal service boundary agreement. The interlocal
486 service boundary agreement may not authorize annexation unless
487 the consent requirements of part I are met or the annexation is
488 consented to by one or more of the following:
489 (a) The municipality has received a petition for
490 annexation from more than 50 percent of the registered voters
491 who reside in the area proposed to be annexed.
492 (b) The annexation is approved by a majority of the
493 registered voters who reside in the area proposed to be annexed
494 voting in a referendum on the annexation.
495 (c) The municipality has received a petition for
496 annexation from more than 50 percent of the persons who own
497 property within the area proposed to be annexed.
498 (2) If the area to be annexed includes a privately owned
499 solid waste disposal facility as defined in s. 403.703 which
500 receives municipal solid waste collected within the jurisdiction
501 of multiple local governments, the annexing municipality must
502 set forth in its plan the effects that the annexation of the
503 solid waste disposal facility will have on the other local
504 governments. The plan must also indicate that the owner of the

505 affected solid waste disposal facility has been contacted in
506 writing concerning the annexation, that an agreement between the
507 annexing municipality and the solid waste disposal facility to
508 govern the operations of the solid waste disposal facility if
509 the annexation occurs has been approved, and that the owner of
510 the solid waste disposal facility does not object to the
511 proposed annexation.
512 (3) For all or a portion of an enclave consisting of more
513 than 20 acres within a designated municipal service area, the
514 interlocal service boundary agreement may provide a flexible
515 process for securing the consent of persons who are registered
516 voters or own property in the area proposed for annexation, or
517 of both such voters and owners, for the annexation of property
518 within such an enclave, with notice to such voters or owners as
519 required in the interlocal service boundary agreement. The
520 interlocal service boundary agreement may not authorize
521 annexation of enclaves under this subsection unless the consent
522 requirements of part I are met, the annexation process includes
523 one or more of the procedures in subsection (1), or the
524 municipality has received a petition for annexation from one or
525 more persons who own real property in excess of 50 percent of
526 the total real property within the area to be annexed.
527 (4) For all or a portion of an enclave consisting of 20
528 acres or fewer within a designated municipal service area,
529 within which enclave not more than 100 registered voters reside,
530 the interlocal service boundary agreement may provide a flexible
531 process for securing the consent of persons who are registered
532 voters or own property in the area proposed for annexation, or

533 of both such voters and owners, for the annexation of property
534 within such an enclave, with notice to such voters or owners as
535 required in the interlocal service boundary agreement. Such an
536 annexation process may include one or more of the procedures in
537 subsection (1) and may allow annexation according to the terms
538 and conditions provided in the interlocal service boundary
539 agreement, which may include a referendum of the registered
540 voters who reside in the area proposed to be annexed.
541 171.206 Effect of interlocal service boundary area
542 agreement on annexations.--
543 (1) An interlocal service boundary agreement is binding on
544 the parties to the agreement, and a party may not take any
545 action that violates the interlocal service boundary agreement.
546 (2) Notwithstanding part I, without consent of the county
547 and the affected municipality by resolution, a county or an
548 invited municipality may not take any action that violates the
549 interlocal service boundary agreement.
550 (3) If the independent special district that participated
551 in the negotiation process pursuant to s. 171.203(2)(d) does not
552 consent to the interlocal service boundary agreement and a
553 municipality annexes an area within the independent special
554 district, the independent special district may seek compensation
555 using the process in s. 171.093.
556 171.207 Transfer of powers.--This part is an alternative
557 provision otherwise provided by law, as authorized in s. 4, Art.
558 VIII of the State Constitution, for any transfer of power
559 resulting from an interlocal service boundary agreement for the
560 provision of services or the acquisition of public facilities

561 entered into by a county, municipality, independent special
562 district, or other entity created pursuant to law.
563 171.208 Municipal extraterritorial power.--This part
564 authorizes a municipality to exercise extraterritorial powers
565 that include, but are not limited to, the authority to provide
566 services and facilities within the unincorporated area or within
567 the territory of another municipality as provided within an
568 interlocal service boundary agreement. These powers are in
569 addition to other municipal powers that otherwise exist.
570 However, this power is subject to the jurisdiction of the Public
571 Service Commission to resolve territorial disputes under s.
572 366.04. An interlocal agreement has no effect on the resolution
573 of a territorial dispute to be determined by the Public Service
574 Commission.
575 171.209 County powers in an incorporated area.--As
576 provided in an interlocal service boundary agreement, this part
577 authorizes a county to exercise powers within a municipality
578 that include, but are not limited to, the authority to provide
579 services and facilities within the territory of a municipality.
580 These powers are in addition to other county powers that
581 otherwise exist.
582 171.21 Effect of part on interlocal agreement and county
583 charter.--A joint planning agreement, a charter provision
584 adopted under s. 171.044(4), or any other interlocal agreement
585 between local governments, including a county, municipality, or
586 independent special district, is not affected by this part;
587 however, a county, municipality or independent special district
588 may avail itself of this part, which may result in the repeal or

589 modification of a joint planning agreement or other interlocal
590 agreement. A local government within a county that has adopted a
591 charter provision pursuant to s. 171.044(4) may avail itself of
592 the provisions of this part which authorize an interlocal
593 service boundary agreement if such interlocal agreement is
594 consistent with the charter of that county, as the charter was
595 approved, revised, or amended pursuant to s. 125.64.
596 171.211 Interlocal service boundary agreement presumed
597 valid and binding.--
598 (1) If there is litigation over the terms, conditions,
599 construction, or enforcement of an interlocal service boundary
600 agreement, the agreement shall be presumed valid, and the
601 challenger has the burden of proving its invalidity.
602 (2) Notwithstanding part I, it is the intent of this part
603 to authorize a municipality to enter into an interlocal service
604 boundary agreement that enhances, restricts, or precludes
605 annexations during the term of the agreement.
606 171.212 Disputes regarding construction and effect of an
607 interlocal service boundary agreement.--If there is a question
608 or dispute about the construction or effect of an interlocal
609 service boundary agreement, a local government shall initiate
610 and proceed through the conflict resolution procedures
611 established in chapter 164. If there is a failure to resolve the
612 conflict, no later than 30 days following the conclusion of the
613 procedures established in chapter 164, the local government may
614 file an action in circuit court. For purposes of this section,
615 the term "local government" means a party to the interlocal
616 service boundary agreement.

617 Section 2. Sections 171.011-171.093, Florida Statutes, and
618 section 171.094, Florida Statutes, as created by this act, are
619 designated as part I of chapter 171, Florida Statutes.
620 Section 3. Section 171.011, Florida Statutes, is amended
621 to read:
622 171.011 Short title.--This part ~~chapter shall be known and~~
623 may be cited as the "Municipal Annexation or Contraction Act."
624 Section 4. Section 171.031, Florida Statutes, is amended
625 to read:
626 171.031 Definitions.--As used in this part ~~chapter~~, the
627 following words and terms have the following meanings unless
628 some other meaning is plainly indicated:
629 (1) "Annexation" means the adding of real property to the
630 boundaries of an incorporated municipality, such addition making
631 such real property in every way a part of the municipality.
632 (2) "Contraction" means the reversion of real property
633 within municipal boundaries to an unincorporated status.
634 (3) "Municipality" means a municipality created pursuant
635 to general or special law authorized or recognized pursuant to
636 s. 2 or s. 6, Art. VIII of the State Constitution.
637 (4) "Newspaper of general circulation" means a newspaper
638 printed in the language most commonly spoken in the area within
639 which it circulates, which is readily available for purchase by
640 all inhabitants in its area of circulation, but does not include
641 a newspaper intended primarily for members of a particular
642 professional or occupational group, a newspaper whose primary
643 function is to carry legal notices, or a newspaper that is given
644 away primarily to distribute advertising.

645 (5) "Parties affected" means any persons or firms owning
646 property in, or residing in, either a municipality proposing
647 annexation or contraction or owning property that is proposed
648 for annexation to a municipality or any governmental unit with
649 jurisdiction over such area.
650 (6) "Qualified voter" means any person registered to vote
651 in accordance with law.
652 (7) "Sufficiency of petition" means the verification of
653 the signatures and addresses of all signers of a petition with
654 the voting list maintained by the county supervisor of elections
655 and certification that the number of valid signatures represents
656 the required percentage of the total number of qualified voters
657 in the area affected by a proposed annexation.
658 (8) "Urban in character" means an area used intensively
659 for residential, urban recreational or conservation parklands,
660 commercial, industrial, institutional, or governmental purposes
661 or an area undergoing development for any of these purposes.
662 (9) "Urban services" means any services offered by a
663 municipality, either directly or by contract, to any of its
664 present residents.
665 (10) "Urban purposes" means that land is used intensively
666 for residential, commercial, industrial, institutional, and
667 governmental purposes, including any parcels of land retained in
668 their natural state or kept free of development as dedicated
669 greenbelt areas.
670 (11) "Contiguous" means that a substantial part of a
671 boundary of the territory sought to be annexed by a municipality
672 is coterminous with a part of the boundary of the municipality.

673 The separation of the territory sought to be annexed from the
674 annexing municipality by a publicly owned county park; a right-
675 of-way for a highway, road, railroad, canal, or utility; or a
676 body of water, watercourse, or other minor geographical division
677 of a similar nature, running parallel with and between the
678 territory sought to be annexed and the annexing municipality,
679 shall not prevent annexation under this act, provided the
680 presence of such a division does not, as a practical matter,
681 prevent the territory sought to be annexed and the annexing
682 municipality from becoming a unified whole with respect to
683 municipal services or prevent their inhabitants from fully
684 associating and trading with each other, socially and
685 economically. However, nothing herein shall be construed to
686 allow local rights-of-way, utility easements, railroad rights-
687 of-way, or like entities to be annexed in a corridor fashion to
688 gain contiguity; and when any provision or provisions of special
689 law or laws prohibit the annexation of territory that is
690 separated from the annexing municipality by a body of water or
691 watercourse, then that law shall prevent annexation under this
692 act.
693 (12) "Compactness" means concentration of a piece of
694 property in a single area and precludes any action which would
695 create enclaves, pockets, or finger areas in serpentine
696 patterns. Any annexation proceeding in any county in the state
697 shall be designed in such a manner as to ensure that the area
698 will be reasonably compact.
699 (13) "Enclave" means:
700 (a) Any unincorporated improved or developed area that is

701 enclosed within and bounded on all sides by a single
702 municipality; or
703 (b) Any unincorporated improved or developed area that is
704 enclosed within and bounded by a single municipality and a
705 natural or manmade obstacle that allows the passage of vehicular
706 traffic to that unincorporated area only through the
707 municipality.
708 Section 5. Subsection (2) of section 171.042, Florida
709 Statutes, is amended, and subsection (3) is added to that
710 section, to read:
711 171.042 Prerequisites to annexation.--
712 (2) Not less than 15 days prior to commencing the
713 annexation procedures under s. 171.0413, the governing body of
714 the municipality shall file a copy of the report required by
715 this section with the board of county commissioners of the
716 county wherein the municipality is located. Failure to timely
717 file the report as required in this subsection may be the basis
718 for a cause of action invalidating the annexation.
719 (3) The governing body of the municipality shall mail by
720 certified mail, not less than 10 days prior to the date set for
721 the first public hearing required by s. 171.0413(1), a written
722 notice to each person who resides or owns property within the
723 area proposed to be annexed. The notice must describe the
724 annexation proposal, the time and place for each public hearing
725 to be held regarding the annexation, and the place or places
726 within the municipality where the proposed ordinance may be
727 inspected by the public. A copy of the notice must be kept
728 available for public inspection during the regular business

729 hours of the office of the clerk of the governing body.
730 Section 6. Subsection (6) of section 171.044, Florida
731 Statutes, is amended to read:
732 171.044 Voluntary annexation.--
733 (6) Not less than 10 days prior to ~~Upon~~ publishing or
734 posting the ordinance notice required under subsection (2), the
735 governing body of the municipality must provide a copy of the
736 notice, via certified mail, to the board of the county
737 commissioners of the county wherein the municipality is located.
738 The notice provision provided in this subsection may ~~shall not~~
739 be the basis for a ~~of any~~ cause of action invalidating
740 ~~challenging~~ the annexation.
741 Section 7. Section 171.045, Florida Statutes, is amended
742 to read:
743 171.045 Annexation limited to a single county.--In order
744 for an annexation proceeding to be valid for the purposes of
745 this part ~~chapter~~, the annexation must take place within the
746 boundaries of a single county.
747 Section 8. Section 171.081, Florida Statutes, is amended
748 to read:
749 171.081 Appeal on annexation or contraction.--
750 (1) ~~No later than 30 days following the passage of an~~
751 ~~annexation or contraction ordinance,~~ Any party affected who
752 believes that he or she will suffer material injury by reason of
753 the failure of the municipal governing body to comply with the
754 procedures set forth in this part ~~chapter~~ for annexation or
755 contraction or to meet the requirements established for
756 annexation or contraction as they apply to his or her property

757 may file a petition in the circuit court for the county in which
758 the municipality or municipalities are located seeking review by
759 certiorari. The action may be initiated at the party's option
760 within 30 days following the passage of the annexation or
761 contraction ordinance or within 30 days following the completion
762 of the dispute resolution process in subsection (2). In any
763 action instituted pursuant to this subsection ~~section~~, the
764 complainant, should he or she prevail, shall be entitled to
765 reasonable costs and attorney's fees.
766 (2) If the affected party is a governmental entity, no
767 later than 30 days following the passage of an annexation or
768 contraction ordinance the governmental entity must initiate and
769 proceed through the conflict resolution procedures established
770 in chapter 164. If there is a failure to resolve the conflict,
771 no later than 30 days following the conclusion of the procedures
772 established in chapter 164 the governmental entity that
773 initiated the conflict resolution procedures may file a petition
774 in the circuit court for the county in which the municipality or
775 municipalities are located seeking review by certiorari. In any
776 legal action instituted pursuant to this subsection, the
777 prevailing party is entitled to reasonable costs and attorney's
778 fees.
779 Section 9. Section 171.094, Florida Statutes, is created
780 to read:
781 171.094 Effect of interlocal service boundary agreements
782 adopted under part II on annexations under this part.--
783 (1) An interlocal service boundary agreement entered into
784 pursuant to part II is binding on the parties to the agreement,

785 and a party may not take any action that violates the interlocal
786 service boundary agreement.
787 (2) Notwithstanding any other provision of this part,
788 without the consent of the county the affected municipality, or
789 affected independent special district by resolution, a county,
790 an invited municipality, or independent special district may not
791 take any action that violates an interlocal service boundary
792 agreement.
793 Section 10. Subsection (11) of section 163.01, Florida
794 Statutes, is amended to read:
795 163.01 Florida Interlocal Cooperation Act of 1969.--
796 (11) Prior to its effectiveness, an interlocal agreement
797 and subsequent amendments thereto shall be filed with the clerk
798 of the circuit court of each county where a party to the
799 agreement is located; however, if the parties to the agreement
800 are located in multiple counties and the agreement, pursuant to
801 subsection (7), provides for a separate legal entity or
802 administrative entity to administer the agreement, the
803 interlocal agreement and any amendments to the interlocal
804 agreement may be filed with the clerk of the circuit court in
805 the county where the legal or administrative entity maintains
806 its principal place of business.
807 Section 11. Section 164.1058, Florida Statutes, is amended
808 to read:
809 164.1058 Penalty.--If a primary conflicting governmental
810 entity ~~which has received notice of intent to initiate the~~
811 ~~conflict resolution procedure pursuant to this act~~ fails to
812 participate in good faith in the conflict assessment meeting,

813 mediation, or other remedies provided for in this act, ~~and the~~
814 ~~initiating governmental entity files suit and is the prevailing~~
815 ~~party in such suit,~~ the primary disputing governmental entity
816 that ~~which~~ failed to participate in good faith shall be required
817 to pay the attorney's fees and costs in that proceeding of the
818 prevailing primary conflicting governmental entity ~~which~~
819 ~~initiated the conflict resolution procedure~~.
820 Section 12. This act shall take effect upon becoming a
821 law.

HB 1431

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1431 Impact Fees
SPONSOR(S): Cretul
TIED BILLS: **IDEN./SIM. BILLS:** SB 1196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Growth Management Committee		Strickland BS	Grayson
2) Fiscal Council			
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1431 creates s. 163.31801, F.S., the "Impact Fee Act." The bill provides a framework for the creation of impact fee ordinances and levy of impact fees.

The bill provides legislative findings and legislative intent regarding the need for and use of impact fees.

The bill provides definitions for the applicable terms within the "Impact Fee Act."

The bill requires that impact fees:

- Be a one time charge, although partial payments may be collected over time during the course of a development.
- Be used for capital outlay projects only.
- Represent a proportionate share of the cost of the project that is needed to serve new development.

The bill authorizes local governments to levy impact fees pursuant to its home rule authority.

The bill authorizes special districts to levy impact fees only when authorized to do so by general law.

The bill requires public notice prior to the enactment of an impact fee ordinance.

The bill sets forth certain criteria for a impact fee ordinance.

The bill provides authority for an impact fee ordinance to provide credits for outside funding sources, improvements initiated by developers, in-kind contributions, and local tax payments that fund capital improvements.

The bill authorizes an exemption from the levy of an impact fee and requires specification of the criteria used in determining such an exemption and the alternative source of revenue which will offset the fee that is exempted.

The bill provides that an impact fee ordinance enacted prior to July 1, 2006, need not comply with the provisions of this bill until July 1, 2008.

The bill has an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill creates a framework for establishing an impact fee ordinance and levying impact fees. To the extent that current impact fee ordinances and levying practices are inconsistent with the provisions of this bill, those required to pay impact fees may pay more or less. For those local governments that do not currently levy impact fees, creation of an impact fee ordinance and the levying of impact fees pursuant to the provisions would create an additional cost to those required to pay the impact fee.

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes:

HB 1431 creates s. 163.31801, F.S., the "Impact Fee Act."

Legislative findings and intent:

The bill provides legislative findings that:

- Impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth.
- Impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction.

The bill provides legislative intent to ensure that impact fees throughout the state are used to maintain adequate public facilities, represent a proportionate share of the cost of each public facility, and promote orderly growth and development.

Definitions:

The bill provides the following definitions relating to impact fees:

- Capital outlay project – The buildings, equipment, and structures that are built, installed, or established to serve the need for infrastructure in a new or expanded development, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, education, parks, and recreational projects.
- Impact fee: A total or partial reimbursement to a local government for the cost of the additional public facilities or services necessitated by new development or the expansion of existing development.
- Local Government: A county, municipality, or special district that is authorized by its enabling legislation or by general law to impose an impact fee.
- Public Notice: Notice as required by s. 125.66(2), F.S., for a county, s. 166.041 (3) (a), F.S., for a municipality, or s. 189.417, F.S., for a special district.
- Rational Nexus: A reasonable connection.

Impact fee requirements:

The bill requires an impact fee to do the following:

- Be a one-time charge, although the charge may be paid at certain times over the course of the development process.
- Be used for capital outlay projects only. Specifically, the impact fee may not be used to fund operating costs and infrastructure deficiencies.

- Represent a proportionate share of the cost of the capital outlay project that is needed to serve the new development.

Authorization to levy impact fees:

The bill authorizes to a local government by its home rule power, to adopt an impact fee ordinance within its jurisdiction in order to fund infrastructure necessary to serve new development.

The bill further authorizes a special district to levy an impact fee only if it is authorized to so by general law.

Notice:

The bill provides that public notice must be given prior to a county, municipality, or special district enacting an impact fee ordinance.

Impact fee ordinance requirements:

The bill provides that an impact fee must do the following:

- Specify the geographical area to be served by the collection of the impact fee.
- Specify that there is a rational nexus between the anticipated need for the capital outlay project and the growth generated by the new development.
- Specify that there is a rational nexus between the anticipated use of the revenue that is collected from the impact fee and the benefits that will accrue to the new development upon completion of the capital outlay project.
- Specify the criteria and methodology used to calculate the amount of the impact fee and the assumptions on which they are based.
- Demonstrate that the impact fee does not exceed a proportionate share of the cost of the capital outlay project or system improvement needed to serve the new development.
- Specify certain times during the development process when partial payments of the impact fee are due.
- Require that the revenue from the impact fee is spent only on the capital outlay project for which the fee was collected.
- Specify that the revenue from the impact fee that is collected by a local government shall be deposited into an interest-bearing account. The interest from the account shall also be used only for the capital outlay project.
- Specify that the revenue from the impact fee and disbursement shall be accounted for and reported separately from other governmental sources of revenue. The accounting and reporting of the revenue from an impact fee shall be available for audit pursuant to s. 218.39.
- Provide a process for refunding an impact fee that was not expended on or encumbered for the capital outlay project for which it was collected within a reasonable amount of time., not to exceed 8 years following the date of the adoption of the ordinance.
- Specify who is entitled to a refund after the time for construction of the capital outlay project has expired. [developer, property owner of record at the time of the refund, some other individual entity]

Impact fee credits:

The bill authorizes an impact fee ordinance may provide credits for outside funding sources, improvements initiated by developers, in-kind contributions, and local tax payments that fund capital improvements.

Impact fee exemptions:

The bill provides that an impact fee ordinance may exempt all or part of a development from an impact fee and must specify the criteria used in determining an exemption and the alternative source of revenue which will offset the fee that is exempted.

Compliance:

The bill provides that an impact fee ordinance that is enacted before July 1, 2006, need not comply with the provisions in this bill until July 1, 2008.

Background:

The Florida Constitution grants local governments broad home rule authority. Impact fees are a unique product of local governments' home rule powers, and the development of such fees has occurred in Florida by home rule ordinance rather than by direct statutory authorization or mandate. Therefore, the characteristics and limitations of impact fees are found in Florida case law rather than statute.[1]

There have been a number of court decisions that address impact fees.[2] In *Hollywood, Inc. v. Broward County*,[3] the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if it offsets needs that are sufficiently attributable to the new dev elopement and the fees collected are adequately earmarked for the benefit of the residents of the new development.[4] In order to show the impact fee meets those requirements, the local government must demonstrate a rational nexus between the need for additional public facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.[5] Because the ordinance at issue satisfied these requirements, the court affirmed the circuit court's validation of the ordinance.[6]

The Florida Supreme Court addressed the issue of impact fees for school facilities in *St. Johns County v. Northeast Builders Association, Inc.*[7] The ordinance at issue conditioned the issuance of a new building permit on the payment of an impact fee. Those fees that were collected were placed in a trust fund for the school board to expend solely "to acquire, construct, expand and equip the educational sites and educational capital facilities necessitated by new development."[8] Also, the ordinance provided for a system of credits to fee-payers for land contributions or the construction of educational facilities. This ordinance required funds not expended within six years to be returned, along with interest on those funds, to the current landowner upon application.[9]

The court applied the dual rational nexus test and found the county met the first prong of the test, but not the second. The builders in *Northeast Builders Association, Inc.* argued that many of the residences in the new development would have no impact on the public school system. The court found the county's determination that every 100 residential units would result in the addition of forty-four students in the public school system was sufficient and, therefore, concluded the first prong of the test was satisfied. However, the court found that the ordinance did not restrict the use of the funds to sufficiently ensure that such fees would be spent to the benefit of those who paid the fees.[10]

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[1] This information is adapted from the Legislative Committee on Intergovernmental Relations (LCIR) publication *Local Government Financial Information Handbook*, 2002 Edition, p. 25.

[2] See, e.g., *Contractors & Builders Ass'n v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 1983).

[3] 431 So. 2d 606 (Fla. 4th DCA 1983).

[4] *See id.* at 611.

[5] *See id.* at 611-612.

[6] *See id* at 614.

[7] 583 So. 2d 635 (Fla. 1991)

[8] *See id.* at 637, citing, St. Johns County, Fla., Ordinance 87-60, § 10(B) (Oct. 20, 1987).

[9] *See id.* at 637

[10] *See id.* at 639. Because the St. Johns County ordinance was not effective within a municipality absent an interlocal agreement between the county and municipality, there was the possibility that impact fees could be used to build a school for development within a municipality that is not subject to the impact fee.

Recent decisions have further clarified the extent to which impact fees may be imposed. In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when residential development has no potential to increase school enrollment, public school impact fees may not be imposed.[11] In City *of Zephyrhills v. Wood*, the district court upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.[12]

As developed under case law, a legally sufficient impact fee has the following characteristics:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for pubic facilities;
- the fee represents a proportional share of the cost of public facilities needed to serve new development;
- the fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- the fee is a one-time charge, although collection may be spread over a period of time;
- the fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions towards the cost of the increased capacity for public facilities.

The Legislative Committee on Intergovernmental Relations (LCIR) reports that forty counties imposed impact fees in FY 2001/02, collecting $466,571,712. In addition, 156 municipalities levying impact fees collected $133,132,215 in FY 2001/02, with thirty-one cities collecting more than $1 million. The largest category of impact fees is transportation for counties, and physical environment for municipalities. An estimated 19 counties levy school impact fees on behalf of school districts in their county.

The 2005 Florida Legislature created the Florida Impact Fee Review Task Force (Task Force). The Task Force was comprised of 15 members representing the state and local governments, the building and development community, the school boards, and an affordable housing advocate. The Task Force was established to serve as an advisory body to the Legislature on the issue of impact fees.

In the Task Force's final report issued to the Legislature, they proposed a number of recommended statutory changes to existing law rather than the creation of a uniform impact fee statute. Further, the task force offered the following recommendations:

- Data – Require local governments to use the most recent and localized data when calculating an impact fee.
- Affordable Housing – Require that all impact fee ordinances significantly address affordable housing. This may include waiving, deferring, exempting, paying out of another source, or establishing a significant affordable housing program. They further recommend fully funding the Sadowski Act.
- Accounting and Reporting Collections and Expenditures – Require that all impact fee collections and expenditures be accounted and reported.
- Notice – Require that local governments provide notice of not less than 90 days before the effective date of an impact fee ordinance.
- Administrative Charges – Require that administrative charges for impact fee collections be limited to "no more than actual cost."

In the Task Force's report, they recommended no statutory guidance regarding the following impact fee topics:

- Methodology used to calculate impact fees;

[11] 760 So. 2d 126 (Fla. 2000), at 134. Volusia County had imposed a school impact fee on a mobile home park for persons aged 55 and older.

[12] 831 So. 2d 233 (Fla. 2d DCA 2002)

- Sharing of impact fees between counties and cities;
- Timing of impact fee payments;
- Time limits for the expenditure of impact fee collections and impact fee refunds;
- Switching the legal burden of proof for impact fee challenges;
- Creation of a presumptively unchallengeable impact fee;
- Impact fee caps; and
- A model impact fee ordinance.

The Task Force recommended that the Legislature consider the following alternative revenue sources for local governments to meet their infrastructure demands:

- Authorizing passage of the Local Option Sales Tax, which includes the Local Government Infrastructure Surtax and the Small County Surtax by majority or supermajority vote of the Board of County Commissioners, and the School Capital Outlay Surtax by majority or supermajority vote of the District School Board, as an option to the referendum requirement;
- Increasing the bonding capacity of County Revenue Sharing Dollars;
- Finding an alternative to augment the Pubic Education Capital Outlay (PECO) fund;
- Fully funding the Sadowski program for affordable housing, and
- Authorizing all local governments to assess a Documentary Stamp Surtax, similar to Miami-Dade County's $0.45 per $100. I

C. SECTION DIRECTORY:

Section 1: Creates s. 16331801, F.S., relating to impact fees.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   The bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate: Local governments that have not already established impact fees may benefit by establishing impact fees consistent with the provisions of this bill. Other local governments that have already established impact fees may either benefit or not based upon the consistency of their impact fee ordinance with the provisions of this bill.

2. Expenditures:

   Indeterminate: Some local governments may need to reenact existing impact fee ordinances to come into compliance with the provisions of this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate: To the extent that impact fee ordinances have been created and impact fees levied inconsistent with the provisions of this bill, the development community may or may not benefit from the passage of this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to impact fees; creating s. 163.31801,
3 F.S.; creating the "Impact Fee Act"; providing legislative
4 intent; providing definitions; requiring that an impact
5 fee meet certain specified requirements; authorizing a
6 local government to adopt an ordinance levying an impact
7 fee as authorized by law in order to fund the
8 infrastructure necessitated by new growth; providing for
9 public notice before an ordinance levying an impact fee is
10 enacted; requiring that an ordinance levying an impact fee
11 specify certain criteria used in calculating and imposing
12 the impact fee; requiring that an ordinance levying an
13 impact fee specify certain requirements for the use of
14 revenue from an impact fee; requiring that an ordinance
15 levying an impact fee provide a process for refunding an
16 impact fee; authorizing an ordinance levying an impact fee
17 to provide certain credits; authorizing an ordinance
18 levying an impact fee to exempt all or part of a
19 development from an impact fee; providing certain dates
20 for compliance; providing an effective date.
21
22 Be It Enacted by the Legislature of the State of Florida:
23
24 Section 1. Section 163.31801, Florida Statutes, is created
25 to read:
26 163.31801 Impact fees; short title; intent; definitions;
27 ordinances levying impact fees.--
28 (1) This section may be cited as the "Impact Fee Act."

29 (2) The Legislature finds that impact fees are an
30 important source of revenue for a local government to use in
31 funding the infrastructure necessitated by new growth. The
32 Legislature further finds that impact fees are an outgrowth of
33 the home rule power of a local government to provide certain
34 services within its jurisdiction. Due to the increased reliance
35 of local governments on impact fees, it is the intent of the
36 Legislature to ensure that impact fees throughout the state are
37 used to maintain adequate public facilities, represent a
38 proportionate share of the cost of each public facility, and
39 promote orderly growth and development.
40 (3) As used in this section, the term:
41 (a) "Capital outlay project" means the buildings,
42 equipment, and structures that are built, installed, or
43 established to serve the need for infrastructure in a new or
44 expanded development, including, but not limited to,
45 transportation, sanitary sewer, solid waste, drainage, potable
46 water, education, parks, and recreational projects.
47 (b) "Impact fee" means a total or partial reimbursement to
48 a local government for the cost of the additional public
49 facilities or services necessitated by new development or the
50 expansion of existing development.
51 (c) "Local government" means a county, municipality, or
52 special district that is authorized by its enabling legislation
53 or by general law to impose an impact fee.
54 (d) "Public notice" means notice as required by s.
55 125.66(2) for a county, s. 166.041(3)(a) for a municipality, or
56 s. 189.417 for a special district. The procedures for public

57 notice which are required in this section are established as the
58 minimum procedures for public notice.
59 (e) "Rational nexus" means a reasonable connection.
60 (4) An impact fee must:
61 (a) Be a one-time charge, although partial payments may be
62 collected at certain times over the course of the development
63 process.
64 (b) Be used for capital outlay projects only. Operating
65 costs and infrastructure deficiencies may not be funded by the
66 revenue from the impact fee.
67 (c) Represent a proportionate share of the cost of the
68 capital outlay project that is needed to serve the new
69 development.
70 (5) A local government is authorized by its home rule
71 power to adopt an ordinance levying an impact fee within its
72 jurisdiction in order to fund the need for infrastructure
73 created by new development or the expansion of existing
74 development. A special district may levy an impact fee only if
75 it is authorized to do so by general law.
76 (6) Before enacting an ordinance levying an impact fee, a
77 county, municipality, or special district must give public
78 notice of the proposed enactment.
79 (7) The ordinance levying an impact fee must:
80 (a) Specify the geographical area to be served by the
81 collection of the impact fee.
82 (b) Specify that there is a rational nexus between the
83 anticipated need for the capital outlay project and the growth
84 generated by the new development.

85 (c) Specify that there is a rational nexus between the
86 anticipated use of the revenue that is collected from the impact
87 fee and the benefits that will accrue to the new development
88 upon completion of the capital outlay project.
89 (d) Specify the criteria and methodology used to calculate
90 the amount of the impact fee and the assumptions on which they
91 are based.
92 (e) Demonstrate that the impact fee does not exceed a
93 proportionate share of the cost of the capital outlay project or
94 system improvement needed to serve the new development.
95 (f) Specify certain times during the development process
96 when partial payments of the impact fee are due.
97 (g) Require that the revenue from the impact fee is spent
98 only on the capital outlay project for which the fee was
99 collected.
100 (h) Specify that the revenue from the impact fee that is
101 collected by a local government shall be deposited into an
102 interest-bearing account. The interest from the account shall
103 also be used only for the capital outlay project.
104 (i) Specify that the revenue from the impact fee and
105 disbursement shall be accounted for and reported separately from
106 other governmental sources of revenue. The accounting and
107 reporting of the revenue from an impact fee shall be available
108 for audit pursuant to s. 218.39.
109 (j) Provide a process for refunding an impact fee that was
110 not expended on or encumbered for the capital outlay project for
111 which it was collected within a reasonable amount of time, not
112 to exceed 8 years following the date of the adoption of the

113 ordinance. A refund may be required after the time for
114 construction of the capital outlay project has expired. An
115 ordinance levying an impact fee must specify who is entitled to
116 the refund, whether it is the developer, the property owner of
117 record at the time of the refund, or some other individual or
118 entity.
119 (8) An ordinance levying an impact fee may provide credits
120 for outside funding sources, improvements initiated by
121 developers, in-kind contributions, and local tax payments that
122 fund capital improvements.
123 (9) An ordinance levying an impact fee may exempt all or
124 part of a development from the impact fee. The ordinance must
125 specify the criteria used in determining an exemption and the
126 alternative source of revenue which will offset the fee that is
127 exempted.
128 (10) An ordinance levying an impact fee which is enacted
129 before July 1, 2006, need not comply with the provisions of this
130 section until July 1, 2008.
131 Section 2. This act shall take effect July 1, 2006.

HB 1583 CS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1583 CS Community Redevelopment
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 2364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	7 Y, 0 N, w/CS	Camechis	Hamby
2) Growth Management Committee		Grayson	Grayson
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

The Community Redevelopment Act of 1969 (Act) was established with the intent to revitalize slum and blighted areas "which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state." Community redevelopment agency's (CRAs) are funded primarily through tax increment financing (TIF). As property tax values in the redevelopment area rise above property values in the base year the redevelopment area was created, increment revenues are generated by applying the current millage rate levied by each taxing authority in the area to the increase in value. Each non-exempt taxing authority that levies taxes on property within a community redevelopment area must annually appropriate the amount of increment revenues to a CRA trust fund. These revenues are used to service bonds issued to finance redevelopment project. CRAs created prior to 2002 may receive TIF contributions for 60 years, while CRAs subsequently created may receive TIF contributions for 40 years. As of March 26, 2006, there were 171 CRAs in Florida.

This bill amends the Act to revise procedures for calculating tax increment revenues, adopting community redevelopment plans or modifications to plans that expand boundaries of a community redevelopment area, and revise procedures for delegating community redevelopment powers to cities by charter counties. Generally, the bill:

- Authorizes CRAs to contract with certain entities to develop and provide affordable housing and to use tax increment dollars to offer incentives for such development.
- Revises procedures regarding the adoption of community redevelopment plans by certain CRAs, and modifications of community redevelopment plans that expand the boundaries of a redevelopment area, to require a joint hearing between the county and municipality to discuss competing policies and uses for the public funds.
- Establishes limitations in certain circumstances on the amount of tax increment contributions that taxing authorities must contribute to CRAs created after July 1, 2006 in a non-charter county, or to CRAs that extend a redevelopment plan beyond a specified time period. These limitations also apply to a CRA in a charter county if the CRA modifies its redevelopment plan after July 1, 2006, to expand the boundaries of the redevelopment area. The bill also authorizes interlocal agreements to provide alternative methods of calculating increment revenues contributed by a taxing authority to a CRA.
- Requires a charter county to approve or deny a city's request for delegation of community redevelopment powers within 120 days or the request is deemed approved.
- Authorizes city and counties to create a slum or blight area study prior to adopting a resolution to create a CRA.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Community Redevelopment Act Generally
The Community Redevelopment Act of 1969, Ch. 163, Part II, F.S. (Act), was enacted to provide a mechanism to revitalize slum and blighted areas "which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state." The Act authorizes each local government to establish one Community Redevelopment Agency (CRA) to, revitalize designated slum and blighted areas upon a "finding of necessity" and a further finding of a "need for a CRA to carry out community redevelopment." During the last two decades, municipalities, and to a lesser extent counties, have increasingly relied upon CRAs as a mechanism for community redevelopment.

CRAs are funded primarily through tax increment financing (TIF). As property tax values in the redevelopment area rise above property values in the base year the redevelopment area was created, increment revenues are generated by applying the current millage rate levied by each taxing authority in the area to the increase in value. Each non-exempt taxing authority that levies taxes on property within a community redevelopment area must annually appropriate the amount of increment revenues to the CRA trust fund. These revenues are used primarily to service bonds issued to finance redevelopment projects. CRAs created prior to 2002 may receive TIF contributions for 60 years, while CRAs subsequently created may receive TIF contributions for 40 years.

As of March 26, 2006, there were 171 CRAs in Florida.[1]

Creation of Community Redevelopment Agencies
A county or municipality may not exercise redevelopment powers conferred by the Act until after the governing body has adopted a resolution finding that:

> (1) One or more slum or blighted areas, or one or more areas in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, exist in such county or municipality; and,
> (2) The rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas, including, if appropriate, the development of housing which residents of low or moderate income, including the elderly, can afford, is necessary in the interest of the public health, safety, morals, or welfare of the residents of such county or municipality.[2]

Further, "[c]ommunity redevelopment in a community redevelopment area shall not be planned or initiated unless the governing body has, by resolution, determined such area to be a slum area, a blighted area, or an area in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, or a combination thereof, and designated such area as appropriate for community redevelopment."[3]

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[1] Department of Community Affairs, Special District Detail Report, http://www.floridaspecialdistricts.org/OfficialList/report.asp, March 26, 2006
[2] s. 163.355, F.S.
[3] s. 163.360(1), F.S.

The Act[4] defines "slum area" and "blighted area" as follows:

> (7) "Slum area" means an area having physical or economic conditions conducive to disease, infant mortality, juvenile delinquency, poverty, or crime because there is a predominance of buildings or improvements, whether residential or nonresidential, which are impaired by reason of dilapidation, deterioration, age, or obsolescence, and exhibiting one or more of the following factors:
>
> (a) Inadequate provision for ventilation, light, air, sanitation, or open spaces;
> (b) High density of population, compared to the population density of adjacent areas within the county or municipality; and overcrowding, as indicated by government-maintained statistics or other studies and the requirements of the Florida Building Code; or
> (c) The existence of conditions that endanger life or property by fire or other causes.
>
> (8) "Blighted area" means an area in which there are a substantial number of deteriorated, or deteriorating structures, in which conditions, as indicated by government-maintained statistics or other studies, are leading to economic distress or endanger life or property, and in which two or more of the following factors are present:
>
> (a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
> (b) Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the 5 years prior to the finding of such conditions;
> (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
> (d) Unsanitary or unsafe conditions;
> (e) Deterioration of site or other improvements;
> (f) Inadequate and outdated building density patterns;
> (g) Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality;
> (h) Tax or special assessment delinquency exceeding the fair value of the land;
> (i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
> (j) Incidence of crime in the area higher than in the remainder of the county or municipality;
> (k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality;
> (l) A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality;
> (m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or
> (n) Governmentally owned property with adverse environmental conditions caused by a public or private entity.
>
> However, the term "blighted area" also means any area in which at least one of the factors identified in paragraphs (a) through (n) are present and all taxing authorities subject to s. 163.387(2)(a) agree, either by interlocal agreement or agreements with the agency or by resolution, that the area is blighted. Such agreement or resolution shall only determine that the area is blighted. For purposes of qualifying for the tax credits authorized in chapter 220, "blighted area" means an area as defined in this subsection.

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[4] s. 163.340, F.S.

A "community redevelopment area" is defined as "a slum area, a blighted area, or an area in which there is a shortage of housing that is affordable to residents of low or moderate income, including the elderly, or a coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot layout or inadequate street layout, or a combination thereof which the governing body designates as appropriate for community redevelopment."

The division of authority between a county and municipality regarding the creation or expansion of a municipal CRA depends upon whether the county is a non-charter or charter county, or whether a CRA was created *prior* to adoption of a county charter. The division of authority may be summarized as follows:

	Authority over creation, expansion, or modification of a CRA
Charter County	Charter counties possess sole authority to create CRAs within the county, but may delegate authority to a municipality via interlocal agreement.
Non-Charter County	Non-charter counties do not have authority over the creation, expansion, or modification of municipal CRAs within the county. Therefore, a municipality may create a CRA and operate the CRA, requiring the long-term contribution of TIF payments from the county, even if the county objects or has other county funding issues to address.
A CRA created in a charter county *prior* to adoption of the county charter	The charter county does not have authority over the operations of the CRA, including modification of the redevelopment plan or expansion of CRA boundaries.

Governance of a Community Redevelopment Agency

The governing body of the local government creating a CRA may appoint a board of commissioners of between 5 and 7 members to govern the CRA, or the governing body may declare itself to be the CRA. A governing body that consists of five members may appoint two additional persons to act as members of the CRA board. In a home rule charter county, powers granted under the Act must be exercised exclusively by the governing body of the charter county unless the county adopts a resolution delegating such powers within the boundaries of a municipality to the governing body of the municipality.[5] This limitation does not apply, however, to a CRA created by a municipality prior to the adoption of a county home rule charter. In addition, a non-charter county cannot exercise powers conferred by the Act within the boundaries of a municipality unless the governing body of the municipality expresses its consent by resolution.[6]

Community Redevelopment Agency Plans

Each community redevelopment area must have an approved community redevelopment plan in conformance with the local government comprehensive plan.[7] The plan must be sufficiently complete to indicate any land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation to be carried out in the designated area.[8] The plan must also provide for the development of affordable housing in the area or state the reasons for not addressing the issue in the plan.[9] The local government may subsequently modify the community redevelopment plan upon the recommendation of the CRA.[10]

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[5] s. 163.410, F.S.
[6] s. 163.415, F.S.
[7] s. 163.358(2)(a), F.S.
[8] s. 163.358(2)(b), F.S.
[9] s. 163.358(2)(c), F.S.
[10] s. 163.361, F.S.

Section 163.361, F.S., governs the modification of community redevelopment plans, and authorizes CRAs -- those created by counties or cities -- to modify such plans after public notice and a public hearing. Section 163.361(1), F.S., allows amendments to the redevelopment plan to change the boundaries of a redevelopment area or the development and implementation of community policing innovations. The section places no restrictions on the magnitude of expansions or exclusions, nor does the section distinguish between modifications to plans in charter and non-charter counties.

Redevelopment Trust Funds and Tax Increment Financing

Section 163.387, F.S., provides for the creation of a redevelopment trust fund for each CRA. Funds allocated to and deposited into this fund are used by the CRA to finance any community redevelopment undertaken based on an approved community redevelopment plan. In tax increment financing, property values in a certain defined community redevelopment area are frozen by local ordinance at the assessed value for the base year, which is the year in which the community redevelopment area was established. As redevelopment proceeds within the redevelopment area, the actual assessed value of property within the redevelopment area should increase, generating tax increment revenues for the CRA.

Section 163.340(2), F.S., defines "taxing authority" to mean the state or any county, municipality, authority, special district as defined in s. 165.031(5), F.S., or other public body of the state, except a school district." Taxing authorities that levy ad valorem taxes on property located within a community redevelopment area are required to deposit the incremental revenue generated as a result of this increase in property value into a redevelopment trust fund for the CRA's use. Section 163.387, F.S., specifically provides that "the annual funding of the redevelopment trust fund shall be in an amount not less than that increment in the income, proceeds, revenues, and funds of each taxing authority derived from or held in connection with undertaking and carrying out of community redevelopment under this part."

Exemptions from Tax Increment Financing

Section 163.387(2)(c), F.S., exempts the following public bodies or taxing authorities created prior to July 1, 1993, from the requirement to deposit an appropriation equaling incremental revenue into a CRA's redevelopment trust fund:

- A special district that levies ad valorem taxes on taxable real property in more than one county.
- A special district, the sole available source of revenue of which is ad valorem taxes at the time an ordinance is adopted under this section.
- A library district, except a library district in a jurisdiction where the community redevelopment agency had validated bonds as of April 30, 1984.
- A neighborhood improvement district created under the Safe Neighborhoods Act.
- A metropolitan transportation authority.
- A water management district created under s. 373.069, F.S.

In addition, a local governing body that creates a CRA may exempt a special district that levies ad valorem taxes within that community redevelopment area from the requirement to deposit incremental revenue into a CRA's redevelopment trust fund.[11] The local governing body may grant the exemption either in its sole discretion or in response to the request of the special district. The local governing body must establish procedures by which a special district may submit a written request for an exemption from contributing to the trust fund. In deciding whether to deny or grant a special district's request for exemption, the local governing body must consider certain specified factors.

The local governing body must hold a public hearing on a special district's request for exemption after public notice of the hearing is published in a newspaper having a general circulation in the county or

[11] s. 163.387(2)(d), F.S.

municipality that created the community redevelopment area. The notice must describe the time, date, place and purpose of the hearing, identify generally the community redevelopment area covered by the plan, and the impact of the plan on the special district that requested the exemption. If a local governing body grants an exemption to a special district, the local governing body and the special district must enter into an interlocal agreement that establishes the conditions of the exemption, including the period of time for which the exemption is granted. If a local governing body denies a request for exemption by a special district, the local governing body must provide the special district with a written analysis specifying the rationale for the denial.

The decision to either deny or grant an exemption must be made by the local governing body within 120 days after the date the written request was submitted to the local governing body pursuant to procedures established by the governing body.

Community Redevelopment Agency Powers
CRAs are granted those powers "necessary or convenient to carry out and effectuate the purposes of the act." These powers include the power to issue bonds and acquire property by eminent domain, if approved by the governing body that established the CRA. CRAs are also granted the power to undertake and carry out community redevelopment and related activities within the community redevelopment area. Redevelopment may include such activities as the acquisition and disposition of real property located within the community redevelopment area and the repair or rehabilitation of structures within the community redevelopment area for dwelling uses.[12]

Charter counties and non-charter counties are treated differently under the Act. Section 163.410, F.S., grants charter counties exclusive authority to exercise the powers of the Act, but allows a charter county to delegate such powers to a municipality. In 1983, ch. 83-29, L.O.F., was enacted to provide that the section does not apply to any community redevelopment agency created by a municipality prior to adoption of a county home rule charter. Noncharter counties are not granted exclusive control over community redevelopment activities.

Legislative Committee on Intergovernmental Relations (LCIR) Study
During the 2003-2004 interim, the LCIR conducted a study of economic revitalization initiatives in distressed urban areas. During the study, local governments in Florida cited CRAs as the most commonly used economic development and revitalization program in Florida. The LCIR continued reviewing the issue of urban revitalization with an emphasis on CRAs. At the conclusion of the review, LCIR issued a comprehensive report in January 2005 entitled Local Government Concerns Regarding Community Redevelopment Agencies in Florida (Report). The Report included the following "Findings":

- County and municipal governments agree that CRAs are useful mechanisms for addressing slum and blight.
- Representatives from municipal government and CRA officials prefer no change to existing CRA statutes, stating that current law has resulted in improvements to areas previously designated as slum or blighted.
- Representatives from municipal government and CRA officials also submit that any problems can best be addressed locally through interlocal agreements rather than statutory changes.
- Representatives of county government advocate changes to existing CRA statutes, stating current law is responsible for creating an imbalance in power between municipal and county governments.
- Problems cited by county government representatives include, among others: county government has insufficient input into operations and expansion of existing CRA districts and creation of new districts; and non-charter counties have no voice whatsoever in CRA activities within their jurisdiction.
- Current law does not require or provide for interlocal agreements between county and municipal governments.

[12] s. 163.370(1)(c), F.S.

- According to 2003 millage rates for county and municipal governments, 78 municipalities with CRAs have lower millage rates than their host county and 36 municipalities with CRAs have higher millage rates than their host county.
- LCIR staff estimates that, based on 2003 millage rates, county government contributes $81,674 to municipal CRAs per each $100,000 increase in the CRA district's taxable value (assumed increase), compared to municipal government contribution of $66,905 to municipal CRAs per each $100,000 increase in the CRA district's taxable value.
- A recent evaluation of three CRAs in Florida, sponsored by the Florida Redevelopment Association, found that TIF payments impose a greater financial burden on municipalities than on counties when measured as a percent of taxable property values and as a percent of overall operating revenues. In addition, some municipalities contribute larger TIF payments than do their host counties.

Effect of Proposed Changes

Section 1. Amending s. 163.340, F.S., relating to Definition of "Taxing Authorities"
This section amends. s. 163.340, F.S., to create a definition of the term "taxing authorities" as follows: "Taxing authority" means any local government other than a school district that levies ad valorem millage against the property within a community redevelopment area." Under the Act, a taxing authority must appropriate tax increment revenues to the CRA for use in redevelopment projects.

Section 2. Amending s. 163.346, F.S., relating to Notice to Taxing Authorities
Currently, s. 163.346, F.S., requires a city or county governing body to notify all taxing authorities prior to enacting any resolution or ordinance required to create a community redevelopment agency; prior to approving, adopting, or amending a community redevelopment plan; and prior to issuing redevelopment revenue bonds. The governing body must provide public notice of such proposed action and, at least 15 days before such proposed action, mail by registered mail a notice to each taxing authority that levies ad valorem taxes on taxable real property contained within the geographic boundaries of the redevelopment area.

This bill amends s. 163.346, F.S., to also require notice to taxing authorities if the governing body of the city or county adopts a resolution establishing a slum and blight study area under s. 163.354, F.S., as created by this bill.

Section 3. Creates s. 163.354, F.S., relating to Development of Study Area
This new section authorizes the governing body of a city or county to adopt a resolution establishing a slum and blight study area before adopting a resolution making a finding of necessity to create a CRA as required by s. 163.355, F.S.

Section 4. Amends s. 163.360, F.S., relating to Community Redevelopment Plans
Under current s. 163.360, F.S., a county, municipality, or CRA may itself prepare or cause to be prepared a community redevelopment plan, or any person or agency, public or private, may submit such a plan to a community redevelopment agency. The CRA must submit any community redevelopment plan it recommends for approval, together with its written recommendations, to the governing body and to each taxing authority that levies ad valorem taxes on taxable real property contained within the geographic boundaries of the redevelopment area. The governing body must conduct a public hearing on a community redevelopment plan after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the county or municipality. The notice must describe the time, date, place, and purpose of the hearing, identify generally the community redevelopment area covered by the plan, and outline the general scope of the community redevelopment plan under consideration. Following the hearing, the governing body may approve the community redevelopment and the plan if it makes certain determinations required by law.

This bill amends that section to authorize a CRA to contract with qualified nonprofits, faith based organizations or other entities to develop and provide affordable and workforce housing in the area, as

well as use tax increment dollars to offer incentives for such development. Examples of incentives are: low interest or no interest loans through qualified lenders or the CRA itself; revolving loans; façade improvement loans or grants; matching, seed or leverage dollars for loans or grants; and developer subsidies. Other incentives as determined needed by the CRA may be provided. For the purposes of this provision, "affordable housing" means housing that meets the definition of "affordable" under s. 420.0004(3), F.S., and "workforce housing" means housing for which the monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households whose income is 150% of the median income of the area.

The bill also creates additional procedures for approving plans recommended by CRAs created after October 1, 2006, that were not created pursuant to a delegation of authority by a charter county to a city. For any CRA created after October 1, 2006, that was not created pursuant to a delegation of authority under s. 163.410, F.S., by a county that has adopted a home rule charter, the following additional procedures are required prior to the adoption of a community redevelopment plan by the governing body of a municipality:

1) Within 30 days after receipt of any community redevelopment plan recommended by a CRA, the county may provide written notice to the governing body of the municipality that the county has competing policy goals and plans for the public funds the county would be required to contribute to the tax increment under the proposed community redevelopment plan.
2) If the county provides notice within 30 days as required by 1), the board of county commissioners and the governing body of the municipality that created the community redevelopment agency must schedule and hold a joint hearing chaired by the chair of the board of county commissioners at which the competing policy goals for the public funds must be discussed. Any such hearing must be held within 90 days after receipt by the county of the recommended community redevelopment plan. Prior to the joint public hearing, the county may propose an alternative redevelopment plan to address the conditions identified in the resolution making a finding of necessity required by s. 163.355, F.S. If the county proposes an alternative redevelopment plan, the alternative plan must be delivered to the governing body of the municipality that created the CRA at least 20 days prior to holding the joint meeting.
3) If the county provides notice within 30 days as required by 1), the municipality may not proceed with adoption of the plan until 30 days after the joint hearing unless the board of county commissioners failed to schedule and attend the joint hearing within the required 90-day period.

Notwithstanding the timeframes described above, the county and the municipality may at any time voluntarily use the dispute resolution process established in ch. 164, F.S., to attempt to resolve any competing policy goals between the county and municipality related to the CRA; however, a county or municipality may not require the other to participate in the voluntary dispute resolution process.

Section 5. Amends s. 163.361, F.S., relating to Modification of Redevelopment Plans
Currently, if at any time after the approval of a community redevelopment plan by the governing body of the city or county creating a CRA it becomes necessary or desirable to amend or modify the plan, the governing body may do so upon the recommendation of the CRA. The CRA recommendation to amend or modify a redevelopment plan may include a change in the boundaries of the redevelopment area to add land to or exclude land from the redevelopment area, or may include the development and implementation of community policing innovations. The governing body must hold a public hearing on a proposed modification of any community redevelopment plan after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the CRA.

Prior to the adoption of any modification to a community redevelopment plan that expands the boundaries of the community redevelopment area or extends the time certain set forth in the redevelopment plan, the CRA must report the proposed modification to each taxing authority in writing or by an oral presentation, or both, regarding the proposed modification.

This bill amends s. 163.361, F.S., to create additional procedures applicable to municipal CRAs that were not created pursuant to a delegation of authority under s. 163.410, F.S., by a county that has adopted a home rule charter and that modifies its adopted community redevelopment plan in a manner that expands the boundaries of the redevelopment area, the following additional procedures are required prior to the governing body's adopting a modified community redevelopment plan:

1) Within 30 days after receipt of any report of a proposed modification that expands the boundaries of the redevelopment area, the county may provide notice to the governing body of the municipality that the county has competing policy goals and plans for the public funds the county would be required to contribute to the tax increment under the proposed modification to the community redevelopment plan.
2) If the county provides notice within 30 days as required in 1), the board of county commissioners and the governing body of the municipality that created the community redevelopment agency must schedule and hold a joint hearing chaired by the chair of the board of county commissioners at which the competing policy goals for the public funds must be discussed. Any such hearing must be held within 90 days after receipt by the county of the recommended modification of the adopted community redevelopment plan. Prior to the joint public hearing, the county may propose an alternative modified community redevelopment plan to address the conditions identified in the resolution making a finding of necessity required under s. 163.355, F.S. If the county proposes an alternative redevelopment plan, the plan must be delivered to the governing body of the municipality that created the community redevelopment agency at least 20 days prior to the joint meeting.
3) If the county provides notice within 30 days as required in 1), the municipality may not proceed with the adoption of the proposed modification to the community redevelopment plan until 30 days after the joint hearing unless the board of county commissioners failed to schedule and attend the joint hearing within the required 90-day period.

Notwithstanding the timeframes established above, the county and the municipality may at any time voluntarily use the dispute resolution process established in ch.164, F.S., to attempt to resolve any competing policy goals between the county and municipality related to the expansion of the boundaries of the community redevelopment agency; however, the county or the municipality may not require the other to participate in the voluntary dispute resolution process.

Section 6. Amends s. 163.387, F.S., relating to the Redevelopment Trust Fund
Section 163.387, F.S., requires the establishment of a redevelopment trust fund into which all tax increment revenues are deposited. This section establishes the mechanism for calculating the tax increment revenues deposited into the trust fund for redevelopment purposes. CRAs created prior to 2002 may receive TIF contributions for 60 years, while CRAs subsequently created may receive TIF contributions for 40 years.

The bill amends s. 163.387, F.S., to limit the amount of tax increment revenue owed by taxing authorities to any CRA created after October 1, 2006, that is not created pursuant to a delegation of authority by a charter county. The amount of tax increment to be contributed by any taxing authority is limited as follows:

a. If a taxing authority imposes a millage rate that exceeds the millage rate imposed by the governing body that created the trust fund, the amount of tax increment to be contributed by the taxing authority imposing the higher millage rate is calculated using the millage rate imposed by the governing body that created the trust fund; however, a taxing authority may voluntarily contribute tax increment at a higher rate for a period of time as specified by interlocal agreement between the taxing authority and the community redevelopment agency.

b. At any time more than 19 years after the fiscal year in which a taxing authority made its first contribution to a redevelopment trust fund, the taxing authority, by resolution effective no sooner than the next fiscal year and adopted by majority vote of the taxing authority's governing body at

a public hearing held not less than 30 or more than 45 days after written notice delivered to the community redevelopment agency and published in a newspaper of general circulation in the redevelopment area, may limit the amount of increment contributed by the taxing authority to the trust fund to the average annual amount the taxing authority was obligated to contribute to the trust fund in the 3 fiscal years immediately preceding the adoption of such resolution, plus any increase in the increment after the adoption of the resolution computed using the taxable values of any area which is subject to an area reinvestment agreement. The term "area reinvestment agreement" is defined as "an agreement between the community redevelopment agency and a private party, with or without additional parties, which provides that the increment computed for a specific area shall be reinvested in public infrastructure or services, or both, including debt service, supporting one or more projects consistent with the community redevelopment plan that is identified in the agreement to be constructed within that area." A reinvestment agreement must specify the estimated total amount of public investment necessary to provide the public infrastructure or services, or both, including any applicable debt service. The contribution to the trust fund of the increase in the increment of any area that is subject to an area reinvestment agreement following the passage of the above-required resolution ceases when the amount specified in the area reinvestment agreement as necessary to provide the public infrastructure or services, or both, including any applicable debt service, have been invested.

For any CRA that was not created pursuant to a delegation of authority under s. 163.410, F.S., by a county that has adopted a home rule charter and that modifies its adopted community redevelopment plan after October 1, 2006, in a manner that expands the boundaries of the redevelopment area, the amount of increment to be contributed by any taxing authority with respect to the expanded area is limited as set forth in s. 163.387(1)(b)1.a. and b., F.S.

The bill also provides that an alternative method of determining the amount and time or times of payment of, and rate of interest upon, tax increments contributed to the trust fund, including formulae and limits different than those specified in law may be established through interlocal agreement between any taxing authorities required to contribute a tax increment to the trust fund and the governing body that created the CRA.

Section 7. Amends s. 163.410, F.S., relating to Charter Counties

Currently, s. 163.410, F.S., provides that in a charter county, the powers conferred by the Act must be exercised exclusively by the governing body of the county unless the county governing body delegates the power, by resolution, to the governing body of a municipality. A delegation to a municipality confers only those powers that are specifically enumerated in the delegating resolution. Any power not specifically delegated is reserved exclusively to the county governing body. This provision does not, however, affect any CRA created by a municipality prior to the adoption of a county home rule charter.

Unless otherwise provided by an existing ordinance, resolution, or interlocal agreement between a charter county and a municipality, the charter county governing body must "act on" any request from a municipality for a delegation of powers or a change in an existing delegation of powers within 120 days after the receipt of all required documentation or such request must be immediately sent to the county governing body for consideration.

This bill amends s. 163.410, F.S., to require the county to "approve or deny" a request for a delegation within 120 days after receipt of all required documentation. If the charter county does not approve or deny the request within that timeframe, the request is deemed approved. Any request by the county for additional documentation or other information must be made in writing to the municipality. The county must notify the municipality in writing within 30 days after receiving all the required documentation and other requested information that such information is complete. If the meeting of the county commission at which the request for a delegation of powers or a change in an existing delegation of powers is unable to be held due to events beyond the control of the county, the request must be acted upon at the next regularly scheduled meeting of the county commission without regard to the 120-day limitation.

If the county does not act upon the request at the next regularly scheduled meeting, the request is deemed approved.

C. SECTION DIRECTORY:

Section 1. Amending s. 163.340, F.S.; defining the term "taxing authority";
Section 2. Amending s. 163.346, F.S.; revising a requirement that a governing body notify taxing authorities before taking certain actions;
Section 3. Creating s. 163.354, F.S.; authorizing the adoption of a resolution establishing a slum and blight study area before making a finding of necessity;
Section 4. Amending s. 163.360, F.S.; specifying additional notice, hearing, and dispute resolution procedures for adoption of a community redevelopment plan for certain community redevelopment agencies;
Section 5. Amending s. 163.361, F.S.; specifying additional notice, hearing, and dispute resolution procedures for adoption of a modified community redevelopment plan expanding redevelopment area boundaries for certain community redevelopment agencies;
Section 6. Amending s. 163.387, F.S.; specifying for certain redevelopment agencies certain limitations on amounts of increment contributed to a redevelopment trust fund by certain taxing authorities; authorizing enactment of an interlocal agreement providing for an alternative determination of amounts of, payment schedules for, and interest on increment contributions to a redevelopment trust fund;
Section 7. Amending s. 163.410, F.S.; providing requirements for actions by certain counties delegating or changing a delegation of powers to a municipality for community redevelopment areas;
Section 8. Providing an effective date.

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: This bill provides limitations on the required contributions of a taxing authority in a CRA in certain circumstances. It also allows for an alternative method of calculating the amount, times of payment, and interest on increment revenues.

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: Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds;

reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Local Government Council adopted a strike-all amendment to the bill for the purpose of clarifying provisions in the bill as filed.

1 A bill to be entitled
2 An act relating to community redevelopment; amending s.
3 163.340, F.S.; defining the term "taxing authority";
4 amending s. 163.346, F.S.; revising a requirement that a
5 governing body notify taxing authorities before taking
6 certain actions; creating s. 163.354, F.S.; authorizing
7 the adoption of a resolution establishing a slum and
8 blight study area before making a finding of necessity;
9 amending s. 163.360, F.S.; specifying additional notice,
10 hearing, and dispute resolution procedures for adoption of
11 a community redevelopment plan for certain community
12 redevelopment agencies; amending s. 163.361, F.S.;
13 specifying additional notice, hearing, and dispute
14 resolution procedures for adoption of a modified community
15 redevelopment plan expanding redevelopment area boundaries
16 for certain community redevelopment agencies; amending s.
17 163.387, F.S.; specifying for certain redevelopment
18 agencies certain limitations on amounts of increment
19 contributed to a redevelopment trust fund by certain
20 taxing authorities; authorizing enactment of an interlocal
21 agreement providing for an alternative determination of
22 amounts of, payment schedules for, and interest on
23 increment contributions to a redevelopment trust fund;
24 amending s. 163.410, F.S.; providing requirements for
25 actions by certain counties delegating or changing a
26 delegation of powers to a municipality for community
27 redevelopment areas; providing an effective date.
28

29 Be It Enacted by the Legislature of the State of Florida:
30
31 Section 1. Subsection (2) of section 163.340, Florida
32 Statutes, is amended, and subsection (24) is added to that
33 section, to read:
34 163.340 Definitions.--The following terms, wherever used
35 or referred to in this part, have the following meanings:
36 (2) "Public body" ~~or "taxing authority"~~ means the state or
37 any county, municipality, authority, special district as defined
38 in s. 165.031(5), or other public body of the state, except a
39 school district.
40 (24) "Taxing authority" means any local government other
41 than a school district that levies ad valorem millage against
42 the property within a community redevelopment area.
43 Section 2. Section 163.346, Florida Statutes, is amended
44 to read:
45 163.346 Notice to taxing authorities.--Before the
46 governing body adopts any resolution or enacts any ordinance
47 required under s. 163.354, s. 163.355, s. 163.356, s. 163.357,
48 or s. 163.387; establishes a study area; creates a community
49 redevelopment agency; approves, adopts, or amends a community
50 redevelopment plan; or issues redevelopment revenue bonds under
51 s. 163.385, the governing body must provide public notice of
52 such proposed action pursuant to s. 125.66(2) or s.
53 166.041(3)(a) and, at least 15 days before such proposed action,
54 mail by registered mail a notice to each taxing authority which
55 levies ad valorem taxes on taxable real property contained
56 within the geographic boundaries of the redevelopment area.

57 Section 3. Section 163.354, Florida Statutes, is created
58 to read:
59 163.354 Development of study area.--Prior to adopting a
60 resolution making a finding of necessity required by s. 163.355,
61 the governing body may adopt a resolution establishing a slum
62 and blight study area.
63 Section 4. Subsection (6) of section 163.360, Florida
64 Statutes, is amended to read:
65 163.360 Community redevelopment plans.--
66 (6)(a) The governing body shall hold a public hearing on a
67 community redevelopment plan after public notice thereof by
68 publication in a newspaper having a general circulation in the
69 area of operation of the county or municipality. The notice
70 shall describe the time, date, place, and purpose of the
71 hearing, identify generally the community redevelopment area
72 covered by the plan, and outline the general scope of the
73 community redevelopment plan under consideration.
74 (b) For any community redevelopment agency created after
75 January 1, 2006, that was not created pursuant to a delegation
76 of authority under s. 163.410 by a county that has adopted a
77 home rule charter, the following additional procedures are
78 required prior to the governing body's adopting a community
79 redevelopment plan under subsection (7):
80 1. Within 30 days after receipt of any community
81 redevelopment plan recommended by a community redevelopment
82 agency under subsection (5), the county shall provide written
83 notice to the governing body of the municipality that the county
84 has competing policy goals and plans for the public funds the

85 county would be required to contribute to the tax increment
86 under the proposed community redevelopment plan.
87 2. If the notice required in subparagraph 1. is timely
88 provided, the board of county commissioners and the governing
89 body of the municipality that created the community
90 redevelopment agency shall schedule and hold a joint hearing
91 chaired by the county chair at which the competing policy goals
92 for the public funds shall be discussed. Any such hearing must
93 be held within 90 days after receipt by the county of the
94 recommended community redevelopment plan. Prior to the joint
95 public hearing, the county may propose an alternative
96 redevelopment plan to address the conditions identified in the
97 resolution making a finding of necessity required by s. 163.355.
98 3. If the notice required in subparagraph 1. is timely
99 provided, the municipality may not proceed with the adoption of
100 the plan under subsection (7) until 45 days after the joint
101 hearing unless the board of county commissioners has failed to
102 schedule and attend the joint hearing within the required 90-day
103 period.
104 4. Notwithstanding the timeframes established in
105 subparagraphs 2. and 3., the county and the municipality may at
106 any time voluntarily use the dispute resolution process
107 established in chapter 164 to attempt to resolve any competing
108 policy goals between the county and municipality related to the
109 community redevelopment agency. Nothing in this subparagraph
110 grants the county or the municipality the authority to require
111 the other to participate in the dispute resolution process.

112 Section 5. Subsection (3) of section 163.361, Florida
113 Statutes, is amended to read:
114 163.361 Modification of community redevelopment plans.--
115 (3)(a) In addition to the requirements of s. 163.346, and
116 prior to the adoption of any modification to a community
117 redevelopment plan that expands the boundaries of the community
118 redevelopment area or extends the time certain set forth in the
119 redevelopment plan as required by s. 163.362(10), the agency
120 shall report such proposed modification to each taxing authority
121 in writing or by an oral presentation, or both, regarding such
122 proposed modification.
123 (b) For any community redevelopment agency that was not
124 created pursuant to a delegation of authority under s. 163.410
125 by a county that has adopted a home rule charter and that
126 modifies its adopted community redevelopment plan in a manner
127 that expands the boundaries of the redevelopment area, the
128 following additional procedures are required prior to the
129 governing body's adopting a modified community redevelopment
130 plan:
131 1. Within 30 days after receipt of any report of a
132 proposed modification that expands the boundaries of the
133 redevelopment area, the county shall provide notice to the
134 governing body of the municipality that the county has competing
135 policy goals and plans for the public funds the county would be
136 required to contribute to the tax increment under the proposed
137 modification to the community redevelopment plan.
138 2. If the notice required in subparagraph 1. is timely
139 provided, the board of county commissioners and the governing

140 body of the municipality that created the community
141 redevelopment agency shall schedule and hold a joint hearing
142 chaired by the county chair at which the competing policy goals
143 for the public funds shall be discussed. Any such hearing shall
144 be held within 90 days after receipt by the county of the
145 recommended modification of the adopted community redevelopment
146 plan. Prior to the joint public hearing, the county may propose
147 an alternative modified community redevelopment plan to address
148 the conditions identified in the resolution making a finding of
149 necessity required under s. 163.355.
150 3. If the notice required in subparagraph 1. is timely
151 provided, the municipality may not proceed with the adoption of
152 the plan under s. 163.360(7) until 45 days after the joint
153 hearing unless the board of county commissioners has failed to
154 schedule and attend the joint hearing within the required 90-day
155 period.
156 4. Notwithstanding the timeframes established in
157 subparagraphs 2. and 3., the county and the municipality may at
158 any time voluntarily use the dispute resolution process
159 established in chapter 164 to attempt to resolve any competing
160 policy goals between the county and municipality related to the
161 expansion of the boundaries of the community redevelopment
162 agency. Nothing in this subparagraph grants the county or the
163 municipality the authority to require the other to participate
164 in the dispute resolution process.
165 Section 6. Subsection (1), paragraph (a) of subsection
166 (2), and subsection (3) of section 163.387, Florida Statutes,
167 are amended to read:

168 163.387 Redevelopment trust fund.--
169 (1)(a) After approval of a community redevelopment plan,
170 there shall be established for each community redevelopment
171 agency created under s. 163.356 a redevelopment trust fund.
172 Funds allocated to and deposited into this fund shall be used by
173 the agency to finance or refinance any community redevelopment
174 it undertakes pursuant to the approved community redevelopment
175 plan. No community redevelopment agency may receive or spend any
176 increment revenues pursuant to this section unless and until the
177 governing body has, by ordinance, provided for the funding of
178 the redevelopment trust fund for the duration of a community
179 redevelopment plan. Such ordinance may be adopted only after the
180 governing body has approved a community redevelopment plan. The
181 annual funding of the redevelopment trust fund shall be in an
182 amount not less than that increment in the income, proceeds,
183 revenues, and funds of each taxing authority derived from or
184 held in connection with the undertaking and carrying out of
185 community redevelopment under this part. Such increment shall be
186 determined annually and shall be that amount equal to 95 percent
187 of the difference between:
188 1.~~(a)~~ The amount of ad valorem taxes levied each year by
189 each taxing authority, exclusive of any amount from any debt
190 service millage, on taxable real property contained within the
191 geographic boundaries of a community redevelopment area as
192 indicated by the preliminary assessment roll; and
193 2.~~(b)~~ The amount of ad valorem taxes which would have been
194 produced by the rate upon which the tax is levied each year by
195 or for each taxing authority, exclusive of any debt service

196 millage, upon the total of the assessed value of the taxable
197 real property in the community redevelopment area as shown upon
198 the most recent assessment roll used in connection with the
199 taxation of such property by each taxing authority prior to the
200 effective date of the ordinance providing for the funding of the
201 trust fund.
202
203 However, the governing body of any county as defined in s.
204 125.011(1) may, in the ordinance providing for the funding of a
205 trust fund established with respect to any community
206 redevelopment area created on or after July 1, 1994, determine
207 that the amount to be funded by each taxing authority annually
208 shall be less than 95 percent of the difference between
209 subparagraphs 1. and 2. ~~paragraphs (a) and (b)~~, but in no event
210 shall such amount be less than 50 percent of such difference.
211 (b)1. For any community redevelopment agency created after
212 July 1, 2006, that was not created pursuant to a delegation of
213 authority under s. 163.410 by a county that has adopted a home
214 rule charter, or that extends the time certain set forth in the
215 redevelopment plan as required by s. 163.362(10) beyond 40 years
216 after the later of the fiscal year in which the initial
217 redevelopment plan is adopted or the most recent amendment to
218 the redevelopment plan is adopted, the amount of tax increment
219 to be contributed by any taxing authority shall be limited as
220 follows:
221 a. If a taxing authority imposes a millage rate that
222 exceeds the millage rate imposed by the governing body that
223 created the trust fund, the amount of tax increment to be

224 contributed by the taxing authority imposing the higher millage
225 rate shall be calculated using the millage rate imposed by the
226 governing body that created the trust fund, provided that any
227 taxing authority may voluntarily contribute amounts of tax
228 increment at a higher rate for a period of time as specified by
229 interlocal agreement between the taxing authority and the
230 community redevelopment agency.
231 b. At any time more than 19 years after the fiscal year in
232 which a taxing authority made its first contribution to a
233 redevelopment trust fund, the taxing authority, by resolution
234 effective no sooner than the next fiscal year and adopted by
235 majority vote of the taxing authority's governing body at a
236 public hearing held not less than 30 or more than 45 days after
237 written notice delivered to the community redevelopment agency
238 and published in a newspaper of general circulation in the
239 redevelopment area, may limit the amount of increment
240 contributed by the taxing authority to the trust fund to the
241 average annual amount the taxing authority was obligated to
242 contribute to the trust fund in the 3 fiscal years immediately
243 preceding the adoption of such resolution, plus any increase in
244 the increment after the adoption of the resolution computed
245 using the taxable values of any area which is subject to an area
246 reinvestment agreement. As used in this subparagraph, the term
247 "area reinvestment agreement" means an agreement between the
248 community redevelopment agency and a private party, with or
249 without additional parties, provided that all the increment
250 computed for a specific area shall be reinvested in public
251 infrastructure or services, or both, or debt service for such

252 infrastructure supporting a specific project identified in the
253 agreement to be constructed within that area. Any such
254 reinvestment agreement must specify the estimated total amount
255 of public investment necessary to provide the public
256 infrastructure or services, or both, including any applicable
257 debt service. The increase in the increment of any area that is
258 subject to an area reinvestment agreement following the passage
259 of a resolution as provided in this subparagraph is limited to
260 the amount specified in the area reinvestment agreement as
261 necessary to provide the public infrastructure or services, or
262 both, including any applicable debt service, that is the subject
263 of the agreement. The increase in the increment of any area that
264 is subject to an area reinvestment agreement following the
265 passage of a resolution as provided in this sub-subparagraph
266 shall cease when the amount specified in the area reinvestment
267 agreement as necessary to provide the public infrastructure or
268 services, or both, including any applicable debt service, have
269 been invested.
270 2. For any community redevelopment agency that was not
271 created pursuant to a delegation of authority under s. 163.410
272 by a county that has adopted a home rule charter and that
273 modifies its adopted community redevelopment plan after July 1,
274 2006, in a manner that expands the boundaries of the
275 redevelopment area, the amount of increment to be contributed by
276 any taxing authority with respect to the expanded area shall be
277 limited as set forth in subparagraph 1.
278 (2)(a) Except for the purpose of funding the trust fund
279 pursuant to subsection (3), upon the adoption of an ordinance

280 providing for funding of the redevelopment trust fund as
281 provided in this section, each taxing authority shall, by
282 January 1 of each year, appropriate to the trust fund for so
283 long as any indebtedness pledging increment revenues to the
284 payment thereof is outstanding (but not to exceed 30 years) a
285 sum that is no less than the increment as defined and determined
286 in subsection (1) or paragraph (3)(b) accruing to such taxing
287 authority. If the community redevelopment plan is amended or
288 modified pursuant to s. 163.361(1), each such taxing authority
289 shall make the annual appropriation for a period not to exceed
290 30 years after the date the governing body amends the plan.
291 However, for any agency created on or after July 1, 2002, each
292 taxing authority shall make the annual appropriation for a
293 period not to exceed 40 years after the fiscal year in which the
294 initial community redevelopment plan is approved or adopted.
295 (3)(a) Notwithstanding the provisions of subsection (2),
296 the obligation of the governing body which established the
297 community redevelopment agency to fund the redevelopment trust
298 fund annually shall continue until all loans, advances, and
299 indebtedness, if any, and interest thereon, of a community
300 redevelopment agency incurred as a result of redevelopment in a
301 community redevelopment area have been paid.
302 (b) Notwithstanding the provisions of subsections (1) and
303 (2), an alternative method of determining the amount and time or
304 times of payment of, and rate of interest upon, tax increments
305 contributed to the trust fund, including formulae and limits
306 different than those specified in subsection (1), may be enacted
307 by interlocal agreement between any of the other taxing

308 authorities required to contribute a tax increment to the trust
309 fund and the governing body that created the community
310 redevelopment agency.
311 Section 7. Section 163.410, Florida Statutes, is amended
312 to read:
313 163.410 Exercise of powers in counties with home rule
314 charters.--In any county which has adopted a home rule charter,
315 the powers conferred by this part shall be exercised exclusively
316 by the governing body of such county. However, the governing
317 body of any such county which has adopted a home rule charter
318 may, in its discretion, by resolution delegate the exercise of
319 the powers conferred upon the county by this part within the
320 boundaries of a municipality to the governing body of such a
321 municipality. Such a delegation to a municipality shall confer
322 only such powers upon a municipality as shall be specifically
323 enumerated in the delegating resolution. Any power not
324 specifically delegated shall be reserved exclusively to the
325 governing body of the county. This section does not affect any
326 community redevelopment agency created by a municipality prior
327 to the adoption of a county home rule charter. Unless otherwise
328 provided by an existing ordinance, resolution, or interlocal
329 agreement between any such county and a municipality, the
330 governing body of the county that has adopted a home rule
331 charter shall approve or deny ~~act on~~ any request from a
332 municipality for a delegation of powers or a change in an
333 existing delegation of powers within 120 days after the receipt
334 of all required documentation or such request shall be deemed
335 approved. Any request by the county for additional documentation

336 or other information shall be made in writing to the
337 municipality. The county shall notify the municipality in
338 writing within 30 days after receiving all the required
339 documentation and other requested information. If the meeting of
340 the county commission at which the request for a delegation of
341 powers or a change in an existing delegation of powers is unable
342 to be held due to events beyond the control of the county, the
343 request may be acted upon at the next regularly scheduled
344 meeting of the county commission without regard to the 120-day
345 limitation ~~immediately sent to the governing body for~~
346 ~~consideration~~.
347 Section 8. This act shall take effect July 1, 2006.