

January 29, 2003

The Hon. Ken Sorensen, Chairman
and Members
Committee on Local Government and Veterans Affairs
Florida House of Representatives
Tallahassee, FL 32399

Dear Mr. Chairman and Members of the Committee:

It is a pleasure to provide you with a copy of the annexation position paper formulated by the FCCMA last fall. The FCCMA has been working with the Florida League of Cities (FLC) and the Florida Association of Counties (FAC) on this subject since last summer.

The Association had three goals in preparing this paper: to compile the history of city and county concerns regarding annexation; to find common ground from the perspective of city and county managers with regard to annexation law and related intergovernmental issues; and to provide the policy makers within FAC and FLC with a vehicle to further the annexation discussion.

As the recent executive director of the Commission on Local Government II, Dr. Lance deHaven-Smith was an invaluable resource for us in preparing this paper. He will be attending your hearing on February 5th, as will I, to address any questions you may have.

We have appreciated the interest and cooperation of FAC and FLC, and look forward to continuing our work with them on this important issue. Please let us know how we may be of service to you.

Sincerely,

Christopher Holley
President
County Manager, Okaloosa County

FCCMA Policy Statement on Annexation

Prepared for
The Florida City and County Management Association

by

Professor Lance deHaven-Smith, Ph.D.
Florida State University
October 12, 2002

This is a policy statement adopted by the Board of Directors of the Florida City and County Management Association. It was presented in October to both the Florida League of Cities and Florida Association of Counties for consideration by their respective policy committees. The purpose of the paper is to find common ground; to identify ideas for policy discussion, and to promote cooperation between the associations.

Background

The 2003 Legislative Session may be the best opportunity since the mid-1970s to restructure Florida's annexation laws, which have long been in need of reform. Legislation enacted in 2002 requires cities, counties, and special districts to submit to the Legislature by February 2003 recommended statutory revisions related to annexation and to the delivery of local government services in areas planned for annexation (Section 2 of CS/SB 1906 & 550, First Enrolled). As the cities, counties, and special districts formulate their proposals, the Florida Senate will be conducting a study of annexation as part of its Interim Work Plan for the 2003 Session (Project Number 2003-115).

Another political development supportive of annexation policy reform is the Legislature's evolving orientation toward the issue. Since the mid-1970s, lawmakers have dealt with municipal boundary policies in the context of growth management and have viewed annexation as a barrier to regional and countywide planning and land-use regulation. Recently, however, legislative priorities for annexation have begun to shift toward concerns about

service delivery. This is evident in the title of Senate's interim project: "Does Current Law Adequately Address Delivery of Local Governmental Service Issues and Other Conflicts that Arise During Annexation?" It is also suggested by a legislative mandate enacted in 2002 for each county with 100,000 residents or more, and the county's cities and special districts, to review local public services for duplication and gaps and to update accordingly the intergovernmental coordination elements in their comprehensive plans (Sections 6, 7, and 9 of CS/SB 1906 & 550).¹

In response to the Legislature's request for input and consistent with the state's growing interest in coordinated service delivery, this paper recommends changes to Florida's annexation statutes to increase the options available to local governments and the attention given to service provision and finance when municipal boundary changes are considered. The proposal was formulated by the Florida City and County Management Association (FCCMA) in consultation with the Florida Institute of Government at Florida State University.

The state's city and county managers know as much as anyone about the problems caused by Florida's existing annexation policies and want more than anyone to see reforms enacted that would resolve or mitigate them. After all, they must work with these laws on a regular basis. Florida's city and county managers are also in the best position to predict how proposed changes to the statutes are likely to work in practice. The recommendations in this paper reflect sound professional judgment and real-world experience.

Proposed Legislative Changes

Later sections in this report contain a detailed analysis of Florida's experience with annexation. The analysis explains that the state's existing annexation statutes are causing many problems and much unproductive intergovernmental conflict.

¹The report on services must be submitted to the Department of Community Affairs by January 2004, and the intergovernmental coordination element must be amended by July 2004.

The main flaws in Florida's statutory framework governing annexation are its unnecessarily prohibitive character and its narrow emphasis on municipal boundary geography. Florida seeks to promote sensible municipal boundaries by prohibiting annexations that would leave cities with unincorporated enclaves, serpentine borders, or land parcels unintended for urban uses. No one would disagree with this objective, but the policy's preoccupation with geographic shape and urban function overlooks a number of equally important considerations and therefore allows annexations that are geographically acceptable but socially, politically, and economically harmful. At the same time, the prohibitive nature of the policy precludes proactively delineating--much less encouraging--annexation or de-annexation initiatives that might reduce the costs of local government, facilitate urban service delivery, or increase political transparency and accountability.²

The problems and issues associated with Florida's annexation laws are serious, systemic, and well known.³ The statutes have resulted in a crazy-quilt pattern of city boundaries, fragmented unincorporated areas, a jumbled mix of dependent and independent districts, and rates of taxation that vary from one geographical area to the next with little connection to levels of service. Many Florida cities contain large unincorporated enclaves, and many Florida counties serve unincorporated parcels that are scattered and hard to reach. Citizens have difficulty knowing who is providing which services to whom and at what cost. Businesses sometimes find public services being held hostage by competing governments, and local governments sometimes find themselves being played off against one another by savvy entrepreneurs. Often for everyone

² There are at least two exceptions to this generalization, both of which are discussed later in this paper. One is Chapter 163.07, F.S., which authorizes a proactive process for annexation and service-delivery planning. Another is the authority of local governments to include an annexation overlay in their comprehensive plans. However, as is also discussed later, neither of these options has proven to be workable in practice.

³ For a discussion of these political trends in relation to Florida's projected demographic changes between now and 2050, see Colburn and deHaven-Smith (2002). For a discussion of the history of Florida government in relation to recurring waves of population growth, see Colburn and deHaven-Smith (1999). For predictions about how the aging Baby Boom generation will affect Florida municipalities, see deHaven-Smith (2001).

involved, the municipal boundaries that have evolved under Florida's annexation laws impose inefficiencies and inequities.

The FCCMA recommends that Florida's annexation procedures be made more flexible and broadened to address a wider range of impacts. Florida's annexation laws should encourage intergovernmental cooperation in adjusting municipal boundaries, local government revenue structures, and service provision responsibilities to better reflect planned or actual urban development patterns, community identities, and service-delivery capacities. Procedurally, state annexation policy should support America's republican form of government by allowing local elected officials to make decisions without being second-guessed by referenda involving small groups of voters with narrowly focused interests.⁴

As a beginning to what may be a lengthy reform process, the FCCMA endorses the following legislative revisions:

1) Eliminate all enclaves by a time certain.

- a) Amend Chapter 171.031(13), F.S., to delineate two types of enclaves: (1) Internal enclaves, defined as unincorporated lands of any total acreage, whether improved or not, that are fully contained within the borders of a single city, and (2) External enclaves, defined as unincorporated lands totaling to less than 100 acres, whether improved or not, that are surrounded on all sides by a combination of two or more contiguous cities.
- b) Amend Chapter 171.046, F.S., to require all internal enclaves statewide to be annexed by their surrounding municipalities no later than January 1, 2005. These annexations shall be executed by municipal ordinances and shall be accompanied by comprehensive plan amendments per current law.

⁴ Theory and research in economics and voting behavior have demonstrated that elections on issues considered in isolation are incapable of reflecting the complex preference orderings of large populations. The initial theorizing on this was done by Arrow (1963), who won the Nobel prize for his insights. Arrow's paradox, as it is now called, has been applied to elections and referenda by Riker (1988).

- c) Amend Chapter 171 to require all external enclaves to be annexed into their surrounding municipalities by January 1, 2007. In this statutory revision, assign responsibility to county commissions to decide (after consulting with affected cities) how external enclaves are to be divided geographically between the cities that enclose them. These annexations shall be executed by county and municipal ordinances and shall be accompanied by comprehensive plan amendments per current law.
- d) As part of the statutory amendments proposed above in Recommendations 1b and 1c, a provision shall be included to allow counties, prior to the deadlines for annexing internal and external enclaves, to identify and quantify any diminution in the value of county-owned capital facilities that may result from the annexations. When such costs can be demonstrated, annexing cities shall negotiate service-delivery agreements and/or compensation.
- e) The processes proposed below (under Recommendation 2) for studying and assigning annexation costs shall not be required for the mandatory annexation of existing internal and external enclaves, except with respect to diminution in the value of county-owned capital facilities (per Recommendation 1(d)).

2) Allocate the costs and benefits of annexations equitably across units of government and bodies of citizens on the basis of objective, documented information about anticipated costs and benefits.

- a) Amend F.S. Chapter 171 to create a separate process for annexations that total to less than 100 acres.
 - i. To prevent the 100-acre threshold from being circumvented, require contiguous unincorporated lands annexed within a two-year period to be treated as a single annexation for purposes of calculating the total acreage.
 - ii. Require cities undertaking these small annexations (less than 100 acres) to
 - notify the county, the public, and other cities contiguous to the unincorporated lands targeted for annexation;

- adopt a plan for service delivery in the lands being considered for annexation; and
 - hold two public hearings on the plan at least ten days apart.
- iii. For these small annexations, follow the requirements in existing law for obtaining approval from landowners and voters.
- b)** For annexations that are larger than 100 acres, add two steps to the existing annexation process by amending Chapter 171.0413, F.S., to require, first, that the financial impacts of a contemplated annexation be studied and identified, and then that they be addressed by mandatory negotiations between the affected governments.
- i. Assessing financial impacts. The financial impacts of a proposed or contemplated annexation larger than 100 acres shall be assessed by an independent professional designated by mutual agreement between the county and city. These financial assessments shall be completed prior to public hearings on annexation ordinances and shall include aggregate as well service-specific costs and savings for the city, the residents of the area being annexed, the unincorporated area as a whole, and the county as a whole. Impacts to be included in the analysis shall be current costs and savings associated with changes in MSTU and MSBU revenues, general revenues, service fees, and any diminution in the value or utility of capital facilities.
- ii. Negotiating agreements. After the financial impacts of the proposed annexation have been determined, the county and city or cities shall negotiate an agreement for assigning costs and service delivery responsibilities.
- With one difference, the process for negotiating how costs are to be assigned shall be the same as the process in F.S. Chapter 164, which establishes a conflict resolution process that can be triggered by local governments for certain specified issues, one of which is municipal annexation.

- The difference in the proposed conflict resolution process for Chapter 171 has to do with what happens when negotiations fail to produce agreement on services, facilities, or finances. In such cases and for each service or facility in dispute, the issue shall be sent to binding arbitration. The arbitrator shall be a certified professional selected by mutual agreement.
- The purpose of the binding arbitration shall be limited to assigning costs, not to determining whether or not the annexation should go forward.

c) Amend Chapter 171.061, F.S., to allow the financial implications of annexations to be phased in over a period of years. Also amend this section to require local governments to be compensated for any annexation-related or contraction-related diminution in the value of capital facilities.

3. Prevent developers from using voluntary annexation to circumvent county growth management requirements. Amend Chapter 171.062(2) to require that, unless the county and municipal governments agree otherwise for a particular annexation, the county land use plan and county zoning or subdivision regulations shall govern the annexed area for three years following an annexation. This stipulation shall apply to annexations regardless of whether they are over or under 100 acres in size.

4. Improve and expand existing procedures for counties and cities to proactively initiate annexations and de-annexations to reduce the costs of local government, facilitate urban service delivery, and increase political transparency and accountability.

a) Amend Chapter 171.051, F.S., to allow cities to de-annex land by interlocal agreement with the overlying county.

b) Amend 163.07, F.S., or add a section to Chapter 171, to allow any county and combination of cities therein to formulate a plan for services and new municipal boundaries in any geographical area under their collective jurisdiction.

- i. Allow the service-delivery and boundary plans to include municipal contractions as well as annexations;
- ii. Allow planned adjustments of service-delivery responsibilities to include interjurisdictional financial transfers to compensate affected local governments for prior investments and other considerations;
- iii. Make the plans' implementation contingent upon approval by majority vote in referenda open to all county electors;
- iv. Make any annexations or municipal contractions effective upon voter approval of the plans, unless stated otherwise in the plans themselves.

5. Provide incentives and financial support for cities and counties to engage in intergovernmental planning and negotiation.

- a) Grants shall be made available to cities and counties to underwrite joint planning, conflict resolution, binding arbitration, and economic impact analysis.
- b) As an incentive, counties that complete comprehensive joint-planning initiatives shall be given greater control over how they spend earmarked revenues.
- c) As a financial incentive to implement the planning and boundary-adjustment process described above in Recommendation Number 4, the state revenue sharing formula shall be adjusted to redirect a percentage of revenue-sharing monies to counties and cities that successfully complete comprehensive joint-planning agreements. Such monies shall become available on a designated date. Successful completion of the joint planning process shall be defined as having a joint planning agreement approved by county electors in a referendum (per Recommendation Number 4.b.iv).

6. Continue to monitor, track, and study annexation and related issues.

- a) The Legislative Committee on Intergovernmental Relations (LCIR) shall be assigned to track annexation

in Florida and issue a report at least once every five years on the amount and nature of annexations and de-annexations in previous years. The report should also assess the status of enclaves, joint planning, conflict resolution processes, and related matters.

b) Further study is needed on specific issues.

- i. Research shall be conducted to measure and determine whether to address the long-term costs to counties of municipal annexations of lands with potentially high value for development. The financial analysis proposed above (in Recommendation 2.b.i) deals only with current impacts.
- ii. A study shall be undertaken of the process described in Recommendation Number 2(a) for annexations that total to less than 100 acres. The study shall examine the frequency, nature, geographic location, and aggregate amount of land included in such annexations.
- iii. A study shall be conducted to delineate and assess policy options with respect to external enclaves that are bounded on one side by a county border and on remaining sides by one or more cities. The study shall compile information on the number, nature, location, and aggregate amount of unincorporated lands contained in such enclaves. It shall also specifically consider whether these enclaves, or a subset of these enclaves, should be targeted for mandatory annexation.

Florida's Existing Annexation Policy

The prohibitive character and geographic focus of Florida's existing annexation policy is evident in Florida Statutes Chapter 171, which defines the state's annexation procedures and criteria. Chapter 171 is intended to ensure "sound urban development" and efficient provision of urban services to urban areas, while preventing annexation where urban services cannot be provided (171.021, F.S.). It seeks these ends in two ways: By placing restrictions on the kinds of land areas that can be annexed, and by giving a number of interests a voice and in some cases a veto in the annexation process.

A municipality can propose to annex an area only if it is contiguous to the city's borders, reasonably compact, and either already developed or likely to be developed for urban purposes (Section 171.043, F.S.). Compactness is defined so as to preclude "any action which would create enclaves, pockets, or finger areas in serpentine patterns" (Section 171.031(12), F.S.).

Under Chapter 171, annexation of all unincorporated lands except enclaves of 10 acres or less is accomplished by city ordinance, but a number of points are established in the statute where different interests must be heard and where some have the right to block the city's action.

- When the land to be annexed is owned by more than one individual or party, two public hearings must be held before the city adopts the annexation ordinance (171.0413(1)).
- After an annexation ordinance is passed, "affected parties" have 30 days in which they can file a petition in Circuit Court to block the annexation on grounds of procedural failures or failure to meet the requirements for contiguity, compactness, and urban development (171.081).
- When the land to be annexed is owned by more than one individual or party, the annexation ordinance does not take effect unless and until a referendum is approved by a majority of electors from the area to be annexed (171.0413(2)). The referendum must be held within 12 months of the annexation ordinance's adoption.
- When 70 percent of the land to be annexed is owned by individuals or parties who are not registered electors of the area, the annexation must be approved both by a majority of the electors and by the owners of more than 50 percent of the land (171.0413(5)).
- The owner or owners of unincorporated area land that meets the contiguity and compactness requirements may petition the municipality to be annexed into the city (171.044(1)).

Problems Associated with the Existing Policy

The problems and issues associated with Florida's approach to annexation are serious, systemic, and well known. The problems experienced most often include:

1. Border conflicts. With the approval of the landowner, cities can annex contiguous land even though the annexation may divide an established community in the unincorporated area, create problems for the county in delivering services to the surrounding unincorporated area, and harm the county's financial situation. Conversely, the cities have no control over the County Commission's land use decisions in the unincorporated area even though the decisions often impact the cities' quality of life.
2. Financial inequities. Municipal residents are often burdened financially by the unincorporated area in two ways: Services in the unincorporated areas are sometimes subsidized by countywide taxes, and unincorporated area residents may benefit from city services without having to pay for those services. Conversely, when unincorporated lands are annexed, county governments often lose MSTU and MSBU revenues while being left with capital facilities (e.g., fire stations) that have diminished value but ongoing costs.
3. Cherry picking. Cities are naturally inclined to annex only those unincorporated areas that will improve their tax base. They look for opportunities to annex lands with high property values but low requirements for public services. Typically, this means that residential neighborhoods with high concentrations of working-class families are bypassed in favor properties with commercial developments and upscale homes. Over time, the difficulty of providing urban services to the remaining unincorporated area increases (because the area becomes fragmented and geographically divided), while the taxable value of the unincorporated area (for purposes of MSTUs and MSBUs) declines relative to the value of the county as a whole.
4. Enclaves and related problems. The geographic layout of municipal borders sometimes defies common sense and creates problems for planning, policing, and service delivery. Some cities have large unincorporated enclaves that are totally contained within their borders.
5. Spillover effects. The tensions caused by annexation issues, perceptions of financial inequities, and related matters undermine trust and

make it difficult for local governments to work together for the common good.

Blind Spots

Florida's existing annexation policy has produced some of these problems and has perpetuated others, because it has a number of blind spots:

- a) The policy's emphasis on the geographic shape, location, and use of lands targeted for annexation overlooks other, equally important considerations, such as annexations' impacts on service delivery and tax revenues in the remaining unincorporated area.
- b) The prohibitive character of the state's policy completely ignores the effects of not annexing those unincorporated lands that should be annexed.
- c) Focusing on the land to be annexed tends to create a privileged political position for residents and landowners of annexable lands. This gives more weight to the interests of a few voters than to interests of city residents, the countywide electorate, and all of the remaining unincorporated area residents.

Politically speaking, Florida's annexation procedures assume that municipal boundary changes affect only a very narrow range of interests, namely, those of the annexing city, the electors and landowners of the area being annexed, and any special districts or utilities already providing services. The premise that annexation impacts are isolated and narrowly circumscribed is perhaps most evident in Chapter 171's definition of affected parties. In the words of the statute(171.031(5),

"Parties affected" means any persons or firms owning property in, or residing in, either a municipality proposing annexation or contraction or owning property that is proposed for annexation to a municipality or any governmental unit with jurisdiction over such area.

The only interests of a general nature given voice in Florida's annexation process are the state's concerns about

municipal compactness and service-delivery capacity.⁵ The interests of the unincorporated area residents in general, of the cities in general, of the county as a whole, of minorities and other communities of interest, etc., are entirely overlooked.

How We Got Here

The origins of Florida's prohibitive and geographic orientation to annexation are both conceptual and historical. Conceptually, the policy originates in an inaccurate and unstated theory of municipal annexation behavior.⁶ The policy assumes incorrectly or oversimplistically that cities are driven to expand territorially and that they therefore tend to annex aggressively and opportunistically. This conceptualization of annexation attributes far too much unity to municipal politics and ignores the many economic, political, and social forces pushing and pulling municipal boundary decisions in multiple directions.

Historically, Florida's annexation statutes are prohibitive in character and geographic in orientation because they were written in the mid-1970s to support Florida's new system of growth management, which was just beginning to be developed.⁷ Prior to growth management, policy makers had hoped to control the pace and location of urban development constitutionally.

⁵ The various ways in which policies treat special and general issues have been analyzed by Avineri and de-Shalit (1992). The need to frame issues abstractly is one of the implications of the theory of justice developed by Rawls (1971). For a discussion of successful issue-framing in Florida during the civil rights era, see Askew and deHaven-Smith (2000).

⁶ For a theoretical exposition based on public opinion research of this tendency for modern representative governments to gravitate toward vague, blaming, and simplistic accounts of public problems, see Mannheim (1936), Converse (1964), and Luttbeg (1968). For an application of these ideas to Florida, see deHaven-Smith (1995); to the environmental movement, see deHaven-Smith (1987, 1991); and to taxes and spending, see deHaven-Smith (1985). For a discussion of the latitude this tendency gives to top leaders, see deHaven-Smith (1995b).

⁷ The classic study of the origins and early history of Florida's growth management laws in relation to land use planning and regulation nationally is the book by DeGrove (1984), who was influential in the development of the framework. For a more critical account of growth management's origins and performance, see deHaven-Smith (1991b, 1998b) and deHaven-Smith and Colburn (1999).

Annexation before growth management. When the state's constitution was being rewritten in 1967 and 1968, policy makers added a section to its local government article to prohibit dual taxation.⁸ The section says that "property situate within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas" (Article VIII (1) (h), Constitution of Florida). The primary aim of this section was to tie urbanization to municipal expansion by making it difficult for developers to obtain urban services outside cities. Given the political and legal barriers to both involuntary annexation and municipal incorporation, this would have forced new development into and around preexisting cities and would have helped prevent growth from running ahead infrastructure.

However, in the early 1970s, judicial rulings interpreted the constitutional prohibition against dual taxation in a manner that greatly limited its applicability and thereby weakened the connection between cities and municipal services. The courts said that county services delivered exclusively to the unincorporated area may be funded by countywide taxes if they benefit municipal residents indirectly. This effectively meant that the state's cities could be taxed to subsidize the urban development around them.

Annexation policy early in growth management. Once counties became urban service providers and urban sprawl was no longer constrained by the limited availability of urban services from cities, policy makers decided to try to manage growth by strengthening the counties. The 1968 Constitution included sections authorizing county electors to adopt home rule charters that could provide for county ordinances to overrule municipal ordinances. The 1968 Constitution also included provisions and incentives for city-county consolidation. In the mid-1970s, statutory changes were enacted to help counties move into urban service delivery and to encourage them to plan for and regulate urban development countywide.

The statutory revisions related to regulating development involved an expansion of Florida's system of

⁸ For a more detailed history that goes further back in time, see Sparkman (1973).

growth management. Introduced in the early 1970s, the state's growth management framework initially had had only three targets: water; very large developments; and geographical areas of critical state concern. In 1975, the system was extended to require local government comprehensive planning and to authorize a state plan that would frame the local plans.

The ability of counties to deliver urban services was strengthened by statutory changes allowing counties to levy a municipal property tax in all or part of the unincorporated area to pay for unincorporated-area urban services. In part, this authorization was intended to address the perceived inequities of dual taxation, which had been made possible by the judicial rulings discussed above. Under the new law, cities could trigger a review of the distribution of the county tax burden if they believed their overlying county government was not making the unincorporated area pay its fair share.

The initial growth management philosophy. To understand how Florida's approach to annexation became snared in the state's growth management laws, it is important to know that, initially, the growth management system was intended to disperse rather than concentrate the state's growing population. Growth management originated conceptually in the early 1970s. The first call for a "state growth policy" came from the Environmental Land Management Study (ELMS) Committee, which had been created in 1972 under the Environmental Land and Water Management Act, the first legislation in Florida that attempted to interject state and regional considerations into local land use decision making. The policy proposed by the ELMS Committee in 1973 would (O'Connell, 1973, p. 14):

- a. Recognize that Florida cannot legally stop all population growth in the State of Florida, and further recognize the need to respond to this additional growth in a manner consistent with environmental protection for the State.
- b. Recommend that Florida affirm a goal for redirecting further population growth in the state from the overpopulated areas of the state to those areas of Florida capable of sustaining additional

growth through a "New Communities" concept and other techniques.

- c. Direct State planning in such areas as transportation, recreation, and schools to be consistent with the goals in (a) and (b) above.
- d. Direct the State's attention to the existing urban areas and develop techniques for coordinating the relationship of public facilities and private development in order to overcome the existing problem of delay in providing public facilities to well planned private development.

This statement included all of the policy elements that would soon be referred to as "growth management," but the key phrase had not yet been coined.

The first use of the term "growth management" did not occur until the Governor's Conference on Growth and the Environment in 1974. The opening sentence of the final report issued by the conference said that Florida must have a "managed growth policy." Among other things, the report explained, such a policy would explore ways "to keep growth in line with environmental and service capacities." This would require "legislative action to mandate the preparation, adoption, and implementation of comprehensive plans by local governments and regional planning agencies throughout the State." The essence of "a managed growth policy for the State of Florida," the conference report added,

is to harmonize concerns about the natural environment with the economic, social, and shelter needs of our citizens. Managing growth will involve legal and responsible efforts to slow growth, disperse population, and provide controls and incentives to improve the quality of land use. Programs to protect environmentally sensitive areas by restricting or prohibiting development are necessary. Nevertheless, affirmative action needed by state, regional, and local governments to assure that land is available to meet the state's housing goals is vital."

Thus, the initial growth management concept was unconcerned by the potential for urbanization to sprawl into the state's unincorporated areas, nor did it include any reference to the

traditional role of cities as the primary providers of urban services. Instead, policy makers envisioned a strong role for county governments and regional planning agencies.

From this new policy perspective, annexation was seen as posing problems for county and regional governance. This is why Chapter 171, F.S., was and remains so prohibitive in character and focused substantively on regulating municipal geography. Chapter 171 was enacted in 1974 contemporaneous with the introduction of Florida's new policy framework for managing growth.

The growth management revolution of 1984. During the first ten years of growth management, two changes occurred that caused policy makers to revise their growth management strategy. First, it became clear that dispersing the population was a bad idea. Urban sprawl is a problem everywhere in the United States, but it is especially pronounced in Florida because of the state's large numbers of retirees, who do not need to reside close to the state's employment centers. A diffuse pattern of urbanization, which is exacerbated by the state's retirement population, also poses more serious environmental threats in Florida than in other states because of Florida's large, fragile, water-dependent ecosystems, which are easily damaged by urban runoff.

Second, policy makers realized that Florida's requirements for local government comprehensive planning would not be capable, as they stood, of containing the urban sprawl that was of increasing concern (Stroud and Abrams, 1981; deHaven-Smith, 1983, 1984). In their plans, most counties designated large areas of land to be kept in agricultural uses, but the problem was maintaining this or a similar designation in the face of development pressures and land owners requesting zoning changes. The comprehensive planning legislation provided little support, because it placed no restrictions on the nature or frequency of plan amendments. Consequently, most local governments amended their plans willy-nilly to accommodate applications for development approval as requests came forward. Moreover, the state plan that had been formulated in the 1970s to frame local plans ended up being too long, complex, and internally inconsistent to guide local land use planning and regulation, and it had never been adopted legislatively.

To address these weaknesses, the Legislature created a second ELMS Commission (ELMS II) to study the state's growth challenges and then enacted statutory changes based on the Commission's recommendations. The new growth management system was explicitly aimed at constraining urban sprawl, but annexation and municipal boundary issues were left largely untouched, except that cities were required to amend their comprehensive plans when lands were annexed, and the amendments had to be approved for consistency with the state plan by the Florida Department of Community Affairs.

Contrary to legislative expectations, the overall impact of the 1984 growth management revisions was not to reduce urban sprawl but to accelerate it. This happened unintentionally because of what came to be called the "concurrency requirement," which prohibited local governments from approving new development unless they could assure that necessary public facilities could be brought on line "concurrent with the impacts of development." Because most of Florida's urban centers had a backlog of unmet capital facility needs from past growth, new development was pushed into the less developed lands along the urban fringe where road capacity was still available.

Florida's third try at growth management. In 1992, yet a third Environmental Lands Management Study Commission was appointed to review the growth management framework and recommend changes. This time, although it still did not reconsider the state's annexation policy, it did pay some attention to service delivery issues and intergovernmental coordination.

Most of the ELMS III recommendations were enacted into law in 1993. In terms of the overall growth management framework, the statutory revisions focused on strengthening the regional role in the planning process.⁹ The state plan was to get a growth management element along with *objectives* (rather than just goals and policies), and regional plans were to become strategic in nature, focusing on regional resources and facilities.

⁹ For a summary of the legislation, see Tom Pelham, "Implementing the ELMS III Legislation: New Challenges for Florida's Planners." *Florida Planning* (Volume V, No. 5), May/June 1993.

Growing problems with intergovernmental coordination in service delivery were addressed by adding requirements to the Intergovernmental Coordination Element (ICE) already mandated in local government comprehensive plans. The new ICE requirements called for local governments to negotiate agreements for coordinating the delivery of services and the construction of capital facilities at a level of service sufficient to protect "resources of regional significance" that were to be designated and mapped in new regional plans. To provide an implementation mechanism for this coordination, Regional Planning Councils (RPCs) were to establish processes for identifying and mitigating any impacts that proposed developments would have on other local governments or state or regional facilities.

Soon, however, ICE collapsed beneath the weight of its own complexity. Developers became concerned about the unpredictability of land development regulation under the new program, and local governments found the program to be inflexible and largely unworkable. In 1996, the Legislature repealed the requirement for RPCs and local governments to develop processes for containing or correcting the interjurisdictional and regional impacts of development.

After the ICE program was repealed, a voluntary program, still on the books, was created to allow cities and counties to include annexation overlays in their comprehensive plans. However, this program, like ICE, has not proven practical. Cities and counties have avoided it, because they have not wanted to further complicate an already labyrinthine system of land development regulation.

The Local Government Commission II. By the late 1980s if not sooner, municipal boundaries had lost almost all connection to surrounding urbanization, and the provision of urban services to the urbanized or urbanizing unincorporated lands had become a matter of sporadic but intense dispute between local governments competing for revenues, customers, better borders, and other benefits. In 1997, the state decided to examine these issues directly rather than, as it had in the past, as part of the state's growth management efforts.

The Local Government Commission II concluded that the most serious problem in Florida local government was the failure "to meet the governance and service delivery needs

of the state's rapidly urbanizing population." This problem was attributed to state policies and procedures preventing cities and counties from adapting to changing conditions. The Commission pointed out that "Florida's general purpose local governments were established, and their jurisdictions delineated, long before the state's massive population growth." Indeed, over two-thirds of Florida's cities and all of Florida's counties had been established by 1940, and almost all of the cities by 1970. Since 1970, the state's population has more than doubled, and yet most municipal boundaries have changed little. As a result, the Commission observed, the roles and responsibilities of cities, counties, and special districts have become blurred, duplication and overlap are widespread, and intergovernmental conflict is common.

The Local Government Commission II explicitly rejected the idea of trying to remedy this situation by dividing government functions uniformly between different types of governments, giving certain functions to counties, others to districts, and others to cities. Local circumstances and history simply vary too much. Rather, it concluded that a process needs to be created that would empower and encourage general purpose local governments to reconfigure city borders and consolidate and streamline services according to local needs and preferences without having to go through the annexation-by-annexation referendum procedures in state law. The central recommendation of the Commission was a Constitutional Amendment to introduce limited fiscal home rule in Florida and link it to requirements for local government reform.

The proposal for fiscal home rule proved politically unpopular among state policy makers, and the Commission's recommendations were never implemented as originally proposed. Instead, a much weaker version of the proposed process for annexation planning was enacted statutorily (F.S. 163.07). The program seeks to remove NIMBY-like barriers to annexation by allowing cities and counties to develop countywide plans for annexation and urban service delivery that would be considered in a single referendum by the electorate countywide. Thus far, however, local governments have chosen not to undertake the planning process, and future participation is unlikely, because the process is politically difficult and the state offers few incentives for participation.

A New Strategy of Reform

Municipal annexation of unincorporated lands has been an issue in Florida for decades. Although many state legislative and constitutional reforms have been proposed for making annexation more predictable, orderly, and rational, the strongest proposals have failed to attract political support sufficient to secure their enactment, while the few that have succeeded politically have lacked the teeth and incentives necessary to significantly alter established practice. The difficulty facing reformers is to somehow craft policy adjustments that can produce positive change without being heavy handed, insensitive to local circumstances, or dependent on unavailable financial incentives.

The statutory revisions recommended by the FCCMA at the beginning of this paper are intended to encourage in a more practical way and on a smaller scale the basic annexation and service-planning approach proposed four years ago by the Local Government Commission II. Florida's annexation policy needs to be uncoupled from local government comprehensive planning. This does not mean that comprehensive plan amendments should not be required after annexations, but rather that municipal boundaries should no longer be seen as either threats to managed growth or tools for controlling regional patterns of urban development.

Where cities and counties are able to agree, they should be free in most circumstances to set municipal boundaries as they see fit.¹⁰ The state's growth management framework influences the pace, location, and character of development independent of where municipal boundaries happen to fall. After all, although local plans and land development regulations may vary, the land in any Florida county is subject to the same state protections and restrictions regardless of whether it is in the unincorporated area or in a city. Similarly, experience

¹⁰ Negotiation among local governments can also be linked to public participation process to help form community identities as well as reach public judgments. However, policy makers need to avoid the mistake of assuming that the electorate has stable opinions on these matters independent of the way the issues are framed and processed. For a theoretical discussion of collective will-formation, see Yankolovich (1991) and deHaven-Smith (1998). For an example of consensus-building procedures on technical issues, see deHaven-Smith and Wodraska (1996).

shows that urbanization cannot be blocked or moderated simply by restricting annexation; much land in the unincorporated areas of Florida's urban counties is as fully urbanized as the land in their cities.

Furthermore, Florida's existing annexation policy has not been successful in producing a rational configuration of municipal borders. As a practical matter, the state's narrowly focused and prohibitive annexation policy works about as well as a wicker basket functions as a bucket. The policy may be well shaped, but it is at once both rigid and full of holes. For the most part, cities are unable to extend their borders commensurate with contiguous urbanization, and yet in a few spots the policy allows them to spew out in unpredictable and sometimes problematic directions.

Cities and counties alike want reform. Florida's cities need to be able to expand their borders to take in some of the urbanization around them. Otherwise, they will become increasingly burdened by residents and businesses on their borders that use their services and benefit from the proximity to downtown shopping, entertainment, and commerce and yet do not contribute to the city tax base. By the same token, counties need more leverage in the annexation process to discourage cherry picking and assure that they are compensated for their losses when annexations reduce the value or utility of their capital facilities.

Allowing local governments to adjust municipal boundaries by interlocal agreement would create a bargaining situation conducive to cooperation and accommodation, for the gains of each government would be contingent upon the agreement of all.¹¹ It is time to start letting home rule mean home rule.

¹¹ For an analysis of the conditions associated with innovation and cooperation in local government, see Altshuler and Behn (1997) and Andrisan *et al.* (2000).

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