

STORAGE NAME: h3283b.ca

DATE: April 27, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Community Affairs
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3283

RELATING TO: Local Government Planning/School Boards

SPONSOR(S): Representative Andrews and others

COMPANION BILL(S): SB 1168 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) EDUCATION/K-12 (W/D)
 - (2) COMMUNITY AFFAIRS YEAS 4 NAYS 5
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill requires each district school board to meet annually with the board of county commissioners and with municipal governing bodies to plan for educational facilities. This bill requires the public meeting be held on dates to allow coordination with the local government's comprehensive plan amendment process and with the local government's evaluation and appraisal of its comprehensive plan.

This bill requires, as a result of the annual meeting, a report to be filed with the Department of Community Affairs (Department), detailing the specific findings and actions of the bodies relating to construction of public educational facilities. In the event the governmental bodies are unable to agree upon specific findings regarding the status of the coordination of construction and opening of public educational facilities, this bill requires the participating bodies to undertake binding arbitration proceedings under the direction of the Florida Conflict Resolution Consortium.

This bill authorizes the imposition of a \$100 per day fine on each member of the district school board, the board of county commissioners, and/or each member of the municipal governing boards for failure to file the report. This bill prohibits the use of public funds or campaign contributions to pay for the fines.

This bill has an indeterminate fiscal impact on state agencies, state funds, and local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Local Government Comprehensive Planning and Land Development Regulation Act:

In 1985, the Legislature passed the Local Government Comprehensive Planning and Land Development Regulations Act (Act), ICE codified at chapter 163, Part II, Florida Statutes. The Act requires local governments to adopt a comprehensive plan, subject to review and approval or appeal by the Department of Community Affairs (Department). The Act outlines the required and optional elements of local government comprehensive plans, provides for public participation in the local comprehensive planning process, requires local governments to follow specified procedures for adoption of the comprehensive plans, and requires local governments to update their comprehensive plans at regular intervals.

Evaluation and Appraisal:

Section 163.3191, Florida Statutes, requires each local government to prepare an evaluation and appraisal report (EAR) on their local government comprehensive plan. The EAR is the principal process for updating local comprehensive plans to reflect changes in state policy on planning and growth management. The EAR must include statements of the effect of future changes to growth management plans and rules on the local comprehensive plan, actions necessary to meet planning issues, anticipated plan amendments necessary to implement changes, and public participation processes.

Intergovernmental Coordination Element:

Section 163.3177, Florida Statutes, requires that the local government comprehensive plan include an intergovernmental coordination element (ICE). ICE provides, in part, that each county, all municipalities within that county, the district school board, and service providers in that county, enter into interlocal or other formal agreements that provide joint processes for collaborative planning and decision making on issues including, in part, public school siting and the location and extension of public facilities subject to concurrency.

Educational Facilities:

Subsection 235.193(5), Florida Statutes, requires that as early as possible, but before commencing construction of new public educational facilities, the local government regulating land use, shall within 90 days after receiving a request for consistency from the local school board issue a determination of consistency or non-consistency with the appropriate local government comprehensive plan and the State Uniform Building Code for Public Educational Facilities Construction. This section also provides that a determination of consistency allows the construction of the school. In addition, if the local government fails to issue the determination within 90 days, the new public educational facility shall be deemed consistent.

Florida Growth Management Conflict Resolution Consortium:

The Conflict Resolution Consortium (CRC), is a statewide, publicly funded, public service program located at Florida State University and the University of Central Florida. The CRC offers consulting services, training, education, and research in mediation and conflict resolution techniques statewide.

Public School Construction Study Commission:

Specific Appropriation 1628 of ch. 97-152, §6, Laws of Florida created the Public Schools Construction Study Commission to provide "to study in detail and recommend appropriate reforms related to planning, and siting, of public schools, and reforms related to school concurrency," on or before January 1, 1998. The final report is contained as an attachment to this Bill Research & Economic Impact Statement. A copy of the final report is also available on the Internet at:

<http://www.state.fl.us/commafff/bob2-4.htm>

B. EFFECT OF PROPOSED CHANGES:

Creates section 163.3182, Florida Statutes: This bill creates a new section in the Local Government Comprehensive Planning and Land Development Regulations Act. The new section requires the following:

Annual Meetings

- The district school board, the board of county commissioners, and members of all municipal governing bodies (within the county) hold an *annual public meeting* to facilitate the coordination of planning educational public facilities with plans for residential development and concurrent with other necessary services. At the initial meeting, a schedule for subsequent annual meetings is established and submitted to the Department of Community Affairs (DCA).
- Meetings must be held after 5:00 pm, if scheduled on any day other than Saturday.
- Meetings may not be held on Sundays.

Binding Arbitration:

- Binding arbitration by the Florida Conflict Resolution Consortium, in the event the participating bodies cannot agree on specific findings and actions is to be included in the mandatory report to DCA.

Fines:

- The imposition of \$100 per day fines on individual members if the first meeting is not held prior to October 1, 1998.

- The imposition of \$100 per day fines on individual members if subsequent meetings are not held annually.
- The imposition of \$100 per day fines on individual members if the required report is not filed with DCA within 60 days after the meeting or within 60 days of the conclusion of binding arbitration proceedings.

Prohibition of using public funds or campaign contributions:

- A prohibition against using public funds or campaign contributions to pay for fines levied in this act.

Public Notice Requirements:

- Notice of each meeting must be published at least 7 days, but not more than 15 days, prior to the meeting.
- Notice may not be less than one-quarter page size in a standard size or tabloid size newspaper.
- The type size of the headline must be no smaller than 18 point.
- The notice may not be placed in the legal notices and classified advertisements section of the newspaper.
- The notice must be published in a newspaper of general paid circulation pursuant to chapter 50, Florida Statutes.
- The notice must appear for at least five days a week, unless the only newspaper in the community is published less than 5 days per week.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes.

Florida Conflict Resolution Consortium: When the parties are unable to agree on specific findings and actions for the report which is required to be filed with DCA within 60 days of the meeting, the parties are required to immediately initiate binding arbitration proceedings under the direction of the Florida Conflict Resolution Consortium.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Possibly.

District school boards, county commissions, and municipal governing bodies: District school boards, county commissions, and municipal governing bodies are required to *meet annually* to facilitate the coordination of planning between school boards and local governing bodies for the construction and opening of public educational facilities, current with residential development and other necessary services. Within 60 days of the public meeting, the participating bodies must *submit a report to DCA*.

In the event the school board, board of county commissioners, and municipal governing bodies cannot agree on the specific findings and actions to establish and support a financially feasible system of public school facilities then they must *immediately initiate binding arbitration proceedings* under the direction of the Florida Conflict Resolution Consortium.

In the event the school board, board of county commissioners, and members of the municipal governing bodies fail to hold the annual meeting each school board member, county commission, and member of the municipal governing body is subject to a \$100 per day fine. This fine may not be paid out of public funds of the board which the member represents. The fine may not be paid out of campaign contributions.

In the event that after holding the meeting, the parties cannot agree on the specific findings and actions and do not submit a final the report detailing the specific findings and actions to DCA within 60 days of the public meeting, then each school board member, county commissioner, and each member of the municipal governing body is subject to a \$100 per day fine. This fine may not be paid out of public funds of the board which the member represents. The fine may not be paid out of campaign contributions.

Note: Due to the requirements of the Intergovernmental Coordination Element found in paragraph 163.3177(3)(h), Florida Statutes, and the Coordination of planning with local governments found in section 235.193, Florida Statutes, some local governments have operative interlocal agreements and/or coordinated planning policies to address public school siting issues.

Florida Conflict Resolution Consortium: The Florida Conflict Resolution Consortium is required to provide binding arbitration proceedings in order to resolve the issues regarding the status of the coordination and actions for establishing public educational facilities.

- (3) any entitlement to a government service or benefit?

Indeterminate. This bill does not provide any methodology for determining how the services of the Florida Conflict Resolution Consortium are reimbursed or if the Florida Conflict Resolution Consortium will be reimbursed.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Florida Conflict Resolution Consortium:

Certain responsibilities will be borne by the Florida Conflict Resolution Consortium which they currently are not required to bear. This bill does not provide any methodology for determining how the Florida Conflict Resolution Consortium is to be reimbursed or if the Florida Conflict Resolution Consortium will be reimbursed.

Department of Community Affairs:

This bill does not provide for any procedures for imposing, collecting, and disbursing the fines levied on the various commissioners and members of the municipal governing bodies.

This bill does not authorize DCA to comment on or reject the report.

- (2) what is the cost of such responsibility at the new level/agency?

Indeterminate.

- (3) how is the new agency accountable to the people governed?

Indeterminate. The binding arbitration decisions made by the Florida Conflict Resolution Consortium are not subject to review.

Costs of the public meeting: Responsibility for the costs associated with the annual public meeting are not addressed by this bill.

Costs of Binding Arbitration: Responsibility for the costs associated with the use of the Florida Conflict Resolution Consortium for binding arbitration are not addressed by this bill.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

Indeterminate.

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Indeterminate.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapter 163, Florida Statutes

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates section 163.3182, Florida Statutes, which requires the following:

Annual Meetings:

- In each county, the district school board, the board of county commissioners, and the governing bodies of all municipalities within the county meet annually.
- The purpose of the annual public meetings is to facilitate the coordination of planning between the school boards and the local governing bodies to ensure that plans for the construction and opening of public educational facilities are facilitated and coordinated in time and place with plans for residential development.
- The initial meeting will be scheduled no later than October 1, 1998.
- A schedule of subsequent annual meetings will be established at the initial meeting.

Annual Reports:

- At the conclusion of the meetings, the participating bodies (school board, board of county commissioners, and municipalities located within the county), make a written report of the meeting to be submitted to DCA no later than 60 days after the meeting or conclusion of binding arbitration. The report contains the following:
 - ▶ Specific findings regarding the status of the coordination;
 - ▶ Describe the actions the governmental entities intend to take during the following year to establish and support a financially feasible system of public school facilities adequate for the population to be served.

Binding Arbitration:

- In the event the governing bodies are unable to agree on the specific findings and actions, they will immediately initiate binding arbitration proceedings with the Florida Conflict Resolution Consortium. A final report will be submitted to DCA within 60 days of the conclusion of the arbitration proceedings.

Fines:

- Failure of the participating bodies to hold the initial meeting by October 1, 1998, will result in the imposition of \$100 per day fines on each member beginning October 2, 1998.

- Failure of the participating bodies to hold subsequent meetings will result in the imposition of \$100 per day fines on each member beginning October 2 of the applicable year.
- Failure to file a report within 60 days after the meeting will result in the imposition of \$100 per day fines on each member beginning the day after the report was due.
- Failure to file a report within 60 days after the conclusion of the arbitration proceedings will result in the imposition of \$100 per day fines on each member beginning the day after the report is due.
- Fines may not be paid from public funds of the member's board.
- Fines may not be paid from funds received as a campaign contribution by the member in connection with his/her election to the board.

Note: Authorization to impose and collect fines is not contained in this bill. Authorization to utilize funds collected as fines is not contained in this bill.

Public Notice Requirements:

- Notice of each meeting must be published at least 7 days, but not more than 15 days, prior to the meeting.
- Notice may not be less than one-quarter page size in a standard size or tabloid size newspaper.
- The type size of the headline must be no smaller than 18 point.
- The notice may not be placed in the legal notices and classified advertisements section of the newspaper.
- The notice must be published in a newspaper of general paid circulation pursuant to chapter 50, Florida Statutes.
- The notice must appear for at least five days a week, unless the only newspaper in the community is published less than 5 days per week.

Section 2: Provides that this act will become effective upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

Florida Conflict Resolution Consortium: Costs associated with providing potential binding arbitration services to a potential 67 counties is not known at this time.

Florida Department of Community Affairs: Costs associated with monitoring 67 counties, 67 school boards, and over 400 municipalities for compliance to this section is not known at this time.

District School Boards, County Commissions, and Governing Municipal Bodies: Cost associated with annual meetings, public notices, possible, arbitration is not known.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

Indeterminate. School districts, counties, and municipalities might incur costs associated with public notice requirements; annual meetings; annual reports; and, possibly, arbitration.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The fiscal impacts of this bill are indeterminate.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill requires district school boards, county commissions, and governing bodies of municipalities to take actions that require expenditures of money (i.e., expending funds for the public notice, annual meeting, annual report, and, possibly, arbitration). The mandates implications are indeterminate as to the introduced bill.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

CONSTITUTIONAL CONSIDERATIONS:

This bill authorizes the imposition of \$100 per day fines on individual school board members, individual county commissioners, and individual members of municipal governing bodies under the following circumstances:

- If the district school board, county commission, and governing bodies of municipal governments fail to hold the required annual public meeting, each board member is subject to a fine of \$100 per day, until the meeting is held.
- If the district school board, county commission, and governing bodies of municipal governments hold the annual meeting but fail to submit the required report within 60 days of the meeting or the conclusion of the arbitration proceedings, each board member is subject to a fine of \$100 per day.

The state and federal constitutions provide all citizens with the right to due process of law. *Section 9, art. 1, Fla. Constitution; 5th and 14th Amendments, U.S. Constitution.* That is, a government action cannot deny a person life, liberty, or property without due process of law. If this bill becomes law, a challenge against it could be made against it by a person who could argue that its provisions deny due process of law. This bill does not provide for any hearing process to challenge a decision to levy a fine.

ADDITIONAL COMMENTS:

The bill does not designate an authority to impose or collect fines. The bill does not designate the disposition of the fines collected.

Florida Conflict Resolution Consortium: The Florida Conflict Resolution Consortium **does not provide binding arbitration services.**

Florida League of Cities: The Florida League of Cities (FLC), does not support this bill. According to the FLC, "The League opposes the mandatory meetings, arbitration and fines that are imposed by this legislation. These meetings should take place and should be coordinated by local governments under their own rules, and when convenient for the governing bodies of that jurisdiction. These meetings are not necessary in many areas of the state, and if they are necessary, they should be coordinated by those governing officials of that jurisdiction that are responsible to the public that elected them. The binding arbitration changes the process from coordination to adversarial, and subjecting elected officials to personal fines for not holding a meeting is unnecessary and again may dissuade qualified members of the public to engage in public service."

Florida Department of Community Affairs: The Department of Community Affairs takes no position on this bill.

Florida Association of Counties: The Florida Association of Counties does not support this bill.

Florida School Boards Association: The Florida School Boards Association (FSBA), does not support this bill. According to FSBA, "This bill raises a number of concerns and questions, the greatest being the requirement of binding arbitration. This creates a situation in which a nonelected body may dictate policy, procedures and consequences to duly elected officials. This is in direct conflict with Constitutional and Statutory home rule provisions for cities, counties and school boards."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 12, 1998, the Committee on Community Affairs considered and temporarily passed the bill. On April 22, 1998, the House of Representatives suspended the rules and placed HB 3283 on the Community Affairs agenda for April 23, 1998.

The sponsor of the bill offered a "strike-everything" amendment which was adopted and provides:

Section 1: Creates section 163.3182, providing for an annual meeting regarding educational facilities, as follows:

- Requires an annual meeting regarding educational facilities in counties where more than 10 percent of the schools in the district are 110 percent or more above capacity, the district school board, board of county commissioners, and the governing boards of all municipalities within the county must meet annually in a public meeting;

- The meeting is to be scheduled on a date that allows coordination with the local governments' schedule for amendment and for evaluation and appraisal of its comprehensive plan;
- The meeting is to be held after 5:00 pm, if scheduled on a day other than Saturday, and no meeting is to be scheduled on a Sunday;
- Notice of the meeting is to be published at least 7 days, but not more than 15 days, prior to the meeting;
- The notice is to be no less than one-quarter page in a standard size or a tabloid size newspaper, and the notice headline is to be no smaller than 18 point type;
- The notice is not to be placed with legal notices and classified advertisements;
- The notice is to be published in a newspaper of general paid circulation in the county, pursuant to ch. 50, Florida Statutes;
- The notice is to appear in a newspaper that is published at least 5 days a week unless the only newspaper in the county is published less than 5 days a week;
- The cost of the public meeting is to be shared equally by the boards participating in the meeting.
- The purpose for the meeting is to "facilitate the coordination of planning between the school board and the local governing boards to ensure that plans for the construction and opening of public educational facilities are facilitated in a timely manner to avoid overcrowded schools..."
- Requires the participating boards to make a report containing specific findings regarding the status of coordination and describe intended actions of the governing entities;
- Requires the participating boards which are not able to agree on these specific findings and action to resolve the dispute in either of the following ways;
 - The boards may initiate binding arbitration in accordance with rules adopted by DCA and DCA is to adopt rules to conform with the Florida Arbitration Code or may establish, by rule, in accordance with the Florida Administrative Procedures Act and within 90 days, a dispute resolution process, or
 - Costs incurred are to be shared by the district school board, the board of county commissioners, and the municipal governing boards and are to be paid from the administrative budgets of the boards.
- The full report of the meeting, including the findings and action statements, is to be submitted to DCA no later than 60 days after the date of the meeting, or 60 days after the conclusion of arbitration or dispute resolution procedures;

- The initial meeting is to be held no later than October 1, 1998;
- A schedule for subsequent annual meetings is to be submitted to DCA;
- After a required meeting is held, the district school board must notify DCA, by certified mail of the meeting.
- When DCA determines that a required meeting has not been held or that a report has not been made, DCA must, in accordance to ch. 120, F.S., impose a \$100 fine per day upon each member of the district school board, each member of the board of county commissioners, and each member of the municipal governing boards until a meeting is held or the report is submitted;
- If the initial meeting is not held the fine is to be calculated beginning October 2, 1998;
- If subsequent annual meetings are not held, the fine is to be calculated beginning October 2 of the applicable year;
- If the meeting is held and the required report is not made, the fine is to be calculated beginning the day after the report was due;
- Fines will not be paid from public funds of the board or from funds received as a campaign contribution by the member in connection with his or her election;
- No fine exceeds \$500 for any individual;
- Proceeds of the fines may be used to offset the costs of arbitration under this section for the board which the person who paid the fine represents; and
- Any person who contests a fine imposed under this section is entitled to a hearing under ch. 120, F.S.

Section 2: Provides this act takes effect upon becoming a law.

The bill, as amended, was subsequently voted unfavorably.

VII. SIGNATURES:

COMMITTEE ON Community Affairs:

Prepared by:

Legislative Research Director:

Tonya S. Chavis, Esq.

Joan Highsmith-Smith