

STORAGE NAME: h0223.ca

DATE: February 18, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 223

RELATING TO: Governmental Controversies

SPONSOR(S): Representative Constantine

COMPANION BILL(S): SB 1076(i), HB 491(c)

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

- (1) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
 - (2) COMMUNITY AFFAIRS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill renames the "Florida Governmental Cooperation Act" as the "Florida Governmental Conflict Resolution Act". The bill is concerned with disputes between local or regional governmental entities. It establishes procedures and requirements for conflict resolution which, except in certain specified circumstances, must be exhausted by the governmental entity initiating the lawsuit before court proceedings occur. The bill provides procedures and requirements for conflict assessment meetings, joint public meetings, mediation, and final conflict resolution.

This bill does not appear to have a direct fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida Governmental Cooperation Act

Presently, disputes between counties or municipalities are governed by Chapter 164, Florida Statutes, (the Florida Governmental Cooperation Act).

This act provides a mechanism for the resolution of disputes between counties and municipalities which must be followed prior to litigation. Under the act, before a county or municipality can file a law suit against another county or municipality, notice of intent to file suit must be given to the potential defendant, at least 45 days prior to filing suit. The party receiving notice must hold a public meeting within 30 days after receipt of this notice. At this meeting, the disputing governing bodies must discuss the proposed litigation in an effort to amicably settle the controversy.

A governing body which has received notice of intent to file a suit under this act which fails to hold a public meeting to discuss the proposed litigation is required to pay the attorney's fees and costs in that proceeding of the initiating county or municipality.

The statute provides for an exception to the notice and public meeting requirements of this act if the county or municipality finds that "an immediate danger to the health, safety, or welfare of the public requires immediate action."

Each applicable statute of limitation is tolled for 45 days from the date of receipt by the potential defendant local governmental entity of the notice of intent to sue.

Finally, before a suit naming a governing body of a county or municipality as a defendant is settled requiring the expenditure of public funds in excess of \$5,000, the terms of the settlement must have been the subject of a public hearing. However, if there exists an emergency which precludes the local government from holding a public hearing on the settlement and it records, in the minutes, the reasons for the emergency, then it may settle a case that requires the expenditure of public funds in excess of \$5,000 at a public meeting subject to Florida's "Sunshine Law", s. 286.011, Florida Statutes.

B. EFFECT OF PROPOSED CHANGES:

This bill requires that, if a local or regional governmental entity files suit against another local or regional governmental entity, the governmental entities must exhaust procedural conflict resolution processes before court proceedings occur, except in certain specified circumstances. The bill provides for court review of justification for failure to comply with the act. The bill provides for conflict assessment meetings, joint public meetings, mediation, and--should efforts to resolve the conflict under the act fail--final conflict resolution, and sets forth requirements for each of these.

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?

N/A

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

Under certain circumstances municipalities, counties, independent special districts, and regional governmental entities, that have been notified that another municipality, county, independent special district, or regional governmental entity has a dispute with them has a responsibility to initiate certain procedural options of the act within certain time frames in order not to be responsible for the initiating entity's attorney's fees and costs at any proceeding.

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

N/A

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

An agency or program is not eliminated or reduced.

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

N/A

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

N/A

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

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

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?

N/A

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:

N/A

(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:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapter 164, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends section 164.101, Florida Statutes, changing the title of the act from the “Florida Governmental Cooperation Act” to the “Florida Governmental Conflict Resolution Act.”

Section 2: Amends section 164.102, Florida Statutes, expanding the intent of the act from counties and municipalities to include local and regional governmental entities. Language is added to expand and clarify that the intent of the act is to “enhance intergovernmental coordination efforts” and that “conflicts between governmental entities be resolved to the greatest extent possible without litigation.”

Section 3: Creates section 164.1031, providing definitions of terms used in the act, including, but not limited to the following terms:

- Local governmental entities - this term includes municipalities, counties, school boards, special districts, and other local entities within the jurisdiction of one county created by general or special law or local ordinance;
- Regional governmental entities - this term includes regional planning councils, metropolitan planning organizations, water supply authorities that include more than one county, local health councils, water management districts, and other regional entities that are authorized and created by general or special law that have duties or responsibilities extending beyond the jurisdiction of a single county;
- Governmental entity - this term includes local and regional governmental entities.
- Local government resolution - this term has the same meaning as provided for s. 166.041, Florida Statutes. Section 166.041, Florida Statutes, defines "Resolution" as “an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body.”
- Governing body - this term includes the council, commission, or other board or body which possesses general legislative powers.
- Designee - a representative with full authority to negotiate on behalf of a governmental entity and to recommend settlement to the appropriate decision making body or authority of the governmental entity; and
- Noticed public meeting - a public meeting where notice has been given at least 10 days before the meeting by publication in a newspaper of the widest circulation in the jurisdictions of the primary conflicting governmental entities. Each primary governmental entity must provide notice by publication within its jurisdiction.
- Primary conflicting governmental entities - is the governmental entity that is initiating the conflict resolution process and the governmental entity or entities that is in conflict with the initiating governmental entity. The term does not include other governmental entities which merely approve or implement a particular element or

aspect of any settlement of the conflict or which may receive notice or intervene in the conflict resolution.

- Mediation - a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a conflict between two or more parties.

Section 4: Creates section 164.1041, creating a duty to negotiate on the part of the potential plaintiff governing entity. In addition, the following provisions are created:

- Governmental entities are encouraged to use the dispute resolution procedures created in this bill at any time;
- An exception to the duty to negotiate and the requirement to provide notice and a public meeting is provided when three-fourths vote of the governing body of a governing entity, finds that an immediate danger to the health, safety, or welfare of the public requires immediate action, or that significant legal rights will be compromised, at which time no notice or public meeting is required; or
- When a three-fourths vote of a water management district's governing body finds an immediate danger to the natural resources, water resources, and wildlife require immediate declaratory relief, or that significant legal rights will be compromised if this act is complied with, at which time no notice or public meeting is required.

[Note: The duty to negotiate created by this section does not apply to administrative proceedings pursuant to chapter 120; any appeal from any administrative or trial court judgment or decision; conflicts between governmental entities where an alternative dispute resolution process is specifically required by law, or written instrument; or if the governmental entities have reached an impasse during an alternative dispute resolution process engaged in before the initiation of the law suit. Similarly, nothing in this act shall limit a governmental entity from initiating eminent domain, foreclosure, or other court proceedings where other governmental entities are necessary parties; from filing a counterclaim or cross-claim in any litigation in which it is a defendant; from challenging certain specific governmental actions, including comprehensive plan amendments and tax assessment challenges; and from filing a suit without resort to the provisions of this act against any governmental entity not governed by state law.]

Section 5: Creates section 164.1051, defining the scope of the act. The scope of the act does not apply to any administrative proceeding pursuant to chapter 120. The scope of the act includes, but is not limited to, governmental conflicts arising from any of the following issues or processes:

- Any issue relating to local comprehensive plans or plan amendments prepared pursuant to Part II of chapter 163;
- Municipal annexation;
- Service provision areas;
- Allocation of natural resources;

- Siting of hazardous waste facilities, land fills, garbage collection facilities, silt disposal sites, or any other locally unwanted land use uses;
- Governmental entity permitting processes; and
- Siting of elementary and secondary schools.

Section 6: Creates section 164.1052, establishing the methods for initiation of the conflict resolution procedure and duty to give notice. The procedure is as follows:

- Before proceeding to court, an initiating governmental entity must pass a resolution, specifying the issues in conflict and the governmental entities with which it has a conflict and stating its intent to initiate the conflict resolution procedures;
- Within 5 days of the passage of the resolution, the initiating governmental entity must send, by certified mail/return receipt requested, a letter and certified copy of the resolution to the chief administrator of the conflicting governmental entity;
- The letter must identify the conflict, list the governmental entities in conflict, justification for instituting the conflict resolution process, list a proposed date and location for the conflict assessment meeting, and provide suggestions on who should attend the meeting;
- The initiating governmental entity must mail a copy of the letter to any state, regional, or local government which may have a role in approving or implementing any element or aspect of the settlement of the conflict or whose substantial interests may be affected by the resolution of the conflict, and any other governmental entity deemed appropriate by the initiating governmental entity;
- Within 10 days of receipt of a copy of the initiating governmental entity's initiating letter, other governmental entities receiving the letter may elect to participate in the conflict resolution process (but are not entitled to control the timing or progress of the process);
- Other governmental entities desiring to join the process as a primary conflicting governmental entity must, within 10 days of receipt of the initiating letter, pass its own resolution and follow the previously described process of initiating conflict resolution procedures. Intent to join must be communicated to the initiating governmental entity by certified mail. A copy of the letter must be sent to any state, regional, or local governmental entities which the joining governmental entity determines may have a role in approving or implementing a particular element or aspect of any settlement of whose substantial interests may be affected by resolution of the conflict, and any other governmental entities it deems appropriate.

Section 7: Creates section 164.1053, establishing the "Conflict assessment phase." This section provides the process for the public meeting. After the initiation of the conflict resolution and notice procedure, a conflict assessment meeting must be held, as follows:

- Within 30 days of the receipt of the letter initiating the conflict resolution procedure, a conflict assessment meeting must occur;

- Public notice, in accordance with the provisions contained in ch. 164.1031(7), must be given;
- If a tentative resolution to the conflict can be agreed upon, the primary conflicting governmental entities may proceed with whatever steps they deem appropriate;
- If no resolution to the conflict can be agreed upon, the primary conflicting governmental entities shall schedule a joint public meeting within 50 days of the receipt of the letter initiating the conflict resolution procedure.

Section 8: Creates section 164.1055, establishing the procedures for the joint public meeting. This section creates the following procedures:

- The governmental entity first initiating the conflict resolution process has the responsibility to schedule the joint public meetings and to arrange the location of the meeting;
- The entities in conflict may agree to enlist the assistance of a facilitator to conduct the meeting.

In the meeting the governing bodies of the primary conflicting governmental entities must:

- Consider the statement of issues prepared in the conflict assessment phase;
- Seek agreement; and
- Schedule additional meetings.

If no agreement is reached:

- The primary conflicting governmental entities must participate in mediation and endeavor in good faith to select a mutually acceptable mediator;
- If the entities are unable to mutually agree on a mediator within 14 days after the joint public meeting, the primary conflicting governmental entities must arrange for a mediator to be selected or recommended by an independent conflict resolution organization, or must agree upon an alternate method for selection of a mediator, within 7 business days after the close of that 14-day period;
- After selection of a mediator, the conflicting governmental entities must schedule the mediation session to occur within 14 days;
- Within 10 days of the conclusion of the mediation proceeding a written agreement on the issues must be issued.

[Note: The written agreement is not admissible in any court proceeding concerning the conflict, except for proceeds to award attorneys' fees under this chapter.]

Section 9: Creates section 164.1056, providing that primary conflicting governmental entities that fail to resolve their conflict after participating in the procedures provided by this act, may avail themselves of any otherwise available legal rights.

Section 10: Creates section 164.1057, requiring, for the purposes of execution of the resolution of conflict, the passage of an ordinance, resolution, or an interlocal agreement that reflects the terms or conditions of the resolution to the conflict.

Section 11: Renumbers section 164.104 as section 164.1058, and is amended, providing for a penalty. This section provides that a recipient governmental entity failing to participate in good faith in the conflict assessment meeting, mediation, or other remedies provided for in this act shall be required to pay the attorney's fees and costs of the initiating governmental entity, should the initiating entity be the prevailing party in the law suit.

Section 12: Creates section 164.1061, providing for time extensions for any requirements of this act may be granted by mutual agreement of the primary conflicting governmental entities. To the extent such agreement causes any jurisdictional time requirement to run with regards to a particular claim, the agreement will have the effect of extending the jurisdictional time requirements for the period of the agreement.

Section 13: Repeals sections 164.103, 164.105 and 164.106, Florida Statutes, relating to the governmental disputes act.

Section 14: Provides that this act will become effective upon becoming a law, but will not be construed to abrogate any otherwise applicable agreements or requirements to contracts, interlocal agreements, or other written instruments which are in existence as of the effective date of this act.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. This bill may result in cost savings due to decreased judicial or administrative proceedings when conflicts are settled.

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:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require municipalities or counties to spend money or to take action that requires a significant expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce revenue raising authority.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 1, 1999, the Committee on Governmental Operations adopted an amendment changing the title of the bill from one relating to "Governmental Controversies" to one relating to "Governmental Conflict Resolution."

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Jen Girgen

Jimmy O. Helms

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

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