

STORAGE NAME: h0237s1.ca

DATE: April 18, 2000

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

BILL #: CS/HB 237

RELATING TO: Correctional Facilities

SPONSOR(S): Committee on Corrections, Representative Lawson and others

TIED BILL(S): None

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

- (1) CORRECTIONS YEAS 6 NAYS 0
 - (2) CHILDREN & FAMILIES YEAS 9 NAYS 0
 - (3) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
 - (4) COMMUNITY AFFAIRS (PRC)
 - (5) CRIMINAL JUSTICE APPROPRIATIONS (FRC)
-

I. SUMMARY:

This bill prohibits the siting of a Department of Corrections institution, a Correctional Privatization Commission facility, or a Department of Children and Family Services facility for sexually violent predators within a half mile radius of the grounds upon which a school, child care facility, park or playground is located, or where children regularly congregate.

This bill also requires the Department of Children and Family Services or other appropriate agency siting a facility for sexually violent predators to furnish notice and hold a public hearing on the request (with notice of the meeting furnished by the affected local government); and the appropriate agency must also secure local government certification of compliance with local zoning restrictions and any other ordinances before siting a facility.

This bill gives the Governor and Cabinet the authority to override local governmental denial of siting approval, subject to review in the First District Court of Appeal, consistent with review procedures outlined in the Administrative Procedures Act.

This bill may have a fiscal impact on state and local governments.

The Committee on Children and Families adopted three amendments that are traveling with the bill. As indicated in the “AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES” section, Amendment One restricts application of this bill to correctional facilities and facilities for sexually violent predators that begin their initial operation after June 30, 2000 and clarifies that the Department of Corrections is authorized to expand non-secure facilities. Amendment Two requires the Department of Children and Families (instead of the “appropriate local government” and “appropriate agency”) to furnish notice and hold the hearing for a proposal for siting a secure facility for sexually violent predators. Amendment Three requires the Department of Children and Families to give notice and hold a public hearing on a request for modification of a local government comprehensive plan.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

The requirements for the siting of Jimmy Ryce Facilities will involve more actions, notices and procedures by state agencies and local governments.

B. PRESENT SITUATION:

There are presently no distance restrictions upon the siting of an institution under the jurisdiction of the Department of Corrections or the Correctional Privatization Commission, or a secure facility for sexually violent predators (defined in s. 394.912 (10), F.S.) under the jurisdiction of the Department of Children and Family Services. There are no current provisions in law for notice regarding the siting of a facility for sexually violent predators under the Department of Children and Families. There is no procedure for assuring compliance with local government comprehensive plans, local land use ordinances, local zoning ordinances and other local ordinances. There is also no procedure to site a facility for sexually violent predators despite local opposition.

Section 394.912 (10), F.S., provides the following definition for "sexually violent predator":

"Sexually violent predator" means any person who:

- (a) Has been convicted of a sexually violent offense; and
- (b) Suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

Section 402.302, F.S., provides the following definition of child care facility:

...any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit.

This definition excludes public schools and nonpublic schools and their integral programs (except for certain designated programs which provide care for very young children); summer camps, including day camps; bible schools; and resorts that provide child care for guests.

Section 120.68, F.S., provides for judicial review by an appellate court under the Administrative Procedures Act.

C. EFFECT OF PROPOSED CHANGES:

This bill creates an unnumbered section of the Florida Statutes limiting the sites available for future Department of Corrections institutions, Correctional Privatization Commission facilities, or a secure facility for sexually violent predators under the Department of Children and Family Services. This bill prohibits the facilities from being located within one-half mile of enumerated real property geared toward children. This bill will not require the relocation of existing facilities (see Part V below), nor will it change where the Department of Corrections may house individuals in the Department's custody.

This bill also creates an unnumbered section of the Florida Statutes that requires the Department of Children and Family Services to request a determination from local government that the siting of the facility is in compliance with the local comprehensive plan and local ordinances. This bill also requires the appropriate agency to hold a public hearing concerning the site request. If the site is not in compliance with local plans, then this bill permits the local government to propose alternative sites. It provides an appeal mechanism to the Governor and Cabinet and the First District Court of Appeal if the Department is denied modification of local law to permit the facility or if there is no action by the local government within 90 days.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. This section prohibits correctional institutions under the jurisdiction of the Department of Corrections, the Correctional Privatization Commission, or secure facilities for sexually violent predators under the jurisdiction of the Department of Children and Family Services from being sited within one-half mile radius of enumerated real properties where children regularly congregate.

This section permits existing facilities, already or previously under the jurisdiction of the Department of Corrections, the Correctional Privatization Commission, or the Department of Children and Family Services, to remain in their current location.

Section 2. This section requires the Department of Children and Family Services to request local government determination that secure facilities for sexually violent predators comply with the local comprehensive plan and all other local laws. This section requires the appropriate local government to give notice of a public hearing to be held by the appropriate agency within 60 days of the site request. The hearing shall be recorded or taped by a court reporter and made available for transcription to interested parties.

This section allows the local government affected by the proposed facility site a period of 90 days to determine whether the site complies with local plans and ordinances. If the proposed facility is not in compliance with local plans, the Department of Children and Family Services may request modifications of the plan or laws. The Department of Children and Families must hold a public hearing, at which the local government may recommend alternative sites.

If the department is denied its request for modification, or if no action is taken in 90 days, the department may appeal to the Governor and Cabinet. If this body determines that the local government has recommended no feasible alternative site, and the need for the

facility outweighs the concerns of the local government, it shall authorize construction and operation on the proposed site. While the actions of the Governor and Cabinet are not subject to s. 120.56, s.120.569, or s.120.57, F.S., the decision is subject to judicial review at the First District Court of Appeal pursuant to section 120.68, F.S.

Section 3. The act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill is unlikely to affect revenues, but referral is made to the Criminal Appropriations Committee for such findings.

2. Expenditures:

This bill may increase the cost of land for facilities; referral is made to the Criminal Appropriations Committee for such findings.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Siting of a facility may impact local revenue; referral is made to the Criminal Appropriations Committee for such findings.

2. Expenditures:

Legal costs can reasonably be expected to be incurred in opposition to siting of a facility; referral is made to the Criminal Appropriations Committee for such findings.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None is anticipated.

D. FISCAL COMMENTS:

None

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

Concerns have been raised that this act will force the relocation of existing facilities which do not comply with the bill's distance requirement. Statutes are presumed to be prospective in application unless the Legislature manifests an intent to the contrary. Fleeman v Case, 342 So.2d 815 (Fla. 1997). The courts have applied this principle when formerly complying property use becomes non-conforming as a result of new regulation. See Thompson v Village of Tequesta Board of Adjustment, 546 So.2d 457 (Fla. 4th DCA 1989). See also Anderson v Anderson, 468 So.2d 528 (Fla. 3d DCA 1985) which states: Absent an express legislative declaration that a statute have retroactive effect, the statute is deemed to operate prospectively only, and even a clear legislative expression of retroactivity will be ignored by courts if the statute impairs vested rights, creates new obligations, or imposes new penalties.

The intent of the amendment to Amendment 3 to HB 237 is to place the burden of cost of noticing and holding the public meeting (in reference to the site request) on the appropriate state agency, not the local government. However, the wording of the amended amendment (which has been incorporated in the bill - section 2) still places the cost of furnishing the notice of the public meeting on the local government. This issue should be addressed by the next Committee of reference.

Amendment 4 to HB 237 attempts to address the situation in which a closed Department of Corrections facility subsequently transferred to the Department of Children and Family Services is permitted to re-open. The amendment adopted and incorporated within the Committee Substitute may be construed to permit a Department of Corrections facility to be opened as a Department of Children and Family Services facility. This is not the intent of the Sponsor and the issue needs to be addressed in the next Committee of reference.

The Legislative Director with the Department of Corrections indicates that they do not oppose the bill, as amended.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Corrections heard this bill on December 7, 1999. The committee adopted four amendments and reported the amended bill favorably as a committee substitute.

Amendment One: Added language to the bill including institutions under the jurisdiction of the Correctional Privatization Commission with the institutions prohibited from being located within a certain distance from property that comprises a public or private elementary school, child care facility, park, playground or other place where children congregate.

Amendment Two: Changed the minimum distance between facilities for sexually violent predators and facilities for children from 5 blocks to a one-half mile radius.

Amendment Three: Requires the local government affected by the request to give notice of a public hearing (regardless of compliance) within 60 days of receiving the request. The amendment still allows the local government 90 days to determine whether or not the site request complies with the local government comprehensive plan. The amendment requires the appropriate agency (requesting the site for a sexual predators facility) to hold the public meeting noticed by the local government within 60 days of the local government's receipt of the request. The public hearing is to be recorded by tape or a certified court reporter.

Amendment Four: Permits existing facilities to remain in their current location and also permits current or closed corrections facilities to be re-opened as either correctional facilities or secure facilities. AS DRAFTED, the language permits a Department of Corrections site to re-open as a secure facility. **The sponsor and committee intended only to permit Department of Corrections facilities to re-open as Department of Corrections facilities.**

When the Committee on Children and Families heard this committee substitute on April 5, 2000, three amendments were adopted. The committee substitute was reported favorably, with the following three traveling amendments:

Amendment One: Restricts application of this bill to correctional facilities and facilities for sexually violent predators that begin their initial operation after June 30, 2000.

This amendment appears to adequately address concerns described in the V. COMMENTS, C. OTHER COMMENTS section, paragraphs one and three.

Amendment Two: Requires the Department of Children and Families (instead of the "appropriate local government" and "appropriate agency") to furnish notice and hold the hearing for a proposal for siting a secure facility for sexually violent predators.

This amendment, along with amendment three, appears to adequately address concerns described in the V. COMMENTS, C. OTHER COMMENTS section, paragraph two.

Amendment Three: Requires the Department of Children and Families to give notice and hold a public hearing on a request for modification of a local government comprehensive plan.

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This amendment, along with amendment two, appears to adequately address concerns described in the V. COMMENTS, C. OTHER COMMENTS section, paragraph two.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON CORRECTIONS:

Prepared by:

Staff Director:

Melinda A. Smith

Jo Ann Levin

AS REVISED BY THE COMMITTEE ON Children & Families:

Prepared by:

Staff Director:

Glenn A. Mitchell

Robert Barrios

AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Jennifer D. Krell

Russell J. Cyphers, Jr.

AS FURTHER REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Cindy M. Brown, J.D.

Joan Highsmith-Smith