

STORAGE NAME: h0237s1.cf

DATE: March 31, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
Children & Families
ANALYSIS**

BILL #: CS/HB 237

RELATING TO: Correctional Facilities and Facilities for Sexually Violent Predators

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

TIED BILL(S): SB 0118 (I)

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

- (1) COMMITTEE ON CORRECTIONS YEAS 6 NAYS 0
 - (2) CHILDREN & FAMILIES
 - (3) GOVERNMENTAL OPERATIONS
 - (4) COMMUNITY AFFAIRS
 - (5) CRIMINAL JUSTICE APPROPRIATIONS
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I. SUMMARY:

The bill would prohibit the siting of a Department of Corrections institution, a Correctional Privatization Commission facility, or a Department of Children and Family Services Jimmy Ryce Act facility for sexually violent predators within a ½ mile radius of the grounds upon which a school, child care facility, park or playground is located, or where children regularly congregate. The bill would also require the Department of Children and Family Services or other appropriate agency siting a Jimmy Ryce Act facility 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. The bill would afford the Governor and Cabinet the authority to override local governmental denial of siting approval, subject to review in the First District Court of Appeal under s. 120.68, F.S.

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

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 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 Jimmy Ryce Facility. 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 Jimmy Ryce Facility despite local opposition.

C. EFFECT OF PROPOSED CHANGES:

Section 1. Will limit the sites available for future Department of Corrections Institutions, Correctional Privatization Commission facilities, or the Department of Children and Family Services Institutions. The 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.

Section 2. Will require 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. Will require the appropriate agency to hold a public hearing concerning the site request. If the site is not in compliance with local plans, then the bill would permit the local government to propose alternative sites. It would provide 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, as originally drafted, would prohibit correctional institutions under the jurisdiction of the Department of Corrections or secure facilities for sexually violent predators under the jurisdiction of the Department of Children and Family Services from being sited within 5 blocks of enumerated real properties where children regularly congregate. Amendment one includes facilities which are under the jurisdiction of the Correctional Privatization Commission to the group of facilities who are restricted from locating in the aforementioned areas. Amendment two changed the distance from 5 blocks to a ½ mile radius.

As originally drafted, this section could have been interpreted to mean that any perviously existing correctional facilities or secure facilities may have to renovate, relocate, or be closed down in order to abide by the legislation. Amendment four 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 would require the Department of Children and Family Services to request local government determination that a Jimmy Ryce Facility complies with the local comprehensive plan and all other local laws. As originally drafted, the section did not require a public hearing about the site request. Amendment three 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. A public hearing must then be held, 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 120.69, F.S.

Section 3. The act is to 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 effect 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:

None

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None

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

None

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 intention to the contrary. Fleeman v Case, 342 So.2d 815 (Fla. 1997). The courts have applied this principal 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: In absence of an express legislative declaration that a statute have retroactive effect, statute will be deemed to operate prospectively only, and even a clear legislative expression of retroactivity will be ignored by courts if statute impairs vested rights, creates new obligations, or imposes new penalties.

The intent of the amendment to Amendment 3 to HB 237 was 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 attempted to address the situation in which a closed Department of Corrections facility subsequently transferred to the Department of Children and Family Services be 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.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Corrections Committee: Four amendments to HB 237 were made and the sponsor elected to have the amendments incorporated into a new Committee Substitute, which is the subject of this bill analysis.

Amendment One:

In the original form of the bill, only institutions under the jurisdiction of the Department of Corrections or the Department of Children and Family Services were affected. Amendment one added language to the bill which would also prohibit institutions under the jurisdiction of the Correctional Privatization Commission 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:

In the original form of the bill, correctional facilities and Jimmy Ryce facilities were not permitted to be located within 5 blocks from schools, etc. Amendment two changed the distance from 5 blocks to a ½ mile radius.

Amendment Three:

In the original form of the bill, the affected local agency was allowed 90 days after having received a request to site a facility for sexually violent predators in the area to determine whether such a site complies with local government comprehensive plans. If the site was in compliance, the bill did not require notice to the public. 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:

In the original form, the bill could be interpreted to mean that any previously existing correctional facilities or secure facilities (for sexual predators) may have to renovate, relocate, or be closed down in order to abide by the legislation. 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.**

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON CORRECTIONS:

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