

Amendment No. 01s (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

The Committee on Community Affairs offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause
and insert in lieu thereof:

Section 1. Section 164.101, Florida Statutes, is amended to read:

164.101 Short title.--Sections 164.101-164.1061 ~~This act~~ may be cited as the "Florida Governmental Conflict Resolution Cooperation Act."

Section 2. Section 164.102, Florida Statutes, is amended to read:

164.102 Purpose and intent.--The purpose and intent of this act is to promote, protect, and improve the public health, safety, and welfare and to enhance intergovernmental coordination efforts by the creation of a governmental conflict dispute resolution procedure ~~process~~ that can provide an equitable, expeditious, effective, and inexpensive method for resolution of conflicts ~~disputes~~ between and among local and regional governmental entities ~~counties and~~

Amendment No. 01s (for drafter's use only)

1 municipalities. It is the intent of the Legislature that
2 conflicts between governmental entities be resolved to the
3 greatest extent possible without litigation.

4 Section 3. Section 164.1031, Florida Statutes, is
5 created to read:

6 164.1031 Definitions.--For purposes of this act:

7 (1) "Local governmental entities" includes
8 municipalities, counties, school boards, special districts,
9 and other local entities within the jurisdiction of one county
10 created by general or special law or local ordinance.

11 (2) "Regional governmental entities" includes regional
12 planning councils, metropolitan planning organizations, water
13 supply authorities that include more than one county, local
14 health councils, water management districts, and other
15 regional entities that are authorized and created by general
16 or special law that have duties or responsibilities extending
17 beyond the jurisdiction of a single county.

18 (3) "Governmental entity" includes local and regional
19 governmental entities.

20 (4) "Local government resolution" has the same meaning
21 as provided in s. 166.041.

22 (5) "Governing body" means the council, commission, or
23 other board or body in which the general legislative powers of
24 a local or regional governmental entity are vested.

25 (6) "Designee" means a representative with full
26 authority to negotiate on behalf of a governmental entity and
27 to recommend settlement to the appropriate decisionmaking body
28 or authority of the governmental entity.

29 (7) "Noticed public meeting" means a public meeting in
30 which notice is given at least 10 days prior to the meeting by
31 publication in the newspaper of widest circulation in the

Amendment No. 01s (for drafter's use only)

1 jurisdictions of the primary conflicting governmental
2 entities. Each primary conflicting governmental entity shall
3 provide notice within its jurisdiction.

4 (8) "Primary conflicting governmental entities" means
5 the governmental entity initiating the conflict resolution
6 process provided for in this act, together with the
7 governmental entity or entities with whom the initiating
8 governmental entity has a conflict. The term does not include
9 other governmental entities which may have a role in approving
10 or implementing a particular element or aspect of any
11 settlement of the conflict, or which may receive notice or
12 intervene in the conflict resolution process provided for in
13 this act.

14 (9) "Mediation" means a process whereby a neutral
15 third person called a mediator acts to encourage and
16 facilitate the resolution of a conflict between two or more
17 parties. The role of the mediator includes, but is not
18 limited to, assisting the parties in identifying issues and
19 exploring settlement alternatives.

20 Section 4. Section 164.1041, Florida Statutes, is
21 created to read:

22 164.1041 Duty to negotiate.--

23 (1) If a governmental entity files suit against
24 another governmental entity, court proceedings shall not occur
25 unless the procedural options of this act have been exhausted.
26 All governmental entities are encouraged to use the procedures
27 in this act to resolve conflicts that may occur at any time
28 between governmental entities, but shall use these procedures
29 before court proceedings, consistent with the provisions of
30 this section. The provisions of this act do not apply to
31 administrative proceedings pursuant to chapter 120 or any

Amendment No. 01s (for drafter's use only)

1 appeal from any administrative or trial court judgment or
2 decision. Nothing in this act shall limit a governmental
3 entity from initiating eminent domain, foreclosure, or other
4 court proceedings where, as a function of the nature of the
5 suit, other governmental entities are necessary parties, if
6 there are no materially disputed issues with regard to such
7 joinder. Nothing in this act shall limit a governmental entity
8 from filing any counterclaim or cross-claim in any litigation
9 in which it is a defendant. Nothing in this act is intended
10 to abrogate other provisions of law which provide procedures
11 for challenges to specific governmental actions, including,
12 but not limited to, comprehensive plan amendments and tax
13 assessment challenges. The provisions of this act shall not
14 apply to conflicts between governmental entities if an
15 alternative dispute resolution process, such as mediation or
16 arbitration, is specifically required by general law or agreed
17 to by contract, interlocal agreement, or other written
18 instrument, or if the governmental entities have reached an
19 impasse during an alternative dispute resolution process
20 engaged in prior to the initiation of court action. Further,
21 nothing in this act shall preclude a governmental entity from
22 filing a suit without resort to the provisions of this act
23 against any federal or other governmental entity not governed
24 by state law.

25 (2) If a governmental entity, by a three-fourths vote
26 of its governing body, finds that an immediate danger to the
27 health, safety, or welfare of the public requires immediate
28 action, or that significant legal rights will be compromised
29 if a court proceeding does not take place before the
30 provisions of this act are complied with, no notice or public
31 meeting or other proceeding as provided by this act shall be

Amendment No. 01s (for drafter's use only)

1 required before such a court proceeding. If a water
2 management district, by three-fourths vote of its governing
3 body, finds that an immediate danger to the natural resources,
4 water resources, and wildlife requires immediate declaratory
5 relief, or that significant legal rights will be compromised
6 if a court proceeding does not take place before the
7 provisions of this act are complied with, no notice or public
8 meeting or other proceeding as provided by this act shall be
9 required before such a court proceeding. However, the court,
10 upon motion, may review the justification for failure to
11 comply with the provisions of this act and make a
12 determination as to whether the provisions of this act should
13 be complied with prior to a court proceeding. If the court
14 determines that the provisions of this act should be complied
15 with prior to a court proceeding and that following the
16 provisions of this act will not result in the compromise of
17 significant legal rights, the court shall dismiss the action
18 for failure to comply with the provisions of this act or shall
19 abate the suit until the provisions of this act are complied
20 with.

21 Section 5. Section 164.1051, Florida Statutes, is
22 created to read:

23 164.1051 Scope.--It is not the intent of this act to
24 limit the conflicts that may be considered under this act,
25 except any administrative proceeding pursuant to chapter 120.
26 Pursuant to s. 164.1041, this act shall apply, at a minimum,
27 to governmental conflicts arising from any of the following
28 issues or processes, including, but not limited to:

29 (1) Any issue relating to local comprehensive plans or
30 plan amendments prepared pursuant to part II of chapter 163,
31 including, but not limited to, conflicts involving levels of

Amendment No. 01s (for drafter's use only)

1 service for public facilities and natural resource protection.
2 (2) Municipal annexation.
3 (3) Service provision areas.
4 (4) Allocation of resources, including water, land, or
5 other natural resources.
6 (5) Siting of hazardous waste facilities, land fills,
7 garbage collection facilities, silt disposal sites, or any
8 other locally unwanted land uses.
9 (6) Governmental entity permitting processes.
10 (7) Siting of elementary and secondary schools.
11 Section 6. Section 164.1052, Florida Statutes, is
12 created to read:
13 164.1052 Initiation of conflict resolution procedure;
14 duty to give notice.--
15 (1) The governing body of a governmental entity shall
16 initiate the conflict resolution procedures provided by this
17 act through passage of a resolution by its members. The
18 resolution shall state that it is the intention of the
19 governing body to initiate the conflict resolution procedures
20 provided by this act prior to a court proceeding to resolve
21 the conflict and shall specify the issues of conflict and the
22 governmental entity or entities with which the governing body
23 has a conflict. Within 5 days after the passage of the
24 resolution, a letter and a certified copy of the resolution
25 shall be provided to the chief administrator of the
26 governmental entity or entities with which the governing body
27 has a conflict by certified mail, return receipt requested.
28 The letter shall state, at a minimum, the conflict, other
29 governmental entities in conflict with the initiating
30 governmental entity, justification for initiating the conflict
31 resolution process, the proposed date and location for the

Amendment No. 01s (for drafter's use only)

1 conflict assessment meeting to be held pursuant to s.
2 164.1053, and suggestions regarding the officials who should
3 be present at the conflict assessment meeting. The initiating
4 governmental entity also shall mail a copy of the letter and
5 resolution to any state, regional, or local governmental
6 entities which, in the determination of the initiating
7 governmental entity, may have a role in approving or
8 implementing a particular element or aspect of any settlement
9 of the conflict or whose substantial interests may be affected
10 by the resolution of the conflict, and any other governmental
11 entity deemed appropriate by the initiating governmental
12 entity.

13 (2) Within 10 days after receiving a copy of a
14 certified letter noticing the initiation of the conflict
15 resolution procedure, other governmental entities receiving
16 the notice may elect to participate in the conflict resolution
17 process, but are not entitled by virtue of that participation
18 to control the timing or progress of the conflict resolution
19 process, which at all times shall remain in the discretion of
20 the primary conflicting governmental entities. However, a
21 governmental entity which receives notice of a conflict may,
22 by passage of its own resolution and by otherwise following
23 the procedures set forth in subsection (1), join the conflict
24 resolution process as a primary conflicting governmental
25 entity. The intent of a governmental entity to join in the
26 conflict resolution process shall be communicated to the
27 initiating governmental entity by certified mail. The joining
28 governmental entity also shall mail a copy of the letter to
29 any state, regional, or local governmental entities which, in
30 the determination of the joining governmental entity, may have
31 a role in approving or implementing a particular element or

Amendment No. 01s (for drafter's use only)

1 aspect of any settlement of the conflict or whose substantial
2 interests may be affected by the resolution of the conflict,
3 and any other governmental entity deemed appropriate by the
4 joining governmental entity.

5 (3) For purposes of this act, the date of initiation
6 of the conflict resolution procedure shall be the date of the
7 passage of a resolution by a governmental entity.

8 Section 7. Section 164.1053, Florida Statutes, is
9 created to read:

10 164.1053 Conflict assessment phase.--

11 (1) After the initiation of the conflict resolution
12 procedure, and after proper notice by certified letter has
13 been given, a conflict assessment meeting shall occur. The
14 meeting shall be scheduled to occur within 30 days of the
15 receipt of the letter initiating the conflict resolution
16 procedure. Public notice shall be given for this meeting in
17 accordance with s. 164.1031(7). The conflict assessment
18 meeting shall be scheduled to allow the attendance by the
19 appropriate personnel from each primary conflicting
20 governmental entity. The chief administrator for each
21 governmental entity, or his or her designee, that are primary
22 conflicting governmental entities in the conflict resolution
23 procedure shall be present at this meeting. If the entities in
24 conflict agree, the assistance of a facilitator may be
25 enlisted for the conflict assessment meeting. During the
26 conflict assessment meeting, the governmental entities shall
27 discuss the issues pertaining to the conflict and an
28 assessment of the conflict from the perspective of each
29 governmental entity involved.

30 (2) If a tentative resolution to the conflict can be
31 agreed upon by the representatives of the primary conflicting

Amendment No. 01s (for drafter's use only)

1 governmental entities at the conflict assessment meeting, the
2 primary conflicting governmental entities may proceed with
3 whatever steps they deem appropriate to fully resolve the
4 conflict, including, but not limited to, the scheduling of
5 additional meetings for informal negotiations or proposing a
6 resolution to the governing bodies of the primary conflicting
7 governmental entities.

8 (3) In the event that no tentative resolution can be
9 agreed upon, the primary conflicting governmental entities
10 shall schedule a joint public meeting as described in s.
11 164.1055, which meeting shall occur within 50 days of the
12 receipt of the first letter initiating the conflict resolution
13 process from the initiating governmental entity.

14 (4) After the conclusion of the conflict assessment
15 meeting, any primary conflicting governmental entity may
16 request mediation as provided in s. 164.1055(2).

17 Section 8. Section 164.1055, Florida Statutes, is
18 created to read:

19 164.1055 Joint public meeting.--

20 (1) Failure to resolve a conflict after following
21 authorized procedures as specified in s. 164.1053 shall
22 require the scheduling of a joint public meeting between
23 primary conflicting governmental entities. The governmental
24 entity first initiating the conflict resolution process shall
25 have the responsibility to schedule the joint public meeting
26 and arrange a location. If the entities in conflict agree, the
27 assistance of a facilitator may be enlisted to assist them in
28 conducting the meeting. In this meeting, the governing bodies
29 of the primary conflicting governmental entities shall:

30 (a) Consider the statement of issues prepared in the
31 conflict assessment phase.

Amendment No. 01s (for drafter's use only)

1 (b) Seek an agreement.
2 (c) Schedule additional meetings of the joint
3 entities, or of their designees, to continue to seek
4 resolution of the conflict.
5 (2) If no agreement is reached, the primary
6 conflicting governmental entities shall participate in
7 mediation, the costs of which shall be equally divided between
8 the primary conflicting governmental entities. The primary
9 conflicting governmental entities shall endeavor in good faith
10 to select a mutually acceptable mediator. If the primary
11 conflicting governmental entities are unable to mutually agree
12 on a mediator within 14 days after the joint public meeting,
13 the primary conflicting governmental entities shall arrange
14 for a mediator to be selected or recommended by an independent
15 conflict resolution organization, such as the Florida Conflict
16 Resolution Consortium, and shall agree to accept the
17 recommendation of that independent organization, or shall
18 agree upon an alternate method for selection of a mediator,
19 within 7 business days after the close of that 14-day period.
20 Upon being selected, the conflicting governmental entities
21 shall schedule mediation to occur within 14 days, and shall
22 issue a written agreement on the issues in conflict within 10
23 days of the conclusion of the mediation proceeding. The
24 written agreement shall not be admissible in any court
25 proceeding concerning the conflict, except for proceedings to
26 award attorney's fees under s. 164.1058, where the agreement
27 may be used to demonstrate an entity's refusal to participate
28 in the process in good faith.

29 Section 9. Section 164.1056, Florida Statutes, is
30 created to read:

31 164.1056 Final resolution.--If there is failure to

Amendment No. 01s (for drafter's use only)

1 resolve a conflict between governmental entities through the
2 procedures provided by ss. 164.1053 and 164.1055, the entities
3 participating in the dispute resolution process may avail
4 themselves of any otherwise available legal rights.

5 Section 10. Section 164.1057, Florida Statutes, is
6 created to read:

7 164.1057 Execution of resolution of
8 conflict.--Resolution of a conflict at any phase shall require
9 passage of an ordinance, resolution, or interlocal agreement
10 that reflects the terms or conditions of the resolution to the
11 conflict.

12 Section 11. Section 164.104, Florida Statutes, is
13 renumbered as section 164.1058, Florida Statutes, and amended
14 to read:

15 164.1058 ~~164.104~~ Penalty.--If a primary conflicting
16 governmental entity ~~the governing body of a county or~~
17 municipality which has received notice of intent to initiate
18 the conflict resolution procedure pursuant to this act ~~file a~~
19 suit pursuant to s. ~~164.103(1)~~ fails to participate in good
20 faith in the conflict assessment meeting, mediation, or other
21 remedies provided for in this act, and the initiating
22 governmental entity files suit and is the prevailing party in
23 such suit, the primary disputing governmental entity which
24 failed to participate in good faith ~~hold a public meeting to~~
25 discuss the proposed litigation, the governing body shall be
26 required to pay the attorney's fees and costs in that
27 proceeding of the governmental entity which initiated the
28 conflict resolution procedure ~~county or municipality which has~~
29 filed suit.

30 Section 12. Section 164.1061, Florida Statutes, is
31 created to read:

Amendment No. 01s (for drafter's use only)

1 164.1061 Time extensions.--Any of the time
2 requirements set forth in this act may be extended by mutual
3 agreement, in writing, of the primary conflicting governmental
4 entities. To the extent such agreement would cause any
5 jurisdictional time requirements to run with regard to a
6 particular claim, the agreement shall have the effect of
7 extending any jurisdictional time requirements with regard to
8 that claim for the period set forth in the agreement.

9 Section 13. Sections 164.103 and 164.106, Florida
10 Statutes, are hereby repealed.

11 Section 14. This act shall take effect upon becoming a
12 law, but shall not be construed to abrogate any otherwise
13 applicable agreements or requirements of any contracts,
14 interlocal agreements, or other written instruments which are
15 in existence as of the effective date of this act. To the
16 extent that any contractual or other agreement provisions in
17 existence on the effective date of this act conflict with the
18 provisions of this act, the provisions in the written
19 agreement shall control.

20
21
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Remove from the title of the bill: the entire title

25
26 and insert in lieu thereof:

27 A bill to be entitled

28 An act relating to governmental controversies;

29 amending s. 164.101, F.S.; renaming the

30 "Florida Governmental Cooperation Act" as the

31 "Florida Governmental Conflict Resolution Act";

Amendment No. 01s (for drafter's use only)

1 amending s. 164.102, F.S.; providing purpose
2 and intent; creating s. 164.1031, F.S.;
3 providing definitions; creating s. 164.1041,
4 F.S.; requiring local and regional governmental
5 entities to exhaust the procedural options of
6 the act before court proceedings in circuit or
7 county court, except in specified
8 circumstances; providing for review by the
9 court of the justification for failure to
10 comply with the act; creating s. 164.1051,
11 F.S.; specifying the governmental conflicts to
12 which the act applies; creating s. 164.1052,
13 F.S.; providing procedures and requirements for
14 initiation of conflict resolution procedures
15 and determination of participants; creating s.
16 164.1053, F.S.; providing for a conflict
17 assessment meeting and providing requirements
18 with respect thereto; creating s. 164.1055,
19 F.S.; providing for a joint public meeting
20 between conflicting entities; providing for
21 mediation when no agreement is reached;
22 creating s. 164.1056, F.S.; providing for final
23 resolution of a conflict when there is a
24 failure to resolve the conflict under the act;
25 creating s. 164.1057, F.S.; specifying the
26 manner of execution of the resolution of a
27 conflict; renumbering and amending s. 164.104,
28 F.S.; providing that a governmental entity that
29 fails to participate in conflict resolution
30 procedures shall be required to pay attorney's
31 fees and costs under certain conditions;

Amendment No. 01s (for drafter's use only)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

creating s. 164.1061, F.S.; providing for extension of the time requirements of the act; repealing ss. 164.103 and 164.106, F.S., which provide procedures and requirements for resolution of governmental disputes; providing effect on existing contracts and agreements; providing an effective date.