SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 20, 1998 Revised: _____ _____ _____ _____

Subject: The Florida Governmental Cooperation Act

	Analyst	Staff Director	Reference	Action
1.	Rhea	Wilson	GO	Favorable/CS
2.			CA	
3.				
4.				
5.				

I. Summary:

This bill renames the "Florida Governmental Cooperation Act" as the "Florida Governmental Conflict Resolution Act." The bill requires local and regional governmental entities to exhaust the procedural options of the act before initiating litigation, except in emergency circumstances. The bill provides that the procedures apply to specific governmental conflicts.

The bill amends sections 164.101 and 164.102, Florida Statutes; creates sections 164.1031, 164.1041, 164.1051, 164.1052, 164.1053, 164.1055, 164.1056, 164.1057, 164.104, and 164.105, Florida Statutes; and repeals sections 164.103 and 164.106, Florida Statutes.

II. Present Situation:

Chapter 164, F.S., is entitled the "Florida Governmental Cooperation Act." The purpose of the act is to promote, protect, and improve the public health, safety, and welfare by the creation of a governmental dispute resolution process than can provide an equitable, expeditious, effective, and inexpensive method for resolution of disputes between and among counties and municipalities.

Section 164.103(1), F.S., prohibits the governing body of a county or municipality from filing suit against another county or municipality unless the governing body has notified the potential defendant county or municipality of its intent to file the suit. Notice must be given no less than 45 days in advance of the filing of the suit.

Section 164.103(2), F.S., requires the governing body of the county or municipality which has received notice of such a suit to hold a public meeting within 30 days after receipt of the notice. The governing body of the county or municipality given notice and the governing body of the

county or municipality receiving notice must discuss the proposed litigation at the meeting in an effort to amicably settle the controversy.

If the county or municipality finds that an immediate danger to the health, safety, or welfare of the public requires immediate action, no notice or public meetings, as provided in the section, is required before the suit is filed.

Section 164.105, F.S., tolls the statute of limitations for 45 days from the date of receipt by the potential defendant local governmental entity of the notice of intent to sue.

Section 164.104, F.S., provides that if a governing body of a county or municipality that fails to hold a public meeting to discuss proposed litigation, the governing body must pay the attorney's fees and costs in that proceeding of the county or municipality that filed suit.

Section 164.105, F.S., provides that each applicable statute of limitations is tolled for 45 days from the date of receipt by the potential defendant local governmental entity of the notice of intent to sue.

Section 164.106, F.S., provides that in any suit filed wherein the governing body of a county or municipality is a defendant, no settlement that requires the expenditure of public funds in excess of $5,000 shall be entered into unless the terms of the settlement have been the subject of a public hearing held after the county or municipality so sued gives due public notice. A local government may settle a case that requires the expenditure of public funds in excess of $5,000 at a public meeting subject to s. 286.011, F.S., where it records in the minutes the reasons for which an emergency exists which preclude the local government from holding a public hearing on the settlement.

III. Effect of Proposed Changes:

Section 1. Section 164.101, F.S., is amended to change the title of the act to the "Florida Governmental Conflict Resolution Act."

Section 2. Section 164.102, F.S., is amended to provide a statement that it is the intent of the Legislature that conflicts between governmental entities be resolved to the greatest extent possible without litigation; to change the term "dispute resolution process" to "conflict resolution procedure"; and to extend the application of the act to "local and regional governmental entities."

Section 3. Section 164.1031, F.S., is created to provide a definitional section.

Section 4. Section 164.1041, F.S., is created to provide that if a governmental entity files suit against another governmental entity[1] a court proceeding shall not occur unless the procedural options of the act have been exhausted. Governmental entities are encouraged to use the

[1]"Governmental entity" is defined by the bill to include local and regional governmental entities.

procedures in this act to resolve conflicts that may occur at any time between governmental entities, but must use them before court proceedings.

The bill provides numerous exemptions to the application of the act. First, the provisions of the act do not apply to administrative proceedings pursuant to ch. 120, F.S., or any appeal from any administrative or trial court judgment or decision. Further, the act does not limit a governmental entity from initiating eminent domain, foreclosure, or other court proceedings where, as a function of the nature of the suit, other governmental entities are necessary parties, if there are no materially disputed issued with regard to such joinder.

The bill also provides that the act does not limit a governmental entity from filing any counterclaim or cross-claim in any litigation in which it is a defendant. Nothing in the act is intended to abrogate other provisions of law which provide procedures for challenges to specific governmental actions, including, but not limited to, comprehensive plan amendments and tax assessment challenges.

Additionally, the act does not apply to conflicts between governmental entities if an alternative dispute resolution process, such as mediation or arbitration, is specifically required by general law or agreed to by contract, interlocal agreement, or other written instrument, or if the governmental entities have reached an impasse during an alternative dispute resolution process engaged in prior to the initiation of court action.

The act also does not preclude a governmental entity from filing a suit without resort to the provisions of the act against any federal or other governmental entity not governed by state law.

If a governmental entity, by a three-fourths vote of its governing body, 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 if a court proceeding does not take place before the provisions of the act are complied with, no notice or public meeting or other proceeding as provided by the act can be required before such a court proceeding. As well, if a water management district, by three-fourths vote of its governing body, finds that an immediate danger to the natural resources, water resources, and wildlife requires immediate declaratory relief, or that significant legal rights will be compromised if a court proceeding does not take place before the provisions of the act are complied with, no notice or public meeting or other proceedings is required before such a proceeding.

The bill authorizes the court, upon motion, to review the justification for failure to comply with the provisions of the act and make a determination as to whether the provisions of the act should be complied with prior to a court proceeding. If the court determines that the provisions of the act should be complied with prior to a court proceeding and that following the provisions of the act will not result in compromise of significant legal rights, the court must dismiss the action for failure to comply with the provisions of the act or abate the suit until the provisions of the act are complied with.

Section 5. Section 164.1051, F.S., is created by the bill and states the scope of the act. The act provides that it is not the intent of the act to limit the conflicts that may be considered, except to administrative proceedings pursuant to ch. 120, F.S. The act applies, at a minimum, to the following issues or processes:

- Any issue relating to local comprehensive plans or plan amendment prepared pursuant to part II of ch. 163, F.S., including, but not limited to, conflicts involving levels of service for public facilities and natural resource protection.
- Municipal annexation.
- Service provision areas.
- Allocation of resources, including water, land, or other natural resources.
- Siting of hazardous waste facilities, land fills, garbage collection facilities, silt disposal sites, or any other locally unwanted land uses.
- Governmental entity permitting processes.
- Siting of elementary and secondary schools.

The bill specifically provides that the foregoing list is not intended to limit the types of conflicts that may be considered under the act.

Section 6. The bill creates s. 164.1052, F.S., which provides the procedure for initiating the conflict resolution process.

First, the governing body of a governmental entity must initiate the conflict resolution process by passage of a resolution of its members. The resolution is required to state:

(1) That it is the intention of the governing body to initiate the conflict resolution process prior to a court proceeding to resolve the conflict;
(2) What the issues of conflict are; and
(3) Who the governmental entity or entities are with which the governing body has a conflict.

The governmental entity or entities that are named must be given notice of passage of the resolution by certified letter, along with a copy of the resolution, delivered to the chief administrator of the governmental entity within 5 days after the passage of the resolution. The letter must be sent by certified mail, return receipt requested. All state or regional governmental entities[2] with responsibilities affecting the implementation of a resolution to the conflict and, at a

[2]"Regional governmental entities" is defined to include 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

minimum, all adjacent local governments,[3] and any other governmental entity deemed appropriate by the initiating governmental entity, must receive a copy of the certified letter. The certified letter must contain the following:

(1) What the conflict is about;
(2) Who the other governmental entities are that are in conflict with the governmental entity that is initiating the process;
(3) Justification for initiating the conflict resolution process;
(4) The proposed date and location for the conflict assessment meeting; and
(5) Suggestions regarding the officials who should be present at the conflict assessment meeting.

Within 10 days after receiving a copy of a certified letter noticing the initiation of the conflict resolution procedure, other governmental entities may elect to participate. If they elect to participate, they are not entitled to control the timing or progress of the process. A governmental entity which receives notice of a conflict may, by passage of its own resolution, join the conflict resolution process as a primary conflicting governmental entity. The intent of a governmental entity to join with the initiating governmental entity must be communicated to the initiating governmental entity by certified letter after passage of the resolution. The intent of a governmental entity to join shall be communicated to the initiating governmental entity by certified mail. The joining entity also shall mail a copy of the letter to any state, regional, or local governmental entity which may have a role in approving or implementing a particular element or aspect of any settlement or whose substantial interests may be affected by the resolution of the conflict. Any other governmental entity deemed appropriate by the joining governmental entity may be notified, as well.

The date of initiation of the conflict resolution procedure is the date of the passage of a resolution by a governmental entity.

Section 7. Section 164.1053, F.S., is created by the bill. This section provides for a conflict assessment phase. After initiation of the conflict resolution procedure, and after proper notice by certified letter has been given, a conflict assessment meeting must occur within 30 days of receipt of the letter. Public notice of this meeting must be given in accordance with s. 164.1031(7), F.S.[4]

The conflict assessment meeting must be scheduled to allow the attendance by appropriate personnel from each governmental entity. The chief administrator for each governmental entity, or designee, that are parties to the conflict resolution procedure are required to be present at the conflict assessment meeting. If agreed to by parties to the conflict, the assistance of a facilitator

single county.

[3]"Local governmental entities" is defined to include 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.

[4]Section 164.1031(7), F.S., defines "noticed public meeting" to mean a public meeting in which notice is given 10 days prior to the meeting by publication in the newspaper of widest circulation in the jurisdictions of the disputing governmental entities."

may be enlisted for the conflict assessment meeting. During the meeting, the governmental entities must discuss the issues pertaining to the conflict and an assessment of the conflict from the perspective of each governmental entity involved.

If a tentative resolution to the conflict can be agreed upon by the representatives of the primary conflicting governmental entities, the primary parties may proceed with whatever steps they deem appropriate to fully resolve the conflict, including, but not limited to, scheduling of additional meetings or proposing a resolution to their governing bodies.

In the event that no tentative resolution can be agreed upon, the primary conflicting governmental entities are required to schedule a joint public meeting within 50 days of the receipt of the first letter initiating the conflict resolution process.

After the conclusions of the conflict assessment meeting, any primary conflicting governmental entity may request mediation. The term "mediation" is defined by the act to mean

> [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. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues and exploring settlement alternatives.

Section 8. This section of the bill creates s. 164.1055, F.S. The section provides that if the conflict is not resolved after the conflict assessment meeting, a joint public meeting between the primary conflicting governmental entities must be held. The governmental entity first initiating the conflict resolution process is assigned the responsibility to schedule the meeting and arrange the location. If the entities in the conflict agree, the assistance of a facilitator may be enlisted to assist them in conducting the meeting. The governing bodies of the primary conflicting entities must:

- Consider the statement of issues prepared in the conflict assessment phase.
- Seek an agreement.
- Schedule additional meetings of the joint entities, or their designees, to continue to seek resolution of the conflict.

If no agreement is reached, the conflicting governmental entities must participate in mediation, the costs of which must be equally divided between the primary conflicting governmental entities. The primary conflicting governmental entities are required to select a mutually acceptable mediator. If the primary conflicting 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, and agree to accept the recommendation of that organization, or agree upon an alternate method for selection of a mediator, within 7 business days after the close of that 14-day period. Upon being selected, the conflicting governmental entities shall schedule mediation to occur within 14 days. They are

required to issue a written agreement on the issues in conflict within 10 days of the conclusion of the mediation proceeding. The written agreement is not admissible in any court proceeding concerning the conflict, except for proceedings to award attorney's fees under another provision of the act.

Section 9. Section 164.1056, F.S., is created by the bill. This section provides that if a conflict is not resolved, the entities participating in the dispute resolution process may avail themselves of any otherwise available legal right.

Section 10. The bill creates s. 164.1057, F.S. This section provides that resolution of a conflict at any phase requires passage of an ordinance, resolution, or interlocal agreement that reflects the terms or conditions of the resolution to the conflict.

Section 11. The bill renumbers s. 164.104, F.S., as s. 164.1058, F.S. This section provides a penalty for failure of a primary conflicting governmental entity which has received notice of intent to initiate the procedure to participate in good faith in the conflict assessment meeting, mediation, or other remedies provided in the act, if the initiating governmental entity files suit and is the prevailing party. In such an instance the primary disputing governmental entity that failed to participate in good faith must pay the attorney's fees and costs of the prevailing initiating governmental entity.

Section 12. The bill creates s. 164.1061, F.S. This section authorizes the extension of any of the time requirements of the act upon mutual agreement of the primary conflicting governmental entities. Further, to the extent such a mutually agreed upon extension would cause any jurisdictional time requirement to run with regard to a particular claim, the agreement has the effect of extending any jurisdictional time requirements for the period set forth in the agreement.

Section 13. The bill repeals ss. 164.103[5] and 164.106[6], F.S.

Section 14. The act takes effect upon becoming law.

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[5]Section 164.103(1), F.S., prohibits the governing body of a county or municipality from filing suit against another county or municipality unless the governing body has notified the potential defendant county or municipality of its intent to file the suit. Notice must be given no less than 45 days in advance of the filing of the suit. Section 164.103(2), F.S., requires the governing body of the county or municipality which has received notice of such a suit to hold a public meeting within 30 days after receipt of the notice. The governing body of the county or municipality given notice and the governing body of the county or municipality receiving notice must discuss the proposed litigation at the meeting in an effort to amicably settle the controversy. If the county or municipality finds that an immediate danger to the health, safety, or welfare of the public requires immediate action, no notice or public meetings, as provided in the section, is required before the suit is filed.

[6]Section 164.106, F.S., provides that in any suit filed wherein the governing body of a county or municipality is a defendant, no settlement that requires the expenditure of public funds in excess of $5,000 shall be entered into unless the terms of the settlement have been the subject of a public hearing held after the county or municipality so sued gives due public notice. A local government may settle a case that requires the expenditure of public funds in excess of $5,000 at a public meeting subject to s. 286.011, F.S., where it records in the minutes the reasons for which an emergency exists which preclude the local government from holding a public hearing on the settlement.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminable.

C. Government Sector Impact:

Costs may be incurred for the procedures contained in the act; however, if the procedures resolve conflicts, litigation costs will be diminished.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.