

STORAGE NAME: h3797.ca

DATE: March 13, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Community Affairs
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3797

RELATING TO: Governmental Controversies

SPONSOR(S): Representative Constantine

COMPANION BILL(S): SB 1756 (i)

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

- (1) CIVIL JUSTICE & CLAIMS (W/D)
- (2) COMMUNITY AFFAIRS
- (3)
- (4)
- (5)

I. SUMMARY:

This bill renames the "Florida Governmental Cooperation Act" as the "Florida Governmental Conflict Resolution Act." This bill requires local and regional governmental entities to exhaust procedural options of the act before initiating litigation, except in emergency circumstances. This bill provides procedures and requirements for conflict assessment meetings.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

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. At this meeting, the parties must discuss the proposed litigation in an effort to amicably settle the dispute.

In situations where there is an immediate danger to the health, safety, or welfare of the public and immediate action must be taken, the county or municipality is exempted from the public notice and public meeting requirements.

Applicable statute of limitations are tolled for 45 days from the date of receipt by the potential defendant governing body.

In the event the governing body of a county or municipality, which has received notice of an intent to file suit, fails to hold a public meeting, as required, the governing body is required to pay attorney's fees and costs of the suit filed by the noticing county or municipality.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the following process for resolution of intergovernmental disputes:

INITIATING THE PROCESS:

Governing body of governmental entity passes a resolution (by majority plus 1) of intent to initiate conflict resolution procedures.

- Notice of Intent contains:
 - ✓ Specific issues of conflict.
 - ✓ Identification of the governmental entity(ies) with which the initiating governing body has a conflict.
 - ✓ List: The issues of conflict;
 - Identify the other governmental entities which are part of the conflict;
 - Justification for initiation of the conflict resolution process;
 - Provide the proposed date, time, and location for the conflict assessment meeting;
 - ✓ Suggest which officials need to be present.

Notice of Intent to be delivered:

- By certified mail to the chief administrator of the conflicting governing body within 5 days after passage of resolution.
- To all state or regional governmental entities with responsibilities affecting the implementation of issues at conflict.
- To all adjacent local governments.
- To any other governmental entity deemed to be appropriate by the initiating governmental entity.

Within 10 days after receiving a copy of a certified letter other governmental entities may join with the initiating government.

- Joining governmental entities must notify initiating governmental entity of intent to join by certified letter.
- Joining governmental entities must send copies of "intent to join" to all state and regional governmental entities with responsibilities affecting the implementation of the resolution of conflict.
- Any governmental entity which fails to joint a conflict resolution proceeding is not permitted to initiate the conflict resolution procedure on the same issue within 6 months.

NOTE: The date of initiation of conflict resolution procedure is the date the resolution is passed by the initiating governmental entity.

Conflict Assessment Meeting - after the initiation of the conflict resolution procedure, and after proper notice by certified letter has been given then:

- Public notice of the public meeting is given:
 - ✓ 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.
- The chief administrator for each local government which is a party to the conflict resolution process must be present at the meeting.
- The chief executive office of a regional governmental entity or his or her designee, which is a party to the conflict resolution process, must be present at the meeting.
- Upon agreement between or among the conflicting entities, a professional facilitator may be utilized for the conflict assessment meeting.
- Issues to be discussed at the meeting include, but are not be limited to, the following:
 - ✓ Issues pertaining to the conflict;

- ✓ An assessment of the conflict; and
- ✓ Perspective of each governmental entity.

If agreement is not reached on the above issues within 30 days of the date of the initiation of the conflict resolution procedure, then the entities must participate in a joint public meeting.

The Joint Public meeting will take place within 50 days of the initiation of the conflict resolution procedure.

At any time, the initiating governing entity or the recipient governmental entity may initiate nonbinding arbitration proceedings in accordance with this act.

- Actions to be taken at the meeting include, but are not limited to, the following:
 - ✓ A resolution of the conflict; or
 - ✓ Arrangement of one of the following:
 - ▶ The scheduling of additional meetings for informal negotiations;
 - ▶ Scheduling the joint public meeting.

Joint public meeting - Unless a joint public meeting has been previously scheduled or convened, failure to resolve a conflict in the conflict assessment phase requires the scheduling of a joint public meeting between governmental entities.

- Initiating governmental entity has the responsibility to schedule the joint public meeting and arrange the location.
- A mediator or facilitator may be used in conducting the meeting.
- The meeting must be noticed as required by this act.
- The governing bodies of the governing entities must be present and:
 - ✓ Consider the statement of issues prepared in the conflict assessment meeting; and
 - ✓ Seek agreement; or
 - ✓ If no agreement is reached, then:
 - ▶ Parties will participate in nonbinding arbitration, as follows:
 - Parties must agree on arbitrator within 14 days or
 - Arbitrator is to be selected by an independent conflict resolution organization, such as the Florida Conflict Resolution Consortium, within 7 days after the close of the 14-day period.

- Arbitrator issues a ruling within 20 days after his or her selection.

Final Resolution

- Nonresolution of disputes - If the resolution procedures listed above fail to resolve the conflicts, final resolution must be determined as provided in existing law.
- Resolution of disputes - If the resolution procedures listed above succeed and resolve the conflicts, resolution of a conflict requires the passage of an ordinance, resolution, or interlocal agreement that reflects the terms or conditions of the resolution to the conflict.

Penalty - if a governmental entity, after receiving a notice of intent, fails to initiate the conflict resolution procedure of this act or fails to participate in the conflict assessment meeting, arbitration, or other remedies, that entity is required to pay the initiating entity's attorney's fees and costs in any final suit or proceeding.

Tolling of Statutes of Limitation - each applicable statute of limitations is tolled, up to 91 days, from the date of receipt by the potential defendant governing entity.

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?

No

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

Yes. This bill requires any or all 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 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 final suit or proceeding.

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

Yes. This bill requires, that in the event the entities are not able to agree upon an arbitrator, an independent conflict resolution organization, such as, but not limited to, the Florida Conflict Resolution Consortium, is required to select an arbitrator for the entities. The independent conflict resolution organization must make the selection of an arbitrator within 7 days.

b. If an agency or program is 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:

- (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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Ch. 164, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends section 164.101, Florida Statutes, changing the title of the act from "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 local and regional governmental entities. Language is added to clarify the intent of the act is to "avoid litigation, to the greatest extent possible."

Section 3: Creates section 164.1031, including, but not limited to the following terms:

- Local governmental entities - this term includes municipalities, counties, school boards, independent special districts, and other local entities within the jurisdiction of one county created by general or special law or local ordinance; and
- Regional governmental entities - this term includes regional planning councils, metropolitan planning organizations, water supply authority that include more than one county, local health councils, water management districts, and other regional entities that are authorized or created by general or special law that are in the jurisdiction of more than one county.

Section 4: Creates section 164.1041, creating a duty to negotiate on the potential plaintiff governing body. Governmental entities are encouraged to use the dispute resolution procedures of this bill at anytime. However, a governmental entity is required to use the procedures before filing suit against another governmental entity until the procedures of this act have been exhausted. An exception to the duty to negotiate is

provided when the majority of the governing body of a governing entity, in a majority plus one vote, finds that there is an immediate danger to the health, safety, or welfare to the public which requires an immediate action, at which time no notice or public meeting is required.

Section 5: Creates section 164.1051, defining the scope of the act. 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 area;
- 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; and
- Siting of elementary and secondary schools, community colleges, and state universities.

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:

- The governing body of a governmental entity will:
 - ▶ Pass a resolution, with a majority plus one vote, which states that it is the intention of the governing body to initiate the conflict resolution procedures of this act.
 - ▶ The resolution specifies the issues of conflict and the governmental entity(ies) with which the governing body has a conflict.
 - ▶ Within five days of passage of the resolution, a Notice of passage of the resolution and letter is delivered by certified mail to the chief administrator(s) of the governing body(ies) with which the governmental entity has a conflict.
 - ▶ The letter must include, at a minimum, the conflict, list the other governmental entities in conflict with the initiating governmental entity, justification for initiating the conflict resolution process, the proposed date and location for the public meeting, and suggesting regarding the officials who should be present at the meeting.
 - ▶ Copies of the letter are sent, at a minimum, to, all state or regional governmental entities with responsibilities affecting the implementation of the resolution of conflict, all adjacent local governments, and any other governmental entities deemed appropriate by the initiating governmental entity.

- Within 10 after receiving a copy of the certified letter, other governmental entities may join with the initiating governmental entity as a party to the conflict. Any governmental entity which fails to join a conflict resolution proceeding may not initiate the conflict resolution procedure on the same issue within 6 months.
- Initiation of the conflict resolution process will be the date of the passage of the resolution.

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 for setting up the public meeting is as follows:

- Public notice will be given by publishing a Notice of Public Meeting, 10 days prior to the meeting, in a newspaper of widest circulation in the jurisdictions of the disputing governmental entities;
- The chief administrator for each local government, and the chief executive officer of a regional governmental entities or his or her designee, that are parties to the conflict, must be present at the meeting; and
- The parties may agree to enlist the assistance of a professional facilitator for the conflict assessment meeting.

The following issues and actions must be discussed or accomplished at the meeting:

- Issues relating to the conflict and assessment of the conflict; and
- The perspective of each governmental entity; and
- Resolution of the conflict; or
- The arrangement of one of the following:
 - ▶ The scheduling of additional meetings for informal negotiations; or
 - ▶ The scheduling of a joint public meeting

If the governmental entities fail to reach agreement on the disputed issues within 30 days:

- ▶ The entities must participate in a joint public meeting;
- ▶ The meeting must take place within 50 days of the initiation of the conflict;
- ▶ At any time, either the initiating entity or the recipient entity may initiate nonbinding arbitration.

Section 8: Creates section 164.1055, providing for joint public meetings. This section creates the following process for the joint public meetings:

- The initiating governmental entity has the responsibility to schedule the meeting, notice the meeting, and arrange the location of the meeting.
- At the meeting, the governmental entities must:
 - ▶ Consider the statement of issues prepared in the conflict assessment phase; and
 - ▶ Seek an agreement.

If no agreement is reached, then the parties must participate in nonbinding arbitration.

- The nonbinding arbitration process is as follows:
 - ▶ The initiating entity and the recipient entity must attempt to agree on an arbitrator within 14 days after the joint meeting;
 - ▶ If the initiating entity and the recipient entity do not agree on an arbitrator within 14 days after the joint meeting, then an arbitrator must be selected by an independent conflict resolution organization, such as the Florida Conflict Resolution Consortium, within 7 days after the close of the 14-day period.
 - ▶ The arbitrator must issue a ruling on the conflict within 20 days after his or her selection.

Section 9: Creates section 164.1056, providing that failure of the entities to resolve their disputes through these procedures results in the final resolution being determined by the direction provided in law.

Section 10: Creates section 164.1057, providing the process for execution of settled disputes. Agreement by the entities to resolve the conflict requires the entities to pass an ordinance, resolution, or interlocal agreement that reflects the terms or conditions of the resolution of the conflict.

Section 11: Renumbers and amends section 164.104, Florida Statutes, providing for a penalty. This section provides that a recipient governmental entity that fails to initiate the conflict resolution process or fails to participate in the conflict assessment meeting, arbitration, or other remedies provided for in this act, is required to pay the attorney's fees and costs in any final suit or proceeding of the initiating entity.

Section 12: Renumbers and amends section 164.105, Florida Statutes, providing for the tolling of statutes of limitations. This section increases the tolling of applicable statutes of limitations from 45 days to 91 days from the date of the receipt of the notice of intent by the recipient entity.

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

Section 14: Provides that this act will become effective upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

Indeterminate.

This bill may require additional funds for state agency employees to travel to meetings with other governmental entities. However, this may result in a savings of cost of litigation and administrative proceedings. Agreements may be reached before judicial or administrative proceedings are instituted.

This bill does not provide for reimbursement to the Florida Conflict Resolution Consortium (RCRS).

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

Indeterminate

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:

Indeterminate. This bill does not provide for reimbursement to independent conflict resolution organizations.

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:

Data is not available at this time on which to base an estimate of costs to local governments. Depending on factors such as frequency of conflicts and governmental entities' ability to resolve them, expenditures in the aggregate, annually may surpass \$1.4 million.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that local governments have to raise revenues in the aggregate.

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

This bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

The Florida Association of Counties: The Florida Association of Counties opposes this bill.

The Florida League of Cities: The League was contacted on several occasions for their position on this bill. Their position was not available at the time of publication of this research statement.

The Florida Association of School Boards: The Florida Association of School Boards supports this bill.

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The Florida Association of Special districts: The Florida Association of Special Districts does not oppose this bill; however, the Association would like to see language added that would permit any of the disputing parties to be able to initiate the dispute resolution process.

The Department of Community Affairs: The Department of Community Affairs supports this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON Community Affairs:

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