

1 A bill to be entitled
2 An act relating to governmental controversies;
3 amending s. 164.101, F.S.; renaming the
4 "Florida Governmental Cooperation Act" as the
5 "Florida Governmental Conflict Resolution Act";
6 amending s. 164.102, F.S.; providing purpose
7 and intent; creating s. 164.1031, F.S.;
8 providing definitions; creating s. 164.1041,
9 F.S.; requiring local and regional governmental
10 entities to exhaust the procedural options of
11 the act before court proceedings in circuit or
12 county court, except in specified
13 circumstances; providing for review by the
14 court of the justification for failure to
15 comply with the act; creating s. 164.1051,
16 F.S.; specifying the governmental conflicts to
17 which the act applies; creating s. 164.1052,
18 F.S.; providing procedures and requirements for
19 initiation of conflict resolution procedures
20 and determination of participants; creating s.
21 164.1053, F.S.; providing for a conflict
22 assessment meeting and providing requirements
23 with respect thereto; creating s. 164.1055,
24 F.S.; providing for a joint public meeting
25 between conflicting entities; providing for
26 mediation when no agreement is reached;
27 creating s. 164.1056, F.S.; providing for final
28 resolution of a conflict when there is a
29 failure to resolve the conflict under the act;
30 creating s. 164.1057, F.S.; specifying the
31 manner of execution of the resolution of a

1 conflict; renumbering and amending s. 164.104,
 2 F.S.; providing that a governmental entity that
 3 fails to participate in conflict resolution
 4 procedures shall be required to pay attorney's
 5 fees and costs under certain conditions;
 6 creating s. 164.1061, F.S.; providing for
 7 extension of the time requirements of the act;
 8 repealing ss. 164.103 and 164.106, F.S., which
 9 provide procedures and requirements for
 10 resolution of governmental disputes; providing
 11 effect on existing contracts and agreements;
 12 providing an effective date.

13

14 Be It Enacted by the Legislature of the State of Florida:

15

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

18 164.101 Short title.--Sections 164.101-164.1061 ~~This~~
 19 ~~act~~ may be cited as the "Florida Governmental Conflict
 20 Resolution Cooperation Act."

21

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

24 164.102 Purpose and intent.--The purpose and intent of
 25 this act is to promote, protect, and improve the public
 26 health, safety, and welfare and to enhance intergovernmental
 27 conflict dispute resolution procedure ~~process~~ that can provide
 28 an equitable, expeditious, effective, and inexpensive method
 29 for resolution of conflicts ~~disputes~~ between and among local
 30 and regional governmental entities ~~counties and~~
 31 ~~municipalities~~. It is the intent of the Legislature that

1 conflicts between governmental entities be resolved to the
2 greatest extent possible without litigation.

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

5 164.1031 Definitions.--For purposes of this act:

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

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

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

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

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

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

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

1 entities. Each primary conflicting governmental entity shall
2 provide notice within its jurisdiction.

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

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

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

21 164.1041 Duty to negotiate.--

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

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

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

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

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

22 164.1051 Scope.--It is not the intent of this act to
 23 limit the conflicts that may be considered under this act,
 24 except any administrative proceeding pursuant to chapter 120.
 25 Pursuant to s. 164.1041, this act shall apply, at a minimum,
 26 to governmental conflicts arising from any of the following
 27 issues or processes, including, but not limited to:

28 (1) Any issue relating to local comprehensive plans or
 29 plan amendments prepared pursuant to part II of chapter 163,
 30 including, but not limited to, conflicts involving levels of
 31 service for public facilities and natural resource protection.

- 1 (2) Municipal annexation.
- 2 (3) Service provision areas.
- 3 (4) Allocation of resources, including water, land, or
4 other natural resources.
- 5 (5) Siting of hazardous waste facilities, land fills,
6 garbage collection facilities, silt disposal sites, or any
7 other locally unwanted land uses.
- 8 (6) Governmental entity permitting processes.
- 9 (7) Siting of elementary and secondary schools.

10 Section 6. Section 164.1052, Florida Statutes, is
11 created to read:

12 164.1052 Initiation of conflict resolution procedure;
13 duty to give notice.--

14 (1) The governing body of a governmental entity shall
15 initiate the conflict resolution procedures provided by this
16 act through passage of a resolution by its members. The
17 resolution shall state that it is the intention of the
18 governing body to initiate the conflict resolution procedures
19 provided by this act prior to a court proceeding to resolve
20 the conflict and shall specify the issues of conflict and the
21 governmental entity or entities with which the governing body
22 has a conflict. Within 5 days after the passage of the
23 resolution, a letter and a certified copy of the resolution
24 shall be provided to the chief administrator of the
25 governmental entity or entities with which the governing body
26 has a conflict by certified mail, return receipt requested.
27 The letter shall state, at a minimum, the conflict, other
28 governmental entities in conflict with the initiating
29 governmental entity, justification for initiating the conflict
30 resolution process, the proposed date and location for the
31 conflict assessment meeting to be held pursuant to s.

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

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

1 interests may be affected by the resolution of the conflict,
2 and any other governmental entity deemed appropriate by the
3 joining governmental entity.

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

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

9 164.1053 Conflict assessment phase.--

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

29 (2) If a tentative resolution to the conflict can be
30 agreed upon by the representatives of the primary conflicting
31 governmental entities at the conflict assessment meeting, the

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

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

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

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

18 164.1055 Joint public meeting.--

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

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

31 (b) Seek an agreement.

1 (c) Schedule additional meetings of the joint
2 entities, or of their designees, to continue to seek
3 resolution of the conflict.

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

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

30 164.1056 Final resolution.--If there is failure to
31 resolve a conflict between governmental entities through the

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

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

6 164.1057 Execution of resolution of
7 conflict.--Resolution of a conflict at any phase shall require
8 passage of an ordinance, resolution, or interlocal agreement
9 that reflects the terms or conditions of the resolution to the
10 conflict.

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

14 164.1058 ~~164.104~~ Penalty.--If a primary conflicting
15 governmental entity the governing body of a county or
16 municipality which has received notice of intent to initiate
17 the conflict resolution procedure pursuant to this act file a
18 suit pursuant to s. 164.103(1) fails to participate in good
19 faith in the conflict assessment meeting, mediation, or other
20 remedies provided for in this act, and the initiating
21 governmental entity files suit and is the prevailing party in
22 such suit, the primary disputing governmental entity which
23 failed to participate in good faith hold a public meeting to
24 discuss the proposed litigation, the governing body shall be
25 required to pay the attorney's fees and costs in that
26 proceeding of the governmental entity which initiated the
27 conflict resolution procedure county or municipality which has
28 filed suit.

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

31

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.