

By Senator Webster

12-1076A-99

See HB 223

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

1 manner of execution of the resolution of a  
2 conflict; renumbering and amending s. 164.104,  
3 F.S.; providing that a governmental entity that  
4 fails to participate in conflict resolution  
5 procedures shall be required to pay attorney's  
6 fees and costs under certain conditions;  
7 creating s. 164.1061, F.S.; providing for  
8 extension of the time requirements of the act;  
9 repealing ss. 164.103, 164.105, and 164.106,  
10 F.S., which provide procedures and requirements  
11 for resolution of governmental disputes and for  
12 tolling of statutes of limitations; providing  
13 effect on existing contracts and agreements;  
14 providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

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

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

7 164.1031 Definitions.--For purposes of this act:

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

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

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

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

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

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

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

1 publication in the newspaper of widest circulation in the  
2 jurisdictions of the primary conflicting governmental  
3 entities. Each primary conflicting governmental entity shall  
4 provide notice within its jurisdiction.

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

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

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

23 164.1041 Duty to negotiate.--

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

1 administrative proceedings pursuant to chapter 120 or any  
2 appeal from any administrative or trial court judgment or  
3 decision. Nothing in this act shall limit a governmental  
4 entity from initiating eminent domain, foreclosure, or other  
5 court proceedings where, as a function of the nature of the  
6 suit, other governmental entities are necessary parties, if  
7 there are no materially disputed issues with regard to such  
8 joinder. Nothing in this act shall limit a governmental entity  
9 from filing any counterclaim or cross-claim in any litigation  
10 in which it is a defendant. Nothing in this act is intended  
11 to abrogate other provisions of law which provide procedures  
12 for challenges to specific governmental actions, including,  
13 but not limited to, comprehensive plan amendments and tax  
14 assessment challenges. The provisions of this act shall not  
15 apply to conflicts between governmental entities if an  
16 alternative dispute resolution process, such as mediation or  
17 arbitration, is specifically required by general law or agreed  
18 to by contract, interlocal agreement, or other written  
19 instrument, or if the governmental entities have reached an  
20 impasse during an alternative dispute resolution process  
21 engaged in prior to the initiation of court action. Further,  
22 nothing in this act shall preclude a governmental entity from  
23 filing a suit without resort to the provisions of this act  
24 against any federal or other governmental entity not governed  
25 by state law.

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

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

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

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

30 (1) Any issue relating to local comprehensive plans or  
31 plan amendments prepared pursuant to part II of chapter 163,

1 including, but not limited to, conflicts involving levels of  
2 service for public facilities and natural resource protection.

3 (2) Municipal annexation.

4 (3) Service provision areas.

5 (4) Allocation of resources, including water, land, or  
6 other natural resources.

7 (5) Siting of hazardous waste facilities, land fills,  
8 garbage collection facilities, silt disposal sites, or any  
9 other locally unwanted land uses.

10 (6) Governmental entity permitting processes.

11 (7) Siting of elementary and secondary schools.

12 Section 6. Section 164.1052, Florida Statutes, is  
13 created to read:

14 164.1052 Initiation of conflict resolution procedure;  
15 duty to give notice.--

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

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

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



1 a role in approving or implementing a particular element or  
2 aspect of any settlement of the conflict or whose substantial  
3 interests may be affected by the resolution of the conflict,  
4 and any other governmental entity deemed appropriate by the  
5 joining governmental entity.

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

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

11 164.1053 Conflict assessment phase.--

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

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1           (2) If a tentative resolution to the conflict can be  
2 agreed upon by the representatives of the primary conflicting  
3 governmental entities at the conflict assessment meeting, the  
4 primary conflicting governmental entities may proceed with  
5 whatever steps they deem appropriate to fully resolve the  
6 conflict, including, but not limited to, the scheduling of  
7 additional meetings for informal negotiations or proposing a  
8 resolution to the governing bodies of the primary conflicting  
9 governmental entities.

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

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

19           Section 8. Section 164.1055, Florida Statutes, is  
20 created to read:

21           164.1055 Joint public meeting.--

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

1           (a) Consider the statement of issues prepared in the  
2 conflict assessment phase.

3           (b) Seek an agreement.

4           (c) Schedule additional meetings of the entities in  
5 conflict, or of their designees, to continue to seek  
6 resolution of the conflict.

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

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1           Section 9. Section 164.1056, Florida Statutes, is  
2 created to read:

3           164.1056 Final resolution.--If there is failure to  
4 resolve a conflict between governmental entities through the  
5 procedures provided by ss. 164.1053 and 164.1055, the entities  
6 participating in the dispute resolution process may avail  
7 themselves of any otherwise available legal rights.

8           Section 10. Section 164.1057, Florida Statutes, is  
9 created to read:

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

15           Section 11. Section 164.104, Florida Statutes, is  
16 renumbered as section 164.1058, Florida Statutes, and amended  
17 to read:

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

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1 conflict resolution procedure ~~county or municipality which has~~  
2 ~~filed suit.~~

3 Section 12. Section 164.1061, Florida Statutes, is  
4 created to read:

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

13 Section 13. Sections 164.103, 164.105, and 164.106,  
14 Florida Statutes, are hereby repealed.

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

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LEGISLATIVE SUMMARY

Renames the "Florida Governmental Cooperation Act" as the "Florida Governmental Conflict Resolution Act." Requires that, when a local or regional governmental entity files suit against another such entity, the procedural options of the act must be exhausted before court proceedings can occur, except in specified circumstances. Allows the court to review the justification for failure to comply with the act. Specifies the governmental conflicts to which the act applies. Provides procedures and requirements for initiation of conflict resolution procedures and determination of participants. Provides for a conflict assessment meeting and provides requirements with respect thereto. Provides for a joint public meeting between disputing entities, and provides for mediation when no agreement is reached. Provides for final resolution of conflicts. Specifies the manner of execution of the resolution of a conflict. Provides that a governmental entity that fails to participate in conflict resolution procedures shall be required to pay attorney's fees and costs under certain circumstances. Provides for extension of the act's time requirements.