SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 640

SPONSOR: Committee on Comprehensive Planning and Senator Miller

SUBJECT: Adult Entertainment Establishments

DATE: January 19, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	Favorable/CS
2.	Matthews	O'Farrell	ED	Favorable
3.				
4.				
5.				
6.				

I. Summary:

This committee substitute requires the approval of the district school board, in addition to the existing requirement for approval by the county or municipality under procedures for changing the list of permitted uses within a zoning category, before an adult entertainment establishment can be located within 2,500 feet of a public or private elementary school, middle school or secondary school.

The committee substitute revises a grandfather provision for adult entertainment establishments legally operating within 2,500 of a school on the effective date of the committee substitute.

This committee substitute amends s. 847.0134 of the Florida Statutes.

II. Present Situation:

An "adult entertainment establishment" as set forth in s. 847.001(2), F.S., includes the following:

- An "adult bookstore" defined as any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has part of its stock books, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material.
- An "adult theater" defined as an enclosed building or an enclosed space within a building used for presenting either films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults.

- A "special cabaret" defined as any business that features persons who engage in specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults.
- An "unlicensed massage establishment" means any business or enterprise that offers, sells, or provides, or that holds itself out as offering, selling, or providing, massages that include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. The term "unlicensed massage establishment" does not include an establishment licensed under s. 480.43 which routinely provides medical services by state-licensed health care practitioners and massage therapists licensed under s. 480.041.

In 2001, the Legislature enacted s. 847.0134, F.S.,[1] which prohibits an adult entertainment establishment that displays, sells or distributes materials harmful to minors from locating within 2,500 feet of a school. A violation of the section constitutes a third degree felony punishable by a prison term not exceeding 5 years, and a fine of up to $5,000.[2] However, there are two exceptions to this prohibition. First, an establishment that is legally operating or has been granted a permit from a local government to operate an adult entertainment establishment on or before July 1, 2001 is exempt. This exemption is necessary because retroactive application of the prohibition on locating an adult entertainment establishment near a school may raise a "takings" issue.

Second, local governments can approve exceptions to the 2,500 feet prohibition. A county or municipality can approve locating an adult entertainment establishment within 2,500 feet of a school under the proceedings in s. 125.66(4), F.S., or s. 166.041(3)(c), F.S. Specifically, s. 125.66(4), F.S., governs the procedure for counties enacting ordinances or resolutions that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances initiated by a county that change the actual zoning map designation of a parcel or parcels of land. This section provides two procedures with different notice requirements depending on whether the proposed ordinance or resolution changes the actual zoning map designation for a parcel of land that involves more than or less than 10 contiguous acres.

If the proposed ordinance or resolution affects a parcel or parcels of land involving less than 10 contiguous acres, public notice shall provide for one or more public hearing(s) on the proposed ordinance or resolution. Notice of the hearing(s) shall include newspaper notice at least 10 days prior to the hearing. In addition, each real property owner whose land the county will redesignate by enactment of the ordinance must be notified by mail at least 30 days prior to such hearing. Upon completion of the hearing, the board of county commissioners may immediately adopt the ordinance or resolution.

If the proposed ordinance or resolution affects a parcel or parcels of land involving 10 contiguous acres or more, the board of county commissioners must hold two advertised public hearings. The first public hearing must be held at least 7 days after the day that the first advertisement is published, and the second hearing must be held at least 10 days after the first

[1] Ch. 2001-177, s. 2, L.O.F
[2] S. 847.0134(2), F.S.

hearing and must be advertised at least 5 days before the hearing. In addition, s. 125.66(4)(b)2., F.S., prescribes the size and content of the required advertisements.

Section 166.041(3)(c), F.S., contains the same notice requirements for municipalities as those described above for counties.

Subsection (1) of s. 1001.372, F.S., requires district school boards to hold not less than one regular meeting each month and provides procedures for convening a special meeting.

III. Effect of Proposed Changes:

The committee substitute revises a grandfather provision to exempt an adult entertainment establishment that is legally operating within 2,500 of a school on or before July 1, 2004, from having to obtain the district school board's consent to the location.

This committee substitute amends the exception to the prohibition against an adult entertainment establishment locating within 2,500 feet of a school when a county or municipality approves the location under proceedings provided for in s. 125.66(4), F.S., for counties and s. 166.041(3)(c), F.S., for municipalities, to also require approval of the district school board at a meeting held pursuant to s. 1001.372, F.S.

Under the proposed legislation, a private school would need a district school board's approval to prevent the placement of an adult entertainment establishment within 2,500 feet of the private school if the county or municipality were to approve the location.

The effective date of the committee substitute is July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The committee substitute, on its face, does not restrict the location of an adult entertainment establishment. Instead, the proposed legislation would require an adult entertainment establishment to obtain school board approval, in addition to county or municipal approval, for placing such an establishment within 2,500 feet of a public or private school.

Legislation restricting the location of an adult entertainment establishment must be narrowly tailored in order to survive a challenge that it violates the First Amendment to the United States Constitution. In *City of Renton v. Playtime Theatres, Inc.*[3] the City of Renton, Washington enacted a zoning ordinance that prohibited an adult motion picture theater from "locating within 1,000 feet of any residential zone, single- or multiple-family dwelling, church, or park, [or] within one mile of a school."[4] The term "adult motion picture theater" was defined in the Renton ordinance as:

> An enclosed building used for presenting motion picture films, video cassettes, cable television, or any other such visual media, distinguished or characteri[zed] by an emphasis on matter depicting, describing or relating to 'specified sexual activities' or 'specified anatomical areas'. . .for observation by patrons therein.[5]

Playtime Theatres, Inc., challenged the ordinance under a claim that it violated the First and Fourteenth Amendments to the United States Constitution. An initial inquiry in a case that involves a First Amendment issue is whether the regulation is content-based or content-neutral.[6] Regulations restricting speech based on its content presumptively violate the First Amendment.[7] Content-neutral regulations are essentially time, place, and manner regulations. Because the Renton ordinance did not ban adult theaters altogether, the Court analyzed the ordinance as a time, place, and manner regulation.[8]

The *Renton* Court applied the following test in determining the validity of a zoning ordinance that regulates adult uses:

i. Is the predominant purpose of the ordinance to control the secondary effects associated with the use and not the content of the material?
ii. Has the city designed the ordinance to serve a substantial governmental interest?
iii. Is the ordinance narrowly tailored to affect only those categories of uses that produce unwanted effects?
iv. Does the ordinance allow reasonable alternative avenues of communication?[9]

After reviewing the ordinance at issue, the *Renton* Court found the ordinance was indeed aimed at crime prevention and maintaining property values rather than the content of the material purveyed by an adult theater; served a substantial governmental interest by attempting to prevent crime, maintain property values, and preserve the quality of life in Renton; was narrowly tailored to address only that category of adult theaters that has been shown to produce unwanted secondary effects; and did allow ample land area for adult theaters to be located elsewhere.[10]

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[3] 475 U.S. 41 (1986).
[4] *See id.* at 44.
[5] *See id.*
[6] *See id.* at 46-47.
[7] *See id.* at 47.
[8] *See id.* at 46.
[9] *See id.* at 47-54. *See also United States v. O'Brien*, 391 U.S. 367, 377 (1968).
[10] *See Renton,* 475 U.S. at 47-54.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The committee substitute would impose the requirement of obtaining school board approval, in addition to local government approval, before an adult entertainment facility could be located within 2,500 feet of a public or private elementary school, middle school, or secondary school.

C. Government Sector Impact:

The committee substitute would have the effect of involving school boards, in addition to local governments, in land use decisions regarding the location of an adult entertainment establishment within 2,500 feet of a school.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.