

Committee Substitute for House Bill No. 223

An act relating to governmental conflict resolution; amending s. 164.101, F.S.; renaming the “Florida Governmental Cooperation Act” as the “Florida Governmental Conflict Resolution Act”; amending s. 164.102, F.S.; providing purpose and intent; creating s. 164.1031, F.S.; providing definitions; creating s. 164.1041, F.S.; providing that, when a local or regional governmental entity files suit against another such governmental entity, court proceedings shall be abated by order of the court until the procedural options of the act have been exhausted, except in specified circumstances; providing for review by the court of the justification for failure to comply with the act; creating s. 164.1051, F.S.; specifying the governmental conflicts to which the act applies; creating s. 164.1052, F.S.; providing procedures and requirements for initiation of conflict resolution procedures and determination of participants; creating s. 164.1053, F.S.; providing for a conflict assessment meeting and providing requirements with respect thereto; creating s. 164.1055, F.S.; providing for a joint public meeting between conflicting entities; providing for mediation when no agreement is reached; creating s. 164.1056, F.S.; providing for final resolution of a conflict when there is a failure to resolve the conflict under the act; creating s. 164.1057, F.S.; specifying the manner of execution of the resolution of a conflict; renumbering and amending s. 164.104, F.S.; providing that a governmental entity that fails to participate in conflict resolution procedures shall be required to pay attorney’s fees and costs under certain conditions; creating s. 164.1061, F.S.; providing for extension of the time requirements of the act; repealing ss. 164.103, 164.105, and 164.106, F.S., which provide procedures and requirements for resolution of governmental disputes and for tolling of statutes of limitations; providing effect on existing contracts and agreements; providing an effective date.

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

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

164.101 Short title.—Sections 164.101-164.1061 ~~This act~~ may be cited as the “Florida Governmental Conflict Resolution Cooperation Act.”

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

164.102 Purpose and intent.—The purpose and intent of this act is to promote, protect, and improve the public health, safety, and welfare and to enhance intergovernmental coordination efforts by the creation of a governmental conflict dispute resolution procedure process that can provide an equitable, expeditious, effective, and inexpensive method for resolution of conflicts disputes between and among local and regional governmental entities counties and municipalities. It is the intent of the Legislature that conflicts between governmental entities be resolved to the greatest extent possible without litigation.

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

164.1031 Definitions.—For purposes of this act:

(1) “Local governmental entities” includes 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.

(2) “Regional governmental entities” includes 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 single county.

(3) “Governmental entity” includes local and regional governmental entities.

(4) “Local government resolution” has the same meaning as provided in s. 166.041.

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

(6) “Designee” means a representative with full authority to negotiate on behalf of a governmental entity and to recommend settlement to the appropriate decisionmaking body or authority of the governmental entity.

(7) “Noticed public meeting” means a public meeting in which notice is given at least 10 days prior to the meeting by publication in the newspaper of widest circulation in the jurisdictions of the primary conflicting governmental entities. Each primary conflicting governmental entity shall provide notice within its jurisdiction.

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

(9) “Mediation” means 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 4. Section 164.1041, Florida Statutes, is created to read:

164.1041 Duty to negotiate.—

(1) If a governmental entity files suit against another governmental entity, court proceedings on the suit shall be abated, by order of the court, until the procedural options of this act have been exhausted. The governing body of a governmental entity initiating conflict resolution procedures pursuant to this act shall, by motion, request the court to issue an order abating the case pursuant to this section. All governmental entities are encouraged to use the procedures in this act to resolve conflicts that may occur at any time between governmental entities, but shall use these procedures before court proceedings, consistent with the provisions of this section. The provisions of this act do not apply to administrative proceedings pursuant to chapter 120 or any appeal from any administrative or trial court judgment or decision. Nothing in this act shall limit a governmental entity from initiating and prosecuting 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 issues with regard to such joinder. Nothing in this act shall limit a governmental entity from filing any counterclaim or cross-claim in any litigation in which it is a defendant. Nothing in this 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. The provisions of this act shall 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. Further, nothing in this act shall preclude a governmental entity from filing a suit without resort to the provisions of this act against any federal or other governmental entity not governed by state law. Nothing in this section shall be deemed to toll or waive jurisdictional time limits on specific pleadings or motions set forth in statute or court rules unless modified pursuant to s. 164.1061.

(2) 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 this act are complied with, no notice or public meeting or other proceeding as provided by this act shall be required before such a court proceeding. 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 this act are complied with, no notice or public meeting or other proceeding as provided by this act shall be required before such a court proceeding. However, the court, upon motion, may review the justification for failure to comply with the provisions of this act and make a determination as to whether the provisions of this act should be complied with prior to action by the court. If the court determines that the provisions of this act should be complied with prior to court action and that following the provisions of this act will not result in the compromise of significant legal rights,

the court shall abate the suit until the provisions of this act are complied with.

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

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

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

(2) Municipal annexation.

(3) Service provision areas.

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

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

(6) Governmental entity permitting processes.

(7) Siting of elementary and secondary schools.

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

164.1052 Initiation of conflict resolution procedure; duty to give notice.—

(1) The governing body of a governmental entity shall initiate the conflict resolution procedures provided by this act through passage of a resolution by its members. The resolution shall state that it is the intention of the governing body to initiate the conflict resolution procedures provided by this act prior to initiating court proceedings or prosecuting action on a previously filed court proceeding to resolve the conflict and shall specify the issues of conflict and the governmental entity or entities with which the governing body has a conflict. Within 5 days after the passage of the resolution, a letter and a certified copy of the resolution shall be provided to the chief administrator of the governmental entity or entities with which the governing body has a conflict by certified mail, return receipt requested. The letter shall state, at a minimum, the conflict, other governmental entities in conflict with the initiating governmental entity, the justification for initiating the conflict resolution process, the proposed date and location for the conflict assessment meeting to be held pursuant to s. 164.1053, and suggestions regarding the officials who should be present at the conflict assessment meeting. The initiating governmental entity also shall mail a copy of the letter and resolution to any state, regional, or local governmental entities which, in the determination of the initiating governmental entity, may have

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

(2) Within 10 days after receiving a copy of a certified letter noticing the initiation of the conflict resolution procedure, other governmental entities receiving the notice may elect to participate in the conflict resolution process, but are not entitled by virtue of that participation to control the timing or progress of the conflict resolution process, which at all times shall remain in the discretion of the primary conflicting governmental entities. However, a governmental entity which receives notice of a conflict may, by passage of its own resolution and by otherwise following the procedures set forth in subsection (1), join the conflict resolution process as a primary conflicting governmental entity. The intent of a governmental entity to join in the conflict resolution process shall be communicated to the initiating governmental entity by certified mail. The joining governmental entity also shall mail a copy of the letter to any state, regional, or local governmental entities which, in the determination of the joining governmental entity, may have a role in approving or implementing a particular element or aspect of any settlement of the conflict or whose substantial interests may be affected by the resolution of the conflict, and any other governmental entity deemed appropriate by the joining governmental entity.

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

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

164.1053 Conflict assessment phase.—

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

(2) If a tentative resolution to the conflict can be agreed upon by the representatives of the primary conflicting governmental entities at the conflict assessment meeting, the primary conflicting governmental entities may proceed with whatever steps they deem appropriate to fully resolve the conflict, including, but not limited to, the scheduling of additional meetings

for informal negotiations or proposing a resolution to the governing bodies of the primary conflicting governmental entities.

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

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

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

164.1055 Joint public meeting.—

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

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

(b) Seek an agreement.

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

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

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

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

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

164.1057 Execution of resolution of conflict.—Resolution of a conflict at any phase shall require passage of an ordinance, resolution, or interlocal agreement that reflects the terms or conditions of the resolution to the conflict.

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

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

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

164.1061 Time extensions.—Any of the time requirements set forth in this act may be extended to a date certain by mutual agreement, in writing, of the primary conflicting governmental entities. To the extent such agreement would cause any jurisdictional time requirements to run with regard to a particular claim, the agreement shall have the effect of extending any jurisdictional time requirements with regard to that claim for the period set forth in the agreement.

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

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

Approved by the Governor June 8, 1999.

Filed in Office Secretary of State June 8, 1999.