The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	CS/SB 1306
INTRODUCER:	Community Affairs Committee and Senator Bennett
SUBJECT:	Growth Management
DATE:	March 24, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Fav/CS**
2.			TR	
3.			FT	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This committee substitute (CS):

- Makes a number of changes to transportation concurrency management.
- Requires the development and implementation of a mobility fee.
- Requires the Department of Transportation to develop and implement a transportation methodology that promotes mixed use developments by July 1, 2009.
- Adds regional centers for clean technology to the expedited permitting system.
- Prohibits local government from establishing standards for security devices that require a business to expend funds.

This CS substantially amends the following sections of the Florida Statutes: 163.3164, 163.3177, 163.3180, 163.3182, 380.06, and 403.973.

This CS creates section 163.31802 of the Florida Statutes.

II. Present Situation:

Growth Management

Adopted by the 1985 Legislature, the Local Government Comprehensive Planning and Land Development Regulation Act[1] - also known as Florida's Growth Management Act - requires all of Florida's 67 counties and 410 municipalities to adopt Local Government Comprehensive Plans that guide future growth and development. Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Community Affairs (DCA).

Capital Improvements Element

In 2005, the Legislature required municipalities to annually adopt a financially feasible Capital Improvements Element (CIE) schedule beginning on December 1, 2007. (House Bill 7203, passed in May 2007, postponed the submittal to December 1, 2008). The purpose of the annual update is to maintain a financially feasible 5-year schedule of capital improvements. The adopted update amendment must be received by DCA by December 1 of each year. Failure to update the CIE can result in penalties such as a *prohibition on Future Land Use Map amendments*; ineligibility for grant programs such as Community Development Block Grants (CDBG), and Florida Recreation Development Assistance Program (FRDAP); or ineligibility for revenue-sharing funds such as gas tax, cigarette tax, or half-cent sales tax. The majority of jurisdictions failed to meet the December 1, 2008 deadline to submit their financial feasibility reports for their capital improvements element.

Transportation Concurrency

The Growth Management Act of 1985 also requires local governments to use a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place to support the growth. Transportation concurrency is a growth management strategy aimed at ensuring that transportation facilities and services are available "concurrent" with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. The Florida Department of Transportation (FDOT) is responsible for establishing level-of-service standards on the highway component of the strategic intermodal system (SIS) and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.

In 1992, Transportation Concurrency Management Areas (TCMA) were authorized, allowing an area-wide LOS standard (rather than facility-specific) to promote urban infill and redevelopment and provide greater mobility in those areas through alternatives such as public transit systems.

[1] *See* Chapter 163, Part II, F.S.

Subsequently, two additional relaxations of concurrency were authorized: Transportation Concurrency Exception Areas (TCEA) and Long-term Transportation Concurrency Management Systems. Specifically, the TCEA is intended to "reduce the adverse impact transportation concurrency may have on urban infill and redevelopment" by exempting certain areas from the concurrency requirement. Long-term Transportation Concurrency Management Systems are intended to address significant backlogs.

Backlog Authorities

Section 163.3182, F.S., governs transportation concurrency backlogs. Transportation concurrency backlog is defined as a deficiency where the existing extent of traffic volume exceeds the level-of-service standard adopted in a local government comprehensive plan for a transportation authority. A county or municipality with an identified transportation concurrency backlog can create a transportation concurrency backlog authority. The governing board of the county or municipality comprises the authority's membership. The authority is tasked with developing and implementing a plan to eliminate all backlogs within its jurisdiction. The plan must identify all roads designated as failing to meet concurrency requirements and include a schedule for financing and construction to eliminate the backlog within 10 years of plan adoption. The plan is not subject to the twice-per-year restrictions on comprehensive plan amendments. To fund the plan's implementation, each authority must collect and earmark, in a trust fund, tax increment funds equal to 25% of the difference between the ad valorem taxes collected in a given year and the ad valorem taxes which would have been collected using the same rate in effect when the authority is created. Upon adoption of the transportation concurrency backlog plan, all backlogs within the jurisdiction are deemed financed and fully financially feasible for purposes of calculating transportation concurrency and a landowner may proceed with development (if all other requirements are met) and no proportionate share or impact fees for backlogs may be assessed. The authority is dissolved upon completion of all backlogs.

Broward County's Approach to Transportation Concurrency

Broward County uses an alternative approach to concurrency called transit-oriented concurrency. This approach has been accepted by DCA and has merit for application by other urbanized areas. Broward County applied two types of concurrency districts—transit-oriented concurrency districts and standard concurrency districts. These districts are defined in the Broward County Code both geographically and conceptually. A Standard Concurrency District is defined as an area where roadway improvements are anticipated to be the dominant form of transportation enhancement. A Transit Oriented Concurrency District is a compact geographic area with an existing network of roads where multiple, viable alternative travel paths or modes are available for common trips (a TCMA, under Florida Statutes).

The distinction is important, because each type of concurrency district carries with it a different set of standards for adequacy determination. The LOS standards for roadways are conventional, whereas, the relevant LOS standards for transit-oriented concurrency districts address transit headways and the establishment of neighborhood transit centers and additional bus route coverage, and are broken down on the individual district level.

The county charges an assessment, the Transit Concurrency Assessment, as a vehicle for meeting concurrency requirements in Transit Oriented Concurrency Districts. The Transit

Concurrency Assessment is calculated as the total peak-hour trip generation of the proposed development, multiplied by a constant annual dollar figure for each District, that represents the cost per trip of all the enhancements in that District listed in the County Transit Program. Revenues from the assessments are used to fund enhancements to the County Transit Program (established by the County Commission) located in the district where the proposed development will occur. The County also uses revenues to fund up to three years of operating costs for these enhancements.

Under certain circumstances, a developer may opt not to pay some or all of the Transit Concurrency Assessment and may instead implement or participate in implementing an alternative transit improvement. This alternative improvement must be intended to enhance transit ridership and cannot focus predominantly on the occupants or users of the applicant's property. The alternative improvement must be determined to be beneficial to the regional transportation system within the relevant district.

Proportionate Fair-Share Mitigation

Proportionate fair-share mitigation is a method for mitigating the impacts of development on transportation facilities through the cooperative efforts of the public and private sectors. Proportionate fair-share mitigation can be used by a local government to determine a developer's fair-share of costs to meet concurrency. The developer's fair-share may be combined with public funds to construct future improvements; however, the improvements must be part of a plan or program adopted by the local government or FDOT. If an improvement is not part of the local government's plan or program, the developer may still enter into a binding agreement at the local government's option provided the improvement satisfies part II of ch. 163, F.S., and:

- the proposed improvement satisfies a significant benefit test; or
- the local government plans for additional contributions or payments from developers to fully mitigate transportation impacts in the area within 10 years.

Proportionate Share Mitigation

Section 380.06, F.S., governs the development-of-regional-impact (DRI) program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.[2] Multi-use developments contain a mix of land uses and multi-use DRIs meeting certain criteria are eligible to satisfy transportation concurrency requirements under s. 163.3180(12), F.S. The proportionate share option under subsection (12) has been used to allow the mitigation collected from certain multiuse DRIs to be "pipelined" or used to make a single improvement that mitigates the impact of the development because this may be the best option where there are insufficient funds to improve all of the impacted roadways.

Strategic Intermodal System

The Florida Department of Transportation (FDOT) is responsible for establishing level-of-service standards on the highway component of SIS and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregionally significant

[2] Section 380.06(1), F.S.

transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.

Office of Tourism, Trade, and Economic Development Job Creation Programs
The Governor through his Office of Tourism, Trade, and Economic Development (OTTED) may waive certain criteria, requirements, or similar provisions for any RACEC project expected to provide more than 1,000 jobs over a 5-year period.[3] OTTED administers an expedited permitting process for "those types of economic development projects which offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment."[4]

Transportation Mobility Fee
DCA and FDOT have convened a technical committee and a stake holders group with participants representing government and private interests. Both agencies are conducting studies to develop mobility fee methodology that will apply statewide and replace the existing transportation concurrency management system.

> The concept of mobility fees is that a development would mitigate its impacts on the transportation system based on the extent of vehicle miles or person miles traveled that would result from the development. This user fee concept would tend to reward mixed use development which relies on many trips within the development over single use development which requires almost all transportation trips to be outside of the development, thus reversing the current economic dynamic under transportation concurrency and proportionate fair share.[5]

III. Effect of Proposed Changes:

Section 1 modifies s. 163.3164, F.S. The CS changes the definition of "existing urban service area" to "urban service area" and is redefined as built-up areas where public facilities and services, including, but not limited to, central water and sewer, roads, schools, and recreation areas, are already in place. The definition also grandfathers-in existing urban service areas and urban growth boundaries within counties that qualify as dense urban land areas.

A definition of a "dense urban land area" is created. The definition includes:

- a municipality that has an average population of at least 1,000 people per square mile and at least 5,000 people total;
- a county, including the municipalities located therein, which has an average population of at least 1,000 people per square mile; and
- a county, including the municipalities located therein, which has a population of at least 1 million.

[3] Section 288.0656(7), F.S.
[4] Section 403.973, F.S.
[5] Department of Community Affairs, Long-Range Program Plan *available at* http://www.dca.state.fl.us/publications/LRPP.pdf.

Those jurisdictions that qualify as dense urban land areas will be ascertained by the Office of Economic and Demographic Research, and the designation will become effective upon publication on the state land planning agency's website.

The CS defines "backlogged" or "backlogged transportation facility" to mean a facility on which the adopted level-of-service standard is exceeded by the existing trips plus the background trips, including transportation facilities that have exceeded their useful life. "Background trips" means forecasted trips from sources other than the development project under review.

Section 2 amends s. 163.3177, F.S. to state that comprehensive plans and plan amendments in transportation concurrency exception areas will be deemed to meet level-of-service standards for transportation.

Section 3 amends s. 163.3180(1), F.S., to state that the state land planning agency, along with the Department of Transportation, develop methodologies to assist local governments in implementing multimodal level-of-service analysis.

The CS exempts from transportation concurrency requirements affordable housing developments that serve residents who have incomes at or below 60 percent of the area median income and are located on arterial roadways that have public transit.

The CS designates the following areas as transportation concurrency exception areas (TCEAs):
- a municipality that qualifies as a dense urban land area;
- an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
- a county, such as Pinellas and Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.

A municipality that does not qualify as a dense urban land area may designate the following areas in its comprehensive plan as transportation concurrency exception areas:
- urban infill as defined in s. 163.3164(27), F.S.;
- community redevelopment as defined in s. 163.340(10), F.S.;
- downtown revitalization as defined in s. 163.3164(25), F.S.;
- urban infill and redevelopment as defined in s. 163.2517, F.S.; or
- urban service areas as defined in s. 163.3164(29), F.S.

A county that does not qualify as a dense urban land area may designate in its comprehensive plan as transportation concurrency exception areas:
- urban infill as defined in s. 163.3164(27), F.S.;
- urban infill and redevelopment as defined in s. 163.2517, F.S.; or
- urban service areas as defined in s. 163.3164(29), F.S., or urban service areas under s. 163.3177(14), F.S.

Any local government that has a transportation concurrency exception area under one of these provisions must, within 2 years, adopt into its comprehensive plan land use and transportation

strategies to support and fund mobility within the exception area, including alternative modes of transportation. If the local government fails to adopt such a plan it may be subject to the sanctions set forth in s. 163.3184(11)(a) and (b), F.S.

The CS retains the exemption for counties such as Broward that use their transportation concurrency to support and fund alternative modes of transportation.

If a local government uses 163.3180(5)(b)6., F.S., the existing method of creating TCEAs, they must first consult the state land planning agency and the Department of Transportation regarding the impact on the adopted level-of-service standards established for regional transportation facilities as well as the Strategic Intermodal System (SIS).

The CS includes language that clarifies that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. The CS further clarifies that the creation of a TCEA does not affect any contract or agreement entered into or development order rendered before the creation of the transportation concurrency exception area.

The CS requires the Office of Program Policy Analysis and Government Accountability to study the implementation of TCEAs and corresponding local government mobility plans and report back to the Legislature by February 1, 2015.

Local government will not have to submit, and the state planning agency will not have to review, the local government's summary of the de minimis impacts on a transportation facility. The local government must consult the state land planning agency, in addition to the Department of Transportation, before the local government designates a transportation management area.

The CS increases from 110 to 150 percent, the amount of actual transportation impact caused by previously existing development that must be reserved for urban redevelopment. The CS deletes existing language that specifies that the subsection does not preclude the appropriate assessment of fees or accounting for the impacts within the concurrency management system and capital improvements program of the affected local government.

The CS allows for a lower level of service to be applied to SIS roads for nonresidential OTTED certified job creation projects within rural areas of critical economic concern.

Proportionate-share contributions for local and regionally significant traffic impacts must be sufficient to pay for one or more mobility improvements that will benefit the network of regionally significant transportation facilities, rather than a single transportation facility. The CS clarifies that the developer pays proportionate-share to the local government having jurisdiction over the development of regional impact.

The CS sets out a new system to determine proportionate-share contributions. The number of trips for the development is to be separately assessed for each stage or phase of development and based only on the amount of trips that are expected to be added by the new stage or phase of development. The CS changes the calculations to use the number of trips that the development creates divided by two to reflect that each off-site trip represents a trip generated by another

development, multiplied by the construction cost at the time of the developer payment, the product of which is divided by the change in peak hour maximum service volume of the roadways resulting from the construction of an improvement necessary to maintain the adopted level of service. The effect of this change is to cut the proportionate-share contribution in half.

The CS contains language that states that proportionate-share and proportionate fair-share mitigation shall be applied as a credit against any transportation impact fees or exactions assessed for the traffic impacts of a development. The CS adds language stating that a developer may not be required to fund or construct proportionate-share mitigation that is more extensive than necessary to offset the impacts of the development and transportation improvements made under proportionate-share satisfies concurrency requirements as a mitigation of the development's impacts.

The CS sets out a new method to calculate proportionate fair-share contributions. Proportionate fair-share shall be calculated based upon the cumulative number of trips from the proposed new stage or phase of development expected to reach roadways during the peak hour at the complete buildout of phase being approved, divided by the change in the peak hour maximum service volume of the roadways resulting from the construction of an improvement necessary to maintain the adopted level of service. The calculated proportionate fair-share contribution shall be multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted level of service in order to determine the proportionate fair-share contribution. The term "construction cost" includes all associated costs of the improvement.

A development that satisfies the requirements of transportation concurrency shall not be denied the ability to develop on the basis of a failure to mitigate its transportation impacts under the local comprehensive plan or land development regulations.

The CS sets up a special scheme for large scale developments, both developments of regional impact and developers or land owners who have 500 cumulative acres or more. These developers or land owners may satisfy all of their transportation concurrency requirements through their proportionate share or proportionate fair-share contributions. If these landowners or developers pay their proportionate share or proportionate fair-share then the local government must:

- designate traffic impacts for transportation facilities in the 5-year schedule of the capital improvements element in the comprehensive plan; and
- reflect that the traffic impacts for transportation facilities are mitigated in the 5-year schedule of capital improvements in the next regularly scheduled update of the capital improvements element.

Updates to the capital improvements element that reflect proportionate share or proportionate fair-share contributions are compliant with the financial feasibility requirement and the capital improvements element of the comprehensive plan if the traffic impacts of the large-scale development would be fully mitigated within 10 years.

The CS creates subsection (19) to specify that the costs of mitigation for concurrency impacts shall be distributed to all affected jurisdictions by the local government having jurisdiction over

project approval. Distribution shall be proportionate to the percentage of the total concurrency mitigation costs incurred by an affected jurisdiction.

Section 4 creates s. 163.31802, F.S., to prohibit local government from establishing standards for security devices that require a business to expend funds.

Section 5 amends s. 163.3182, F.S., to require local governments that have identified transportation concurrency backlog to adopt one or more transportation concurrency backlog areas by 2012. The local governments must create additional transportation concurrency backlog areas on a biannual basis until the local government can demonstrate by 2027 that the backlog that existed in 2012 has been mitigated through construction or planned construction of the necessary transportation mobility improvements. If, because of economic conditions, the local government cannot meet the biannual requirement it may request a one-time waiver of its requirement under this section to file a biannual creation of new transportation concurrency backlog authorities.

Landowners or developers within a large-scale development area of 500 cumulative acres or more may request the local government create a backlog area for roadways significantly affected by traffic from the development if those roadways are *or will be* backlogged. If a development permit is issued or a comprehensive plan amendment is approved within the development area, the local government must designate the area as a transportation concurrency backlog area if the funding is sufficient to address one or more transportation improvements necessary to satisfy the additional deficiencies coexisting or anticipated with the new development. The transportation concurrency backlog area shall be created by ordinance and shall be used to satisfy all proportionate fair-share transportation concurrency contributions of the development that are not otherwise satisfied by impact fees. The local government shall manage the area acting as a transportation concurrency backlog authority and all applicable provisions of this section apply, except that the tax increment levied pursuant to s. 163.3182(5), F.S., shall be used to satisfy transportation concurrency requirements not otherwise satisfied by impact fees.

Local governments may not require any payments for transportation concurrency beyond the development's traffic impacts as identified pursuant to impact fees, proportionate share, or proportionate fair-share nor shall a condition of a development order or permit require such payments. If payments required to satisfy a development's share of transportation concurrency costs do not mitigate all traffic impacts of the planned development area because of existing or future backlog conditions, the landowner or developer shall be entitled to petition the local government for designation of a transportation concurrency backlog area, which shall satisfy any remaining concurrency backlog requirements in the impacted area.

Section 6 amends s. 380.06, F.S. to require that level-of-service standards for developments of regional impact must use the same methodology that is used to evaluate concurrency and proportionate share pursuant to s. 163.3180, F.S.

Section 7 adds a new subsection (19) to s. 403.973, F.S., to provide the benefits of the existing expedited permitting program for regional centers for clean technology. To qualify for the

benefits, projects must:

- create new jobs in the clean technology industry (at least one job for every household in the project and produce no fewer than 10,000 jobs);
- provide at least 25 percent of site-wide demand for electricity by new renewable energy sources;
- use design and construction techniques that reduce project-wide energy demand;
- use conservation and construction techniques and materials to reduce potable water consumption;
- reduce carbon emissions;
- contain at least 25,000 acres, at least 50 percent of which will be dedicated to conservation or open space;
- contain a mix of land uses, including, at minimum, 5 million square feet of combined research development, industrial uses, and commercial land uses, and a balanced mix of housing to meet the demands for jobs and wages created within the project;
- be designed to reduce the need for automobile usage.

The Office of Tourism, Trade, and Economic Development (OTTED) and the governing body of the local body in which the project is located must approve the project. OTTED may decertify a project that has failed to meet the requirements under the subsection. Applications for comprehensive plan amendments received before June 1, 2009, which are associated with a regional center for clean technology shall be processed using the process for small scale developments. An approved regional center for clean technology would not be subject to an analysis regarding whether the requirements for land use allocation are needed based on population projections, etc. If the center is a development of regional impact under chapter 380, the state land planning agency may not appeal a local government development order unless the agency having regulatory authority over the subject area of the appeal has recommended the appeal.

Section 8 provides a statement by the Legislature explaining that transportation concurrency needs to be replaced. This section provides for the evaluation of a mobility fee methodology that would be intended to replace transportation concurrency. The Legislature directs the Department of Community Affairs and the Department of Transportation to conduct independent, yet coordinated, studies to develop the methodology for a mobility that would consider:

- data regarding vehicle miles traveled;
- an equitable manner of apportioning the costs of future roadway improvements;
- replacing locally implemented fees with a state wide fee;
- applying the fee on a statewide or regional basis;
- the ability for developer contributions to transportation to be recognized as a credit against the mobility fee; and
- an equitable manner of distributing the mobility fee proceeds among jurisdictions.

The CS requires that the state land planning agency and the Department of Transportation shall develop and submit to the Legislature three joint interim reports.

Section 9 requires the Department of Transportation to create a transportation methodology that encourages mixed use and internal recapture for large-scale developments. The adopted

transportation methodology shall serve as the traffic impact assessments by the department. The methodology review must be completed and in use not later than July 1, 2009.

Section 10 provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires cities and counties to expend funds to update the comprehensive plans for the transportation concurrency exception areas and transportation concurrency backlog areas, the provisions of Section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the legislature must find that the law fulfills an important state interest and one of the following relevant exceptions:

a. Appropriate funds estimated at the time of enactment to be sufficient to fund such expenditures;
b. Authorize a county or municipality to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures; or
c. Approve the law by two-thirds of the membership of each house of the legislature.

Because this bill is not intended to limit a local government's home rule power to adopt ordinances or impose fees, it appears that the bill does not reduce the revenue raising authority of cities and counties as that authority existed on February 1, 1989. Thus, the provisions of Section 18(b) of Article VII of the State Constitution may not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

New development or redevelopment in dense urban land areas would no longer have to pay proportionate-share costs for transportation concurrency. This may allow development that is currently forestalled by transportation concurrency costs to go ahead with planned projects.

A statutorily defined method for calculating proportionate-share and proportionate fair-share would make the costs that new development would have to pay more uniform and predictable making planning for new development easier.

C. Government Sector Impact:

The CS requires local governments that have identified transportation concurrency backlog to adopt one or more transportation concurrency backlog areas by 2012. It also requires local governments to create transportation concurrency backlog areas if (1) petitioned by a large landowner/developer that (2) received either a development permit or a comprehensive plan amendment. In those situations, the creation of a transportation concurrency backlog area changes from being permissive to mandatory. A transportation backlog authority has a number of planning requirements and must create a backlog trust fund area financed through a tax increment from ad valorem taxes in the transportation backlog area.

Local governments will no longer have to report, and the state land planning agency will no longer have to review, de minimis traffic impacts.

DCA's workload may decrease because of their reduced role in reviewing comprehensive plan amendments for transportation impacts for local governments qualifying as a dense urban land area.

Local governments that qualify as dense urban land areas and FDOT will lose the ability to collect proportionate fair share (transportation concurrency costs)[6] contributions from new development within dense urban land areas. However, the bill clarifies that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. This clarification suggests that the local government's power to raise revenues is not negatively impacted.

Proportionate fair-share payments would be reduced by half under the revised scheme. Proportionate-share calculations would also have a statutorily defined method of calculation but it would be different than the proportionate fair-share method. The proportionate-share and proportionate fair-share contributions would count as a credit against impact fees and exactions. As a result, local governments would have a more limited tool set for funding the transportation infrastructure demands of new development.

VI. Technical Deficiencies:

The CS creates 163.3180(5)(f) which refers to s.380.06(29)(e), a provision that does not exist in current law or in this CS/SB 1306 but is proposed in CS/CS/SB 360.

[6] Section 163.3180(16), F.S.

VII. Related Issues:

The CS is internally inconsistent because section 6 of the CS requires that the method to calculate proportionate-share and proportionate fair-share be the same and section 3 provides different methods for calculating those methods.

New subsection 163.3180(19) provides that the "costs" of mitigation for concurrency impacts be distributed among jurisdictions. In context the term seems to mean the fees the local government receives from a development for transportation mitigation. In that case, the "cost" is actually a form of revenue to be shared. The word "cost" in that context should be clarified. The term "funding" used in section 163.3182(2)(c) likely refers to the funding in the transportation concurrency backlog trust fund in 163.3182(5), but the language does not specify a funding source and could be clarified.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 24, 2009:
The CS:

- Modifies the definition of "urban service area" and creates "dense urban land area" in s. 163.3164, F.S.
- Creates transportation concurrency exception areas in municipalities that qualify as dense urban land areas, urban service areas within a county that qualifies as a dense urban land area, and counties that meet certain population criteria. TCEAs are not created in transit-districts in Broward County.
- Allows a municipality or a county that does not qualify as a dense urban land area to designate certain area in its comprehensive plan as transportation concurrency exception areas.
- Requires TCEAs to create a mobility plan and provides for a penalty for those jurisdictions that do not create a mobility plan for their transportation concurrency exception areas within 2 years.
- Exempts affordable housing developments from transportation concurrency.
- Clarifies that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. The CS further clarifies that the creation of a TCEA does not affect any contract or agreement entered into or development order rendered before the creation of the transportation concurrency exception area except for developments of regional impact that choose to rescind under s. 380.06(29)(e), F.S.
- Requires the Office of Program Policy Analysis and Government Accountability to study the implementation of TCEAs and corresponding local government mobility plans and report back to the Legislature by February 1, 2015.
- Creates incentives for regional centers for clean technology.
- Deletes the provision that repeals transportation concurrency if mobility fees are adopted.
- Changes the method for calculation of proportionate fair-share.

- Distributes costs of mitigation for concurrency impacts to be distributed to all affected jurisdictions based on the percentage of cost incurred by the affected jurisdiction.
- Prohibits local government from establishing standards for security devices that require a business to expend funds.

B. Amendments:

None.