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:	PCS/SB 360
INTRODUCER:	Community Affairs Committee
SUBJECT:	Growth Management – Community Renewal Act.
DATE:	February 11, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Pre-meeting**
2.			TR	
3.			WPSC	
4.				
5.				
6.				

I. Summary:

The bill makes a number of revisions to the Growth Management Act and the Environmental Land and Water Management Act, including streamlining the comprehensive plan amendment process, encouraging growth in densely populated areas, and removing or delaying roadblocks to growth because local governments have not met certain reporting requirements.

Specifically, the bill:

- Extends the compliance deadline for local governments to submit financially feasible capital improvement elements (CIE) from 12/1/08 to 12/01/11, and eliminates one of the penalties for failing to adopt a public schools facility element.
- Provides that local governments with an average of at least 1,000 people per square mile or a county, including the municipalities located therein, which has a population of at least 1 million are Transportation Concurrency Exception Areas (TCEAs).
- Creates a waiver from transportation concurrency requirements on the state's strategic intermodal system for certain Office of Tourism, Trade, and Economic Development (OTTED) job creation projects.
- Applies the alternative state review process to comprehensive plan map amendments in jurisdictions where the local government has 1,000 or more persons per square mile or a county, including the municipalities located therein, which has a population of at least 1 million, and map amendments in Rural Areas of Critical Economic Concern communities if certified by the OTTED as furthering economic objectives. This reduces statutorily prescribed timeframe from 136 days to 65 days.
- Decreases text amendments to comprehensive plans from twice a year to once a year.

- Gives local governments with an average of at least 1,000 people per square mile or a county, including the municipalities located therein, which has a population of at least 1 million an exemption from the Development of Regional Impact (DRI) program.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 163.3164, 163.3177, 163.3180, 163.31801, 163.3184, 163.3187, 163.3246, 163.32465, and 380.06.

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 report for their capital improvements element.

School Concurrency

In 2005, the Legislature enacted statewide school concurrency requirements. Adequate school facilities must be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval. Each local government must adopt a public school facilities element and the required update to the interlocal agreement by December 1, 2008. A local government's comprehensive plan must also include proportionate fair-share mitigation options for schools.

Although the majority of jurisdictions did adopt a school facilities element into their comprehensive plan by the December 1, 2008 deadline, a significant number of jurisdictions did

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

not meet the deadline. One of the penalties for failure to comply with the December 1, 2008 deadline is that the local government cannot adopt comprehensive plan amendments that increase residential density.

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 for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period.

In 1992, Transportation Concurrency Management Areas 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. 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.

In 2008, Transportation Backlog Authorities were created to adopt and implement a plan to eliminate all identified transportation concurrency backlogs within the authority's jurisdiction. To fund the plan's implementation, each authority must collect and earmark, in a trust fund, tax increment funds equal to 25 percent 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.

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 the 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 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 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.

Comprehensive Plan Amendments

A local government may amend its comprehensive plan provided certain conditions are met including two advertised public hearings on a proposed amendment before its adoption and mandatory review by the DCA.[3] By rule, the DCA reviews a submitted comprehensive plan amendment to insure that it has a complete application package within 5 days of receiving the comprehensive plan amendment.[4] A local government may amend its comprehensive plan only twice per year with certain exceptions. At present, the statutorily prescribed timeline for a comprehensive plan amendment days to be processed is 136 days. Small-scale plan amendments are treated differently. These amendments may not change goals, policies, or objectives of the local government's comprehensive plan. Instead, these amendments propose changes to the future land use map for site-specific small scale development activity. The DCA does not issue a notice of intent stating whether a small scale development amendment is in compliance with the comprehensive plan.

Alternative State Review Process

In 2007, the Legislature created a pilot program to provide an alternate, expedited process for plan amendments with limited state agency review. Pilot communities transmit plan amendments, along with supporting data and analyses to specified state agencies and local governmental entities after the first public hearing on the plan amendment. Comments from state agencies may include technical guidance on issues of agency jurisdiction as it relates to ch. 163,

[2] Section 380.06(1), F.S.
[3] Section 163.3189, F. S.
[4] F.A.C. 9J-11.008.

part II, F.S., the Growth Management Act. Comments are due back to the local government proposing the plan amendment within 30 days of receipt of the amendment.

Following a second public hearing that shall be an adoption hearing on the plan amendment, the local government transmits the amendment with supporting data and analyses to DCA and any other state agency or local government that provided timely comments. An affected person, as defined in s. 163.3184(1)(a), F.S., or DCA may challenge a plan amendment adopted by a pilot community within 30 days after adoption of the amendment. DCA's challenge is limited to those issues raised in the comments by the reviewing agencies, but the statute encourages the DCA to focus its challenges on issues of regional or statewide importance. DCA does not issue a report detailing its objections, recommendations, and comments. The alternative state review process shortens statutorily prescribed timeline for comprehensive plan amendments process from 136 days to 65 days.

Rural Areas of Critical Economic Concern

Florida's Rural Areas of Critical Economic Concern (RACEC) are regions comprised of rural communities that have been adversely affected by extraordinary economic events or natural disasters. The designation of the three RACECs in Florida allows these regions certain provisions for economic development initiatives such as waived criteria and requirements for economic development programs. Additionally, funding is provided to the regions to help perform economic research, site selection, and marketing to produce a catalytic economic opportunity. A site is designated in each RACEC for targeted economic development. There are three designated RACECs that cover: 28 counties, 3 municipalities within non-rural counties, one municipality within a rural county which is not a RACEC, and one unincorporated community.

Office of Tourism, Trade, and Economic Development Job Creation Programs

The Governor through his Office of Tourism, Trade, and Economic Development (OTTED) has the authority to waive certain criteria, requirements, or similar provisions for any RACEC project expected to provide more than 1,000 jobs over a 5-year period.[5] OTTED also 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."[6]

The Development of Regional Impact (DRI) Process

Section 380.06, F.S., 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.[7] Regional planning councils assist the developer by coordinating multi-agency DRI review. The council's job is to assess the DRI project, incorporate input from various agencies, gather additional information and make recommendations on how the project should proceed. The DCA reviews developments of regional impact for compliance with state law and to identify the regional and state impacts of large-scale developments. The DCA makes recommendations to

[5] Section 288.0656(7), F.S.
[6] Section 403.973, F.S.
[7] Section 380.06(1), F.S.

local governments for approving, suggesting mitigation conditions, or not approving proposed developments.

Impact Fees
Impact fees are a total or partial payment to counties, municipalities, special districts, and school districts for the cost of additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources and the local government's determination to charge the full cost of the fee's earmarked purposes.

Section 163.31801(3)(d), F.S., requires local governments to provide notice of a new or amended impact fee at least 90 days before the effective date.

The Definition of "In Compliance"
Section 163.3184(1)(b), F.S., defines the term "in compliance" in the context of adopting comprehensive plan and plan amendments. In 2006, in a revisor's bill, a reference to s. 163.31776 was struck because the section on school concurrency planning requirements was relocated in the statutes and s. 163.31776 was deleted. Unfortunately, the phrase that served to modify s. 163.31776 was mistakenly retained.

III. Effect of Proposed Changes:

Dense Urban Land Areas
A definition of a "dense urban land area" is created. This term describes those local governments with an average population of at least 1,000 people per square mile using land area from the U.S. Census and population estimates from the Office of Economic and Demographic Research or a county, including the municipalities located therein, which has a population of at least 1 million. The language requires the DCA to annually publish in the Florida Administrative Weekly notice of which local governments qualify and allows the DCA to promulgate rules. The definition is significant because other proposed changes would allow a dense urban land area to: go through expedited review for map amendments, be transportation concurrency exception areas, and be exempt from the DRI process.

Capital Improvements Element
The proposed legislation changes the deadline to submit the CIE financial feasibility element and the implementation of the associated penalty from December 1, 2008 to December 1, 2011.

School Concurrency
The proposed legislation deletes a penalty for a local government's failure to adopt a school facilities element into their comprehensive plan by the December 1, 2008. The penalty would forbid local governments from adopting amendments to the comprehensive plan that increase residential density.

Transportation Concurrency Exception Areas
Section 163.3180, F.S., is amended to add language that explains why transportation concurrency exception areas are appropriate in urban areas. TCEAs are established for any local

governments with an average density of 1,000 people per square mile or more or a county, including the municipalities located therein, which has a population of at least 1 million. These jurisdictions must adopt into their comprehensive plan land use and transportation strategies to support and fund mobility, including alternative modes of transportation, within two years. In the remaining areas, a local government may still establish a TCEA in a municipality or unincorporated area of the county by designating an area in its comprehensive plan as urban infill development, urban redevelopment, downtown revitalization, urban infill and redevelopment, or an urban service area specifically designated as an exception area to accommodate compact urban development for projected population growth within a 10-year planning period.

Subsection (10) of s. 163.3180, F.S., is amended to provide an exemption from transportation concurrency on the Department of Transportation's state intermodal system (SIS) for projects that the local government and the Office of Tourism, Trade, and Economic Development (OTTED) agree are legitimate job creation programs as described in s. 288.0656 or s. 403.973, F.S.

Alternative State Review Process

Section 163.32465, F.S., is revised to eliminate the pilot status of the program. The revisions would give alternative state review to those local governments that have at least 1,000 people per square mile or a county, including the municipalities located therein, which has a population of at least 1 million, and future land use map amendments for OTTED approved job creation projects within an area designated as a rural area of critical economic concern.

Language regarding the agency comment period under alternative state review is revised to start the 30-day period for comments on the date the DCA notifies the local government that its plan amendment package is complete. Comments from state agencies and local governments must be transmitted to the DCA. Local governments subject to the alternative state review process may request the DCA to prepare an objections, recommendations, and comments report when the local government submits its comprehensive plan amendment. If the local government makes such a request, the DCA has 15 days from the date it receives the other state agency comments to issue its objections, recommendations, and comments report. The plan amendment must be adopted by the local government within 120 days after receipt of agency comments or the amendment is deemed abandoned and cannot be considered until the next available amendment cycle. The DCA is authorized to adopt procedural rules to administer the alternative state review program.

The following plan amendments would still have to go through the normal plan amendment review process: rural land stewardship areas, optional sector plans, coastal high-hazard areas, areas of critical state concern, recently annexed areas within a municipality, updates based on an evaluation and appraisal report, new statutory requirements not previously related to a comprehensive plan, and plans for newly incorporated municipalities.

Frequency of Plan Amendments

Section 163.3187, F.S., is amended to limit the frequency of comprehensive plan text amendments changing the goals, objectives, and policies to once per year rather than twice per year.

Section 163.3187, F.S., also deletes redundant language. Section 163.3187(1) limits comprehensive plan amendments to twice a year but also creates a list of exceptions. For s. 163.3187(1)(b) and (f) this amendment deletes redundant language that repeats the statement that those parts are not subject to the limitation on the frequency of plan amendment.

Development of Regional Impact Exemptions
Section 380.06(29), F.S., is added to exempt local governments containing an average of at least 1,000 people per square mile or a county, including the municipalities located therein, which has a population of at least 1 million from the development of regional impact (DRI) process. Developments that meet the DRI thresholds and are located partially within a jurisdiction that is not exempt still require DRI review. DRIs that had been approved or that have an application for development approval pending when the exemption takes effect may continue the DRI process or rescind the DRI development order. In exempt jurisdictions, the local government would still need to submit the development order to the state land planning agency for any project that would be larger than 120 percent of any applicable DRI threshold and would require DRI review but for the exemption. The state land planning agency would still have the right to challenge such development orders for consistency with the comprehensive plan.

Ordinances Levying Impact Fees
Section 163.31801(3)(d), F.S., is changed to allow a local government to decrease, suspend, or eliminate an impact fee without waiting 90 days.

The Definition of "In Compliance"
Section 163.3184, F.S., is amended to delete the modifying language that should have been deleted with the reference to s. 163.31776 when the statute was revised in 2006.

Other Potential Implications:

Relieving regulatory restraints on development within dense urban land areas should: (1) encourage economic development within these areas and (2) discourage urban sprawl. In particular, TCEAs within dense urban land areas should eventually lead to a shift in the mobility paradigm within those areas from focusing on road building and expansion toward alternative modes of transportation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

The development process is streamlined in dense urban land areas and in rural areas of critical economic concern for OTTED job creation projects. Within jurisdictions designated as dense urban land areas: (1) developers will no longer have to pay the costs associated with the DRI process; (2) because these areas will be TCEAs, for new development the developers will be limited to paying impact fees for their transportation impacts; and (3) alternative state review should expedite the comprehensive plan amendment process for those developments that require a comprehensive plan amendment.

C. Government Sector Impact:

The state land planning agency will have a greater workload due to the increase in the number of local governments which qualify for the expedited comprehensive plan review process. This workload issue should be somewhat counterbalanced by the limitation of text amendments to the comprehensive plan to once per year and the elimination of the state land planning agency's role in reviewing comprehensive plan amendments for transportation impacts for local governments that qualify as a dense urban land area.

Local governments and the Department of Transportation will lose the ability to collect proportionate fair share contributions from new development. Regional planning councils will also see a reduction in their workload due to the elimination of the DRI program in local governments that qualify as a dense urban land area.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.