HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7127 PCB EDCA 09-02 Community Affairs
SPONSOR(S): Economic Development & Community Affairs Policy Council
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Economic Development & Community Affairs Policy Council	15 Y, 0 N	Rojas	Tinker
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SUMMARY ANALYSIS

The bill addresses a number of issues relating to planning and development, revising local government comprehensive plan requirements and associated implementation issues relating to concurrency, as well as providing for certain exemptions to the development of regional impact program.

The bill creates Transportation Concurrency Exception Areas (TCEAs) in specifically defined areas of the state using factors of density and defined urban service areas. The bill provides an exception to the legislatively designated areas to accommodate existing multimodal systems. It 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.

Transportation concurrency may be waived for job creation projects certified by the Office of Tourism, Trade and Economic Development as meeting criteria from the expedited permitting process in s. 403.973(3), F.S. or the rural economic development initiative provisions of s. 288.0656, F.S. The bill provides an exemption from certain financial feasibility requirements in TCEAs created by local governments relating to achieving and maintaining adopted levels of service.

The bill legislatively certifies certain highly populated local governments for the Local Government Comprehensive Planning Certification Program. It provides for biennial reporting for those certified local governments. In addition, it provides any other local government the option to use the alternative plan review process, formerly the alternative state review pilot program for individual comprehensive plan amendments or amendment packages. It authorizes the state land planning agency to establish procedural rules to administer the process and report to the legislature regarding implementation and use.

The developments-of-regional-impact (DRI) process is eliminated in specifically defined areas of the state using factors of density and defined urban service areas.

The bill removes a current law prohibition on comprehensive plan amendments related to public school facilities requirements. Financial feasibility requirements are delayed until 2011. The bill provides for financial sanctions for failure to comply with capital improvement elements and public school facilities requirements. The small county waiver for school concurrency is expanded, and charter schools are added as an appropriate form of public school facilities mitigation.

The bill establishes mobility fee study oversight and directs the state land planning agency and FDOT to report to the Legislature next session.

The bill provides a statewide extension of permits for a period of two years and places limits on a local government's ability to adopt or enforce certain ordinances.

The bill may be considered a mandate and be subjected to a two-thirds vote for approval. The bill includes a finding of an important state interest.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Comprehensive Plan and Plan Amendments

Current Situation

The Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, Florida Statutes), requires all local governments to adopt comprehensive land use plans and implement those plans through land development regulations and development orders. DCA is designated as the lead oversight agency, responsible for reviewing comprehensive plans and amendments to determine consistency with state law. Amendments to comprehensive plans adopted generally may be made not more than two times during any calendar year; however there are a number of statutory exceptions.

Section 163.3177, F.S., provides the requirements for elements of local comprehensive plans. A listing of required elements includes elements for capital improvement, future land use, intergovernmental coordination, housing, transportation, and public schools facilities. The statute also provides for scheduled updates to various elements and imposes penalties for failure to adopt or update elements.

Section 163.3184, F.S., sets forth the criteria for the adoption of comprehensive plans and amendments to those plans. 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 review by the state land planning agency. By rule, the state land planning agency reviews a submitted comprehensive plan amendment to ensure it has a complete application package within 5 days of receiving the comprehensive plan amendment. At present, the statutorily prescribed processing timeline for a comprehensive plan amendment requires at a minimum 136 days.[1]

The burden of proof regarding plans is established in s. 163.3184, F.S. If the adoption is challenged and the state land planning agency's review included a determination of "In Compliance", the local plan or plan amendment shall be determined to be in compliance if the local government's determination of compliance is fairly debatable. If the adoption is challenged and the state land planning agency's review included a determination of "Not In Compliance", the local government's determination that the comprehensive plan or plan amendment is in compliance is presumed to be correct and the local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan or plan amendment is not in compliance.

[1] OPPAGA Report No. 08-62

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 state land planning agency does not issue a notice of intent stating whether a small scale development amendment is in compliance with the comprehensive plan.

In 2002, the Legislature created the Local Government Comprehensive Planning Certification Program's. Since that time, only five local governments have chosen to apply for certification. Three local governments were certified by DCA (cities of Lakeland, Miramar, and Orlando) while two withdrew their applications (cities of Naples and Sarasota). The City of Freeport was certified as a result of a law passed in the 2005 legislative session. The four certified cities have been subject to less state and regional oversight of their comprehensive plan amendments which has allowed them to expedite the amendments' approval. Counties, regional planning councils, and the DCA generally report they did not experience problems as a result of the cities participating in the program[2].

In 2007, the Legislature created a pilot program to provide an alternate, expedited process for plan amendments with streamlined state agency review. The selected pilot communities transmit plan amendments, along with supporting data and analyses directly 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 Chapter 163, Part II, F.S. 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 for the purpose of adopting the plan amendment, the local government transmits the amendment with supporting data and analyses to the state land planning agency 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 the state land planning agency may challenge a plan amendment adopted by a pilot community within 30 days after adoption of the amendment. The state land planning agency's challenge is limited to those issues raised in the comments by the reviewing agencies, but the statute encourages the state land planning agency to focus its challenges on issues of regional or statewide importance. The state land planning agency does not issue a report detailing its objections, recommendations, and comments (ORC Report) on the proposed amendment or a notice of intent (NOI) on the adopted amendment. The alternative state review process shortens statutorily prescribed timeline for comprehensive plan amendments process from 136 days to 65 days.[3]

Effect of the Bill

The bill streamlines the comprehensive plan amendment process in a number of different ways most notably it legislatively designates specified local governments as certified communities and expands the alternative state review process for use by all local governments. The specific details of the proposed changes are addressed below.

The bill allows concurrent zoning changes that would be required to properly enact the provisions of any proposed plan amendment transmitted to the state land planning agency for review or comment. Zoning changes would be contingent upon the state land planning agency issuing a notice of intent to find that the comprehensive plan or plan amendment is in compliance.

The bill provides that in each of the land use categories permitting development, the future land use element must provide a minimum amount of land to accommodate the residential and nonresidential development, furthermore there can be no finding of non-compliance based on lack of demonstrated need. Future land use elements may, however, provide for additional development to encourage other objectives, including economic growth.

The bill establishes additional exceptions to the twice per calendar year amendment limitation for local government plan amendments to include:

[2] OPPAGA Report No. 07-47
[3] OPPAGA Report No. 08-62

- designation of an urban service area, which exists in the local government's comprehensive plan as of July 1, 2009,
- designation as a TCEA under s. 163.3180(5)(b)2. or 3.,F.S., and
- designation of an area exempt from the DRI process under s. 380.06(29),F.S.

Local Government Comprehensive Planning Certification Program

Counties that have a population greater than 1 million and cities that have a population greater than 100,000 and the jurisdiction has an average of at least 1,000 people per square mile are deemed to be certified and are exempt from state review[4].

All comprehensive amendments must be adopted and reviewed in the manner applicable to small-scale amendments as provided for in ss. 163.3184(1), (2), (7), (14), (15), and (16) and 163.3187, F.S. The state land planning agency may not issue an ORC Report on proposed plan amendments or a notice of intent on adopted plan amendments.

However, affected persons may file a petition for administrative review pursuant to the current statutory provisions. The local government's determination that the amendment is "in compliance" is presumed to be correct and shall be sustained unless it is shown by a preponderance of the evidence that the amendment is not "in compliance."

The population and density needed to identify local governments that qualify for state review exemption will be determined annually by the Office of Economic and Demographic Research (EDR) using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates determined pursuant to s. 186.901, F.S. If a local government has had an annexation, contraction, or new incorporation, EDR will determine the population density using the new jurisdictional boundaries as recorded. EDR will annually submit to the state land planning agency a list of jurisdictions that meet the total population and density criteria necessary to qualify for state review exemption, and the state land planning agency is required provide a written notice of certification to the local government, which will be considered final agency action subject to challenge under s. 120.569,F.S. The notice of certification must include a requirement that the local government submit a monitoring report at least every two years according to the schedule provided in the written notice.

Alternative State Review Process

The bill allows for all local governments to elect to use a streamlined review process, formerly the alternative state review process pilot program, in s. 163.32465, F.S., for any amendment or amendment package not expressly excluded by s. 163.32465(3), F.S. The local government may elect to use the alternative review process on an amendment by amendment basis, but must establish in its transmittal hearing that it elects to undergo the alternative review process. If the local government has not specifically approved the alternative review process for the amendment or amendment package, the amendment or amendment package will be reviewed subject to the appropriate standard review process.

Comments from state agencies are required to clearly identify as objections, those issues that, if not resolved, may result in an agency request that the state land planning agency challenge the plan amendment; however agencies may also include technical guidance on issues of agency jurisdiction as it relates to the requirements of this part.

After receiving agency comments, the local government is required to hold a second public hearing. The hearing must be conducted within 120 days after the agency comments are received and the amendment must be adopted, adopted with changes, or not adopted. If a local government fails to

[4] Based on 2008 population estimates, counties that qualify under these criteria are Miami-Dade, Broward, Orange and Hillsborough counties. Qualifying municipalities are Jacksonville, Miami, Tampa, St. Petersburg, Orlando, Hialeah, Ft. Lauderdale, Tallahassee, Cape Coral, Port St. Lucie, Pembroke Pines, Hollywood, Coral Springs, Gainesville, Miramar, Clearwater, West Palm Beach, Palm Bay and Pompano Beach.

adopt the plan amendment within the timeframe set, the plan amendment is deemed abandoned and the plan amendment may not be considered until the next available amendment cycle. However, if the applicant or local government, prior to the expiration of the timeframe, notifies the state land planning agency that the applicant or local government is proceeding in good faith to adopt the plan amendment, the state land planning agency shall grant one or more extensions not to exceed a total of 360 days from the issuance of the agency report or comments. During the pendency of any such extension, the applicant or local government is required to provide to the state land planning agency a status report every 90 days identifying the items continuing to be addressed and the manners in which the items are being addressed.

In a challenge proceeding involving an "affected person" as defined in s. 163.3184(1)(a), F.S., the local government's determination of compliance is held to the fairly debatable standard. However, in a proceeding where the state land planning agency challenges, the local government's determination that the amendment is "in compliance" is presumed to be correct and will be sustained unless it is shown by a preponderance of the evidence that the amendment is not "in compliance."

Alternative State Review Process Exceptions

The following plan amendments are not eligible for the alternative state review process established by this bill and will continue to be reviewed subject to the applicable standard review or small-scale review processes established in ss. 163.3184 and 163.3187, F.S.:

1. designate a rural land stewardship area pursuant to s. 163.3177(11)(d),F.S.;
2. designate an optional sector plan;
3. relate to an area of critical state concern or a coastal high hazard area;
4. make the first change to a land use for lands that have been annexed into a municipality;
5. update a comprehensive plan based on an evaluation and appraisal report; or
6. implement new plans for newly incorporated municipalities; or
7. implements statutory requirements that were not previously incorporated into the comprehensive plan; or
8. changes the boundary of a jurisdiction's urban service area as defined in s. 163.3164, F.S.

Transportation Concurrency

Current Situation

The Growth Management Act also requires local governments to employ 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 intended at ensuring that transportation facilities and services are available "concurrent" with the impacts of development. To implement 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 interregional significant transportation facilities and services and plays a critical role in moving people and goods between major economic regions in Florida, to and from other states, as well as to shipment centers for global distribution.

Strict application of concurrency has resulted in development seeking out capacity in undeveloped areas. Consequently, methods to allow for greater flexibility to meet public policy objectives were adopted. In 1992, Transportation Concurrency Management Areas (TCMA) were authorized, allowing an area-wide LOS standard, rather than facility-specific designations, 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.

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 applies 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 Governor through his Office of Tourism, Trade, and Economic Development (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." Section 403.973(3), F.S., provides for the criteria for projects qualifying for expedited permitting. This provision can be used for projects creating at least 100 jobs; creating at least 50 jobs if the project is located in an enterprise zone, or in a county having a population of less than 75,000 or in a county having a population of less than 100,000 which is contiguous to a county having a population of less than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county; or on a case-by-case basis and at the request of a county or municipal government.

Effect of the Bill

The bill legislatively designates specified areas as transportation concurrency exception areas; however, it also specifies that designation does not limit a local government's home rule power to adopt ordinances or impose fees. The specific details of the proposed changes are addressed below.

The bill modifies current intent language, expressing that the unintended result of the current concurrency requirement for transportation facilities is an impediment to achieving healthy, vibrant centers. The bill designates certain qualifying areas as TCEAs.

The bill amends s. 163.3164, F.S., to change "existing urban service area" to "urban service area" to redefine the term to include built-up areas where public facilities and services, including, but not limited to, central water and sewer capacity, roads, schools, and recreation areas, are already in place. In addition, the bill includes counties, where the non-rural area of a county has adopted into the county charter a rural area of designation, as dense urban land areas. The definition also grandfathers 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 density 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 density 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.

The bill amends s. 163.3180, F.S., to designate the following areas as 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; limited urban service areas are included if the parcel is defined as an agricultural enclave, 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 TCEAs:

- 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 TCEAs:

- 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 TCEA under one of these provisions must, within two 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. If a local government uses the existing method of creating TCEAs, it must first consult the state land planning agency and DOT regarding the impact on the adopted level-of-service standards established for regional transportation facilities as well as the Strategic Intermodal System (SIS).

The bill provides that designation of a TCEA does not limit a local government's home rule power to adopt ordinances or impose fees. The bill further provides 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.

The bill establishes that TCEAs are not created for designated transportation concurrency districts within a county that has a population of at least 1.5 million that uses its transportation concurrency system to support alternative modes of transportation and does not levy transportation impact fees[5].

The bill allows for the creation of TCEAs to aid certain job creation projects certified by OTTED. Local governments may seek to have a development certified by OTTED as a qualified job creation project based on the criteria of ss. 403.973, or 288.0656, F.S. If certified, the development may be exempted from transportation concurrency by the local government after consulting with the Department of Transportation.

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

The bill also clarifies in s. 163.3177(3), F.S., that in TCEAs the financial feasibility requirement of achieving and maintaining adopted Levels of Service (LOS) is not applied.

Capital Improvements Element

Current Situation

In 2005, the Legislature strengthened the financial feasibility requirements of the Capital Improvements Element (CIE) and specified a completion date of December 1, 2007. (House Bill 7203, passed in May

[5] This provision is aimed at addressing counties, such as Broward County, who have implemented alternative forms of transportation concurrency.

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 the state land planning agency 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; or sanctions from the Administrative Commission such as 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. DCA has indicated that the majority of jurisdictions failed to meet the December 1, 2008 deadline to submit their financial feasibility reports for their capital improvements element.

Effect of the Bill

The bill amends s. 163.3177, F.S., to clarify that updates to the capital improvements element of the comprehensive plan need not comply with the financial feasibility requirement until December 1, 2011. The bill establishes that the state land planning agency may issue notice to the local government to show cause why sanctions should not be enforced for failure to submit an annual update.

In addition, a local government that has designated a transportation concurrency exception area in its comprehensive plan pursuant to s. 163.3180(5),F.S., will be deemed to have met the requirement to achieve and maintain level-of-service standards if the CIE and, as suitable, the capital improvement schedule reflect a plan to promote mobility within the area.

School Concurrency

Current Situation

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 have adopted a school facilities element into their comprehensive plan by the December 1, 2008 deadline, DCA has indicated that a significant number of jurisdictions did not meet the deadline. Penalties for failure to comply with the December 1, 2008 deadline include that the local government cannot adopt comprehensive plan amendments that increase residential density and school boards could be subject to possible sanctions from the Administrative Commission.

Currently, a county and the municipalities within that county may seek a waiver from public school facilities concurrency if the capacity rate for all schools within the school district is no greater than 100 percent and the projected five year student growth rate is less than 10 percent.

Mitigation options for developers to address school concurrency requirements include the contribution of land; the construction, expansion, or payment for land acquisition; or construction of a public school facility.

Effect of the Bill

The bill amends s. 163.3177(12), F.S., deleting one of the penalties for failure to adopt a public schools element or to implement school concurrency. Local governments will no longer be prohibited from adopting comprehensive plan amendments that increase residential density.

The bill also establishes that, similar to the provisions of s. 163.3177(3)(b), F.S., the local government, in addition to the school board, may be subject to sanctions by the Administration Commission pursuant to s. 163.3184(11), F.S.

The bill expands the public school facilities concurrency waiver to counties where the projected growth rate exceeds 10 percent, but the projected 10-year capital outlay full-time equivalent student enrollment is less than 2,000 students[6].

[6] Counties that qualify under these criteria are Franklin, Jefferson, Lafayette, and Liberty counties.

The bill adds the construction of a charter school that complies with the requirements of s. 1002.33(18)(f), F.S., as an appropriate mitigation option for developers to address school concurrency requirements. Section 1002.33(18)(f), F.S., provides that facilities are to be built to the State Requirements for Educational Facilities and are to be owned by a public or nonprofit entity. In addition, the local school district retains the right to monitor and inspect such facilities to ensure compliance with the State Requirements for Educational Facilities.

Developments of Regional Impact (DRI)

Current Situation

Section 380.0651, F.S., provides guidelines and standards for developments that are required to undergo development of regional impact review. Section 380.06, F.S., sets forth the criteria for the DRI program and establishes the basic process for DRI review. The DRI program 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. This section also provides statutory exemptions from the DRI program.

Effect of the Bill

The bill amends s. 380.06, F.S., to exempt developments from the DRI process in the following areas:

- municipalities 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.

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. Developments that choose to rescind are exempt from the twice a year limitation on plan amendments for the year following the exemption. In exempt jurisdictions, the local government would still be required 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 otherwise 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.

If a local government that qualifies as a dense urban land area for DRI exemption purposes is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area which has a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the application process in good faith or the development is approved. The bill includes clarifying language expressing the intent to not limit or modify the rights of any person to complete any development that has been authorized as a DRI. The bill states that an exemption from the DRI process does not apply within the boundary of any area of critical state concern, within the boundary of the Wekiva Study Area, or within two miles of the boundary of the Everglades Protection Area.

The bill also amends s. 186.509, F.S., to modify the interlocal dispute resolution process to declare that if the parties fail to resolve their dispute through voluntary meetings, then there will be mandatory mediation or a similar process.

Optional Sector Plans

Current Situation

The optional sector planning process is designed to promote large scale planning and avoid the duplicative data and analysis for developments of regional impact while ensuring adequate mitigation of

a development's impacts. The pilot program is limited to five local governments, or combinations of local governments. DCA enters into agreements to authorize the preparation of an optional sector plan. This process involves the development of a long-term, build-out overlay and detailed specific area plans.

Effect of the Bill

The bill amends s. 163.3245, F.S., increasing to 10 the number of pilots the state land planning agency is authorized to approve under the optional sector plan program, which is currently limited to 5 local governments.

Impact Fees

Current Situation

Impact fees are a total or partial payment to counties, municipalities, special districts, and school districts for the cost of providing 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.

Effect of the Bill

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

Mobility Fee Study

The bill provides legislative findings that indicate dissatisfaction with the existing transportation concurrency system and directs the state land planning agency and FDOT, both of whom are currently performing independent mobility fee studies, to coordinate and use those studies in developing a methodology for a mobility fee system. It directs the agencies to provide two interim joint reports to the President of the Senate and the Speaker of the House of Representatives. The agencies will then develop and submit to the Legislature a final joint report on the mobility fee methodology study complete with recommended legislation and a plan to implement the mobility fee as a replacement for the existing transportation concurrency management systems adopted and implemented by local governments. The final joint report shall also contain, but is not limited to, an economic analysis of implementation of the mobility fee, activities necessary to implement and potential costs and benefits at the state and local levels and to the private sector.

Statewide Permit Extension

The bill provides that any construction permit, development order, building or environmental permit, or other land use application that has been approved by a state or local governmental agency or pursuant to a local ordinance or resolution, and that has an expiration date prior to October 1, 2011, is extended and renewed for a period of two years following its date of expiration.

The extension also applies to phase, commencement, and buildout dates for any development order including any buildout extension previously granted, local land use approval, or related permits, including a certificate of concurrency or developer agreement or the equivalent thereof. The completion date for any required mitigation associated with any phase of construction is similarly extended so that it takes place within the phase originally intended. This extension does not apply to any permit or approval for the consumptive use of water within Water-Use Caution Areas as permitted under ch. 373 and ch. 403, F.S. The bill requires the permit holder to notify the permitting agencies of the intent to use this extension.

Prohibited Standards for Security

Current Situation

Current law has established minimum security standards for certain businesses. In doing so, state law has preempted ordinances or regulations by local governments that differ from state requirements. For example, state law specifies standards for lighting, mirrors and landscaping for Automated Teller Machines (ATM).[7] Likewise, state law has preempted security standards for convenience businesses.[8,9] However, some local governments have sought to establish their own security standards for other businesses.[10]

Effect of the Bill

The bill prohibits a county, municipality, or any other entity of local government from enacting or maintaining an ordinance that sets standards for security devices that requires a lawful business to expend funds to enhance the service of functions of local governments. Local governments will still be able to enact ordinances to establish standards for security when provided by general law.

Dense Urban Land Areas

The bill creates a definition of a "dense urban land area" that is applicable to designation of TCEAs and DRI exceptions. The definition includes:

- a municipality that has an average density 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 density 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.

Those jurisdictions that qualify as dense urban land areas will be ascertained by the Office of Economic and Demographic Research (EDR), and the designation will become effective upon publication on the state land planning agency's website. The bill also amends s. 171.091, F.S. to require municipalities that change their boundaries to submit their boundary changes and a statement specifying the population census effect and the affected land area to EDR.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.3164, F.S., to change "existing urban service area" to "urban service area" and creates a new definition of "dense urban land area"

Section 2. Amends s. 163.3177, F.S.: revising dates and penalties to the capital improvement element and public school facilities element of a comprehensive plan and expanding waivers for small counties and the future land use element must provide a minimum amount of land to accommodate the residential and nonresidential development.

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[7] *See* s. 655.962, F.S.

[8] Section 812.1725, F.S., provides that a "political subdivision of this state may not adopt, for convenience businesses, security standards which differ from those contained in ss. 812.173 and 812.174, and all such differing standards, whether existing or proposed, are hereby preempted and superseded by general law."

[9] The Convenience Business Security Act requires: training in robbery deterrence and safety for each employee; drop safe or cash management device, including a written cash management policy; lighted parking lot; notice at the entrance that the cash register contains $50.00 or less; height markers at the entrance; unobstructed view of the sales transaction area; a security camera system; a silent alarm; and additional security measures, if required.

[10] *See* Fla. AGO 2003-09, in which the Attorney General opined that the "City of Sunny Isles Beach appears to have the authority pursuant to section 2(b), Article VIII, Florida Constitution, and section 166.021, Florida Statutes, to adopt an ordinance requiring condominium associations within the jurisdiction of the city to furnish security guard services upon their premises to curtail the incidence of crime."; Cutler Bay Ordinance No. 09-03, "Town of Cutler Bay Parking Lot Security Ordinance", requiring certain retail businesses with over 25 parking spaces to install security camera system.

Section 3. Amends s. 163.3180, F.S.: creates transportation concurrency exception areas under specified circumstances. Includes charter school construction as a mitigation option for school concurrency.

Section 4. Amends s. 163.31801, F.S.: local governments are not required to wait 90 days to decrease, suspend or eliminate an impact fee.

Section 5. Creates s. 163.31082, F.S.: prohibiting local governments from establishing standards for security which require private entities to expend funds.

Section 6. Amends s. 163.3184, F.S.: establishing a requirement to local governments to identify at the transmittal hearing if it intends to use the alternative state review process.

Section 7. Amends s. 163.3187, F.S.: establishing additional exceptions to the twice per calendar year amendment limitation for local government plan amendments.

Section 8. Amends s. 163.3245, F.S.: increasing from 5 to 10 the number of pilots the state land planning agency is authorized to approve under the optional sector plan program.

Section 9. Amends s. 163.3246, F.S.: establishing criteria for local governments to become certified communities regarding comprehensive planning.

Section 10. Amends s. 163.32465, F.S.: deletes pilot program and creates alternative state review process for the adoption of local comprehensive plans.

Section 11. Amends s.186.509, F.S.: Amends the interlocal dispute resolution process to declare that if the parties fail to resolve their dispute through voluntary meetings, then there will be a mandatory mediation or a similar process.

Section 12. Amends s.171.091, F.S.: requiring municipalities that change their boundaries to submit their boundary changes and a statement specifying the population census effect and the affected land area to EDR.

Section 13. Amends s. 380.06, F.S., to exempt specified developments from the development-of-regional-impact process.

Section 14. Directs the state land planning agency and FDOT to conduct a mobility fee study and submit findings and reports to the Legislature

Section 15. Provides a two year extension to any construction permit, development order, building or environmental permit, or other land use application

Section 16. Provides that the Legislature finds that this act fulfills an important state interest.

Section 17. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   DCA workload will be reduced due to several provisions of the bill including: certification of 23 local governments, delay in financial feasibility requirements, and exemption of some DRI scale projects.

   DCA may have a greater workload if the number of amendments undergoing the expedited comprehensive plan review process increases significantly.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Local governments that qualify as dense urban land areas will lose the ability to collect proportionate fair share (other transportation concurrency costs) contributions and may lose the ability to collect proportionate share (DRI transportation costs) 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.

2. Expenditures:

   This bill may reduce workload on local governments by reducing regulations and streamlining portions of the local comprehensive plan amendment adoption process. Local governments are also able to delay amendments related to the capital improvement element for three years.

   Regional planning councils will also see a reduction in their workload due to the elimination of the DRI program in local governments qualifying as a dense urban land area.

   Local governments with legislatively designated TCEAs will have to amend their comprehensive plan within two years.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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, 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. Further the bill streamlines plan review and approvals and allows for a simultaneous zoning approval at the time of comprehensive plan amendment which may provide a savings to private property owners.

D. FISCAL COMMENTS:

The bill changes certain process and procedures for comprehensive plan reviews. This bill may reduce workload on local governments, state agencies, and property owners by reducing regulations and streamlining portions of the local comprehensive plan amendment adoption process.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

To the extent this bill requires cities and counties to expend funds to update the comprehensive plans for the transportation concurrency exception 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.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill allows for the state land planning agency to establish procedural rules to administer the alternative state review processes for local comprehensive plan amendment adoptions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2009, the Economic Development & Community Affairs Policy Council adopted five amendments to the bill.

Amendment 1
Amended the definition of urban service area

- The amendment adds capacity into the water and sewer equation, so that a simple extension of lines to add a property is not a reason to exclude the property from the urban service area.

Amendment 2
Amended the requirements for the future land use element of local comprehensive plans.

- The amendment allows rural communities and counties, designated as rural areas of critical state concern by the Governor, to factor into their land use decisions the need for job creation, capital investment, and the need to strengthen and diversify their local economy, rather than being limited solely by the projected population.

Amendment 3
Technical amendment; corrects a drafting error

Amendment 4

The amendment is conforming language that narrows the language relating to *Prohibited Standards for Security* to security “devices”

Amendment 5
The amendment replaces Section 15 relating to the extension of permits, to clarify and restructure the section. Substantive changes include –

- Changes the extension from 3 years to 2 years.
- Removes operating permits – the language now is specific to construction permits, development orders, building permits and other land use applications.
- Clarifies the 2 year extension applies to permits that expire between the date the bill becomes law and October 1, 2011; the language is not retroactive – it does not revive a permit that has already expired.
- Clarifies extension does not apply to any new permit issued after the effective date of the bill.