

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 Committee on Community Affairs

BILL: CS/SB 972

INTRODUCER: Community Affairs Committee and Senator Hukill

SUBJECT: Transportation Development

DATE: March 20, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Fav/CS
2.			TR	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 972 makes a number of changes to the transportation concurrency requirements. The bill provides that a local government may accept contributions from multiple applicants for a planned improvement if it maintains such contributions in a separate account designated for that purpose. The bill provides that an alternative mobility funding system may not be used to deny approvals if the developer agrees to pay for the development's identified transportation impacts using the funding mechanism implemented by the local government. Also, that a mobility-fee-based funding system must comply with the dual rational nexus test applicable to impact fees.

The bill states that eligible transportation projects within a transportation development authority may include projects within and outside of the designated deficiency area to relieve deficiencies by the transportation sufficiency plan. The bill stipulates that mass transit improvements and services may extend outside a deficiency area to an existing or planned logical terminus of a selected improvement. Finally, the bill provides that transit-oriented developments exceeding 25 acres in area are subject to specified election requirements.

This bill substantially amends the following sections of the Florida Statutes: 163.3180, 163.3182, and 190.006.

II. Present Situation:

Transportation Concurrency

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. If adequate capacity is not available, then the developer must provide the necessary improvements, provide monetary contribution toward the improvements, or wait until government provides the necessary improvements.¹

Level of Service

Level of service is a technical measure of the quality of service provided by a roadway. LOS is graded on an A through F scale based on the average arterial speed of a roadway. An uncongested roadway with a high average arterial speed will receive an A, while a congested roadway with a low average arterial speed will receive an F.² Local governments, in conjunction with the Florida Department of Transportation (FDOT), are responsible for setting LOS standards for roadways.³

Proportionate Share

Proportionate share is the amount of money a developer must contribute to mitigate the transportation impacts of a new development. Proportionate share contributions are triggered when a new development will cause a decrease in the LOS grade below a set standard. When a proportionate share contribution is triggered, a developer must, at minimum, contribute money toward one or several mobility improvements. However, developers are only required to contribute toward deficiencies they create, and are not required to correct existing deficiencies.⁴

Transportation Concurrency in Florida

Florida adopted the concept of transportation concurrency with the passage of the 1985 Growth Management Act. Since adoption, the legislature has frequently revisited the concept of transportation concurrency, most recently making substantial changes to s. 163.3180, F.S., in 2005, 2007, 2009 and 2011.⁵

¹ Fla. Dep't of Comty. Affairs, *Transportation Concurrency: Best Practices Guide*, pg. 5 (2007), retrieved from www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (last visited March 18, 2013).

² *Id.* at 53.

³ Section 163.3180(5)(b), F.S.

⁴ Section 163.3180(5)(h), F.S.

⁵ See L.O.F. s. 5, ch. 2005-290 (Providing requirements for proportionate share mitigation), s. 11, ch. 2007-196 (Authorizing study on multimodal districts, providing for concurrency backlog and satisfaction of concurrency requirements), s. 3, ch. 2007-204 (provides exception from concurrency for airports and urban service area, revises transportation concurrency exceptions for multiuse DRIs, revises proportionate share, provides requirements for proportionate share mitigation and fair-share), s. 5, ch. 2009-85 (provides definition for backlog, provides legislative findings and declarations on backlog, adds provisions on debt incurred from transportation concurrency backlog projects, requires funding of backlog trust funds), s. 4, ch. 2009-96 (revises concurrency requirements, deletes requirements for concurrency exception areas, requires OPPAGA to

Transportation concurrency in urban areas is often more costly and functionally difficult than in non-urban areas.⁶ As a result, transportation concurrency can result in urban sprawl and the discouragement of development in urban areas, in direct conflict with the general goals and policies of part II, ch. 163, F.S. Also, transportation concurrency can prevent the implementation of viable forms of alternative transit.⁷

Additionally, the frequent changes to transportation concurrency requirements have affected local governments in different ways. In some cases, the changes have provided more flexibility, less state oversight and created more planning tools for local governments, but in other cases, the changes created solutions that were inflexible and unworkable for all but a few local governments, with many local governments having difficulty implementing a transportation concurrency system or local governments implementing highly inconsistent policies.⁸ Recent legislative changes to transportation concurrency have sought to address these problems. In 2011, the Legislature passed the Community Planning Act, which made comprehensive changes to growth management regulation in Florida. As part of the act, the Legislature overhauled transportation concurrency and made it optional for local governments.⁹ The act also gave local governments the option of adopting alternative mobility funding systems.¹⁰

Local governments choosing to implement transportation concurrency must still follow established guidelines related to LOS standards and proportionate share contributions.¹¹ However, local governments that implement alternative mobility funding systems similar to concurrency, but not under the auspices of s. 163.3180, F.S., are not required to follow the LOS and proportionate share guidelines established by s. 163.3180, F.S.

Transportation Development Authorities

Sections 163.3180 and 163.3182, F.S., govern transportation deficiencies. The term “transportation deficiency” is defined as a facility or facilities on which the adopted level-of-service standard is exceeded by the existing, committed, and vested trips, plus additional projected background trips from any source other than the development project under review, and trips that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida’s Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.¹² Transportation deficiency area is defined as the geographic area within the unincorporated portion of a county or within the municipal boundary

submit report to legislature concerning the effects of transportation exception areas, revises requirements for impact fees), s. 4, ch. 2011-14 (reenacts s. 163.3180(5), (10), (13)(b) and (e), relating to concurrency requirements for transportation facilities), s. 15, ch. 2011-139 (revises and provides provisions related to concurrency, revises application and findings, revises local government requirements, provides for urban infill, redevelopment, downtown revitalization, provides for DRIs, revises provisions relating to transportation deficiency plans).

⁶ *Transportation Concurrency: Best Practices Guide* at 11.

⁷ *Id.* at 10.

⁸ *Id.* at 10-12.

⁹ L.O.F. s. 15, ch. 2011-139, “The 2011 Community Planning Act.”

¹⁰ *Id.*

¹¹ Section 163.3180(5), F.S.

¹² Section 162.3180(5)(h)3(e), F.S.

of a municipality designated in a local government comprehensive plan for which a transportation development authority is created pursuant to this section. A transportation deficiency area created within the corporate boundary of a municipality shall be made pursuant to an interlocal agreement between a county, a municipality or municipalities, and any affected taxing authority or authorities.¹³

A county or municipality may create a transportation development authority if it has an identified transportation deficiency. Each transportation development authority shall adopt a transportation sufficiency plan as a part of the local government comprehensive plan within 6 months after the creation of the authority. The plan must identify all transportation facilities that have been designated as deficient and establish a schedule for financing and construction of transportation projects that will eliminate transportation deficiencies within the jurisdiction of the authority within 10 years after the transportation sufficiency plan adoption. The plan must include a priority listing of all transportation facilities that have been designated as deficient and do not satisfy requirements pursuant to s. 163.3180, F.S., and the applicable local government comprehensive plan.

Transit Oriented Development (TOD)

Transit-Oriented Developments are compact, moderate to high intensity and density, mixed use areas within one half mile of a transit stop or station that is designed to maximize walking trips and access to transit.¹⁴ They also are characterized by streetscapes and an urban form oriented to pedestrians to promote walking trip to stations and varied other uses within station areas. One quarter-mile and one-half mile distances represent a 5 to 10 minute walk time, which is the amount of time most people are willing to walk to a destination. The most intense and dense development is typically located within the one quarter mile radius (transit core). Developments' intensities and densities gradually decrease out to the one-half mile radius (transit neighborhood) and the one mile radius (transit supportive area). FDOT has been developing transit oriented development design guidelines to provide general parameters and strategies to local governments and agencies to promote and implement transit ready development patterns.¹⁵

Community Development Districts (CDDs)

Community Development Districts are independent, special-purpose units of government established to finance basic services within a development, including infrastructure construction, services, and maintenance. Common infrastructure improvements provided by CDDs include drainage, potable water, sewerage, roads, and parks. Developers seek CDD approval to obtain low-cost financing by issuing tax-exempt bonds, with lower interest rates. CDDs also have the power to collect fees, levy lienable assessments, or ad valorem taxes against properties within the project for repayment. CDDs are required to have a five-member board of supervisors, elected by the landowners.

¹³ Section 163.3182(1)(a), F.S.

¹⁴ Section 163.3164(46), F.S.

¹⁵ Florida Dept of Transportation, *A Framework for Transit Oriented Development in Florida*, available at http://www.fltdod.com/renaissance/docs/Products/FrameworkTOD_0715.pdf (March 2011).

If the board of supervisors proposes to exercise the ad valorem taxing power authorized by s. 190.021, F.S., the district board shall call an election at which the members of the board of supervisors will be elected.¹⁶ Regardless of whether a district has proposed to levy ad valorem taxes, commencing 6 years after the initial appointment of members or, for a district exceeding 5,000 acres in area or for a compact, urban, mixed-use district, 10 years after the initial appointment of members, the position of each member whose term has expired shall be filled by a qualified elector of the district, elected by the qualified electors of the district.¹⁷

If, in the 6th year after the initial appointment of members, or 10 years after such initial appointment for districts exceeding 5,000 acres in area or for a compact, urban, mixed-use district, there are not at least 250 qualified electors in the district, or for a district exceeding 5,000 acres or for a compact, urban, mixed-use district, there are not at least 500 qualified electors, members of the board of supervisors shall continue to be elected by landowners.¹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 163.3180, F.S., to provide that local governments that continue to implement a transportation concurrency system, whether in the form adopted into the comprehensive plan before July 1, 2011, or as subsequently modified, must allow an applicant for a development agreement to satisfy transportation concurrency requirements. The bill changes a subsequent requirement that the applicant *in good faith offers to enter*, rather than *enters*, into a binding agreement to pay for or construct its proportionate share of required improvements.

The bill provides that a local government may accept contributions from multiple applicants for a planned improvement if it maintains such contributions in a separate account designated for that purpose. Also, the local government must provide the basis upon which landowners will be assessed a proportionate share of the cost of addressing the transportation impacts resulting from a proposed development. The bill states a local government is not required to approve a development that is not qualified for approval pursuant to the applicable local comprehensive plan and land development regulations for reasons other than transportation impacts.

The bill states that if a local government elects to repeal transportation concurrency, it is encouraged to adopt an alternative mobility funding system that uses one or more of the tools and techniques identified in s. 163.3180(5)(f), F.S. An alternative mobility funding system may not be used to deny, time, or phase an application for site plan, plat approval, final subdivision approval, building permit, or the functional equivalent of such approvals if the developer agrees to pay for the development's identified transportation impacts using the funding mechanism implemented by the local government. The bill states that the revenue from the funding mechanism adopted in the alternative system must be used to implement the needs of the local government's plan which serve as the basis for the fee imposed. A mobility-fee-based funding system must comply with the dual rational nexus test applicable to impact fees. The bill provides that an alternative system that is not mobility-fee-based may not be applied in a manner that

¹⁶ Section 190.006(3)(a)1, F.S.

¹⁷ Section 190.006(3)(a)2a, F.S.

¹⁸ *Id.*

imposes upon new development any responsibility for funding existing transportation deficiencies as that term is defined in s. 163.3180(5)(h), F.S.

Section 2 amends s. 163.3182, F.S., relating to transportation deficiencies and the powers granted to transportation development authorities to address deficiencies within the authority's jurisdiction. Specifically, the bill states that eligible transportation projects may include projects within and outside of the designated deficiency area to relieve deficiencies by the transportation sufficiency plan. The bill stipulates that mass transit improvements and services may extend outside a deficiency area to an existing or planned logical terminus of a selected improvement.

Section 3 amends s. 190.006, F.S., relating to the board of supervisors for community development districts. This section establishes requirements for the election of board members to various types of districts. The bill amends this section to provide that transit-oriented developments (as defined in s. 163.3164, F.S.) exceeding 25 acres in area are subject to specified election requirements.

Section 4 provides an effective date of July 1, 2013.

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:

This bill may reduce required contributions from developers for new developments in certain local government jurisdictions and could reduce delays for developer projects. Pooling contributions from multiple developments by a local government may result in needed transportation improvements.

C. Government Sector Impact:

This bill may limit the flexibility of local governments to develop alternative means to transportation concurrency.

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.)

CS by Community Affairs on March 20, 2013:

The CS makes technical and clarifying changes to the language of the bill regarding alternative mobility funding systems. The CS provides requirements and limitations for a mobility-fee-based funding system.

- B. **Amendments:**

None.