

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Community Affairs Committee

BILL: PCS for SB 360

SPONSOR: Community Affairs Committee and Senator Bennett

SUBJECT: Growth Management/Infrastructure Funding

DATE: April 10, 2005 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CA	Pre-meeting
2.			TA	
3.			WM	
4.				
5.				
6.				

I. Summary:

The proposed committee substitute (PCS) requires a local government’s comprehensive plan to be financially feasible and the capital improvements element in a local comprehensive plan to include a schedule of improvements that ensure the adopted level-of-service standards are achieved and maintained. Also, it requires an annual review of the capital improvements element to maintain a financially feasible 5-year schedule of capital improvements.

The 1985 Growth Management Act required that “public facilities and services” be available concurrently with development. This bill includes schools in the list of infrastructure subject to the concurrency requirement on a statewide basis. Transportation facilities must be in place when the local government approves the commencement of construction of each stage or phase of a development or the facility must be under actual construction within 3 years of such approval. The bill contains mitigation options for transportation and schools.

A local government is encouraged to develop a community vision. The process of developing a community vision requires the local government to hold a workshop with stakeholders and two public hearings. Also, a local government is encouraged to adopt an urban service boundary. This area must be appropriate for compact, contiguous urban development within a 10-year planning timeframe. The establishment of an urban service boundary does not preclude development outside the boundary.

A county that has adopted an urban service boundary and a community vision may levy the charter county transit system surtax and the infrastructure surtax under s. 212.055, F.S., by majority vote. A small county that has adopted a community vision and an urban service

boundary may levy the infrastructure surtax and small county surtax under s. 212.055, F.S., by majority vote for a combined rate of up to 2 percent.

A county that has adopted a community vision may levy the local option fuel tax and the ninth-cent fuel tax by majority vote. This bill also provides for the indexing of local option gas taxes.

In addition, the PCS allows a local government to rely on the first 3 years of the tentative work program relating to the State Transportation Trust Fund for planning and concurrency purposes. The Office of Program Policy Analysis and Government Accountability is to perform a study by December 31, 2005, regarding adjustments to the boundaries of the Florida Regional Planning Councils, Florida Water Management Districts, and Department of Transportation Districts. The PCS creates the 21-member Century Commission with its members to be appointed by the Governor. One member shall be designated by the Governor as Chairman. It appropriates the sum of \$250,000 from the General Revenue Fund to the Department of Community Affairs for the funding of the Commission and staff during the 2005-2006 fiscal year.

This PCS substantially amends following sections of the Florida Statutes: 163.3164, 163.3177, 163.31777, 163.3180, 163.3184, 163.3191, 212.055, 206.41, 336.021, 336.025, 339.135, and 163.3247; and repeals section 163.31776.

II. Present Situation:

Florida's current growth management system includes: the Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ss. 163.3161-163.3246, F.S.; chapter 380, F.S., the Florida Environmental Land and Water Management Act, that includes the DRI and Areas of Critical State Concern programs; chapter 186, F.S., establishing regional planning councils and requiring the development of state and regional plans; and chapter 187, F.S., the State Comprehensive Plan.

The first Environmental and Land Management Study Committee (ELMS) was convened in 1971, ELMS II in 1982, and ELMS III in 1991 to address growth management issues. In response to some of the recommendations of these committees, the Legislature has made major changes in growth management regulations over the years. The Growth Management Study Commission was created by Governor Jeb Bush on July 3, 2000. Based on the recommendations of the 2000 Growth Management Study Commission, the Legislature has made a number of changes to the growth management process.

Those changes included increasing coordination between school districts and local governments in the planning of educational facilities; allowing concurrency requirements, except for transportation, to be waived in urban infill and redevelopment areas; broadening standing to include property owners who abut a parcel with a proposed land use change, but do not reside in the same jurisdiction; revising the process for adopting plan amendments from a two-step to a one-step process with reduced timeframes for state review in some circumstances; providing for owners, developers, and applicants to use the methods available to third parties to appeal and challenge a development order's consistency with the comprehensive plan; creating an alternative special master process for quasi-judicial proceedings relating to development order challenges; and, establishing the Local Government Comprehensive Plan Certification Program

as a successor to the Sustainable Communities Program. Notwithstanding these recent changes, development interests and citizen groups have continued to push for further changes in the current growth management process.

Infrastructure Funding

The term “infrastructure” may include fire protection, law enforcement, transportation, water, sewer, garbage, solid waste, economic development, libraries, parks and recreation, and hospitals.¹ Local infrastructure needs are financed through local revenue sources such as “user fees, ad valorem monies, local option taxes, special assessments, and impact fees, as well as through bond issues and debt.”² Nearly all local governments in Florida report experiencing infrastructure deficits to some degree.³ The extent of Florida’s infrastructure deficit and future need is difficult to quantify. However, it has been estimated that portions of the state’s local transportation needs alone are approximately \$7 billion and water project infrastructure needs require another \$14 billion.⁴

There are a number of local option taxes authorized by the Legislature, including several types of local discretionary sales surtaxes and a local option fuel tax. Flexibility in the levy of some of these taxes may encourage local governments to use these sources of additional revenue for infrastructure funding. Section 212.054, F.S., authorizes local governments to levy several types of sales surtaxes. These taxes are applicable to all transactions that are subject to the state sales tax which includes sales, use, services, rentals, admissions, and other authorized transactions. However, the tax does not apply to any amount over \$5000 on any item of tangible personal property or on long distance phone service. The Department of Revenue is responsible for administering, collecting, and enforcing local discretionary sales surtaxes. The proceeds are transferred to the Discretionary Sales Surtax Trust Fund. The department distributes these funds using a distribution factor for each county.

Local Government Infrastructure Surtax

The Local Government Infrastructure Surtax⁵ may be levied at a rate of 0.5 or 1 percent by ordinance if enacted by a majority of the county’s governing body and approved in a countywide referendum. Alternatively, the municipalities representing a majority of the county’s population may adopt uniform resolutions calling for a countywide referendum. Currently, 20 counties are levying the Local Government Infrastructure Sales Surtax at 1 percent, and 3 counties are levying it at the rate of 0.5 percent. The untapped capacity for this revenue source is an estimated \$ 1.5 billion.

Charter County Transit System Surtax

Section 212.055(1), F.S., provides for the levy of the charter county transit system surtax for several uses, including the development, construction, and maintenance of a fixed guide way rapid transit system and supportive services by an expressway or transportation authority on county roads and bridges. There are seven eligible counties: Broward, Duval, Hillsborough, Miami-Dade, Pinellas, Sarasota, and Volusia. These counties may impose, if approved by

¹ See *Local Infrastructure Funding Options*, Legislative Committee on Intergovernmental Relations (June 2002), pg. 2.

² See *id.*

³ See *id.*

⁴ See *id.*

⁵ Section 212.055(2), F.S.

referendum, up to a 1 percent sales surtax on most transactions taxable under ch. 212, F.S.⁶ The untapped capacity for this revenue source, if expanded to all charter counties, is \$ 2 billion. If expanded to both charter and non-charter counties, this estimate would be even higher depending upon the number of counties that levy the tax.

Small County Surtax

Section 212.055(3), F.S., authorizes counties with a population of 50,000 or less as of April 1, 1992, to levy a half percent or 1 percent tax by referendum or by extraordinary vote of the county governing board. Eligible counties may, by extraordinary vote, levy the tax to be expended for operating purposes. If the funds are to be used for bond indebtedness, the tax must be approved by referendum. Currently, twenty-one counties are levying the Small County Surtax at the rate of 1 percent.⁷ By raising the cap to 2 percent on the Small County Surtax, the unrealized capacity for this revenue is an estimated \$ 62 million.

A county may not combine the Local Government Infrastructure Surtax, Small County Surtax, Indigent Care/Trauma Center Surtax, the County Public Hospital Surtax, and the Voter-Approved Indigent Care Surtax in excess of a combined rate of 1 percent.

School Capital Outlay Surtax

The school districts may levy a School Capital Outlay Surtax up to 0.5 percent pursuant to a resolution that requires the approval of a majority of voters in a countywide referendum. Proceeds from this surtax must be expended on school-related capital projects, technology implementation, or the bond financing of those projects. Any school district is eligible to impose this surtax by resolution subject to voter approval. To date, Bay, Escambia, Flagler, Gulf, Hernando, Jackson, Leon, Manatee, Monroe, Orange, Polk, St. Lucie, Santa Rosa, and Volusia counties have levied this surtax.⁸ The untapped capacity for this revenue source is an estimated \$ 1 billion.

County Local Option Fuel Tax

Section 336.025(1)(b), F.S., authorizes counties to impose a Local Option Fuel Tax, from 1 to 5 cents, by ordinance if approved by a majority plus one vote of the county commission or by referendum. This is also known as the ELMS nickel. Counties and municipalities must spend any proceeds from the ELMS nickel on transportation expenditures necessary to meet the requirements of the capital improvements element in the applicable comprehensive plan; to remedy local transportation problems; and for critical expenditures needed to build comprehensive roadway networks. Such expenditures include the construction of new roads, the reconstruction or resurfacing of existing paved roads, or the paving of existing graded roads, but these funds cannot be expended on routine road maintenance. To date, 17 counties have levied the ELMS nickel. Of those counties, 14 counties are levying the maximum 5-cent tax.⁹ The untapped capacity for this revenue source is an estimated \$255 million.

Ninth-Cent Fuel Tax

⁶ 2004 Florida Tax Handbook, pg. 157.

⁷ See 2004 Florida Tax Handbook, pg. 156-8.

⁸ See *id.* at 159.

⁹ See *id.* at pg. 164-5.

Section 336.021, F.S., authorizes the levy of the ninth-cent fuel tax by any county by an extraordinary vote of the governing body or by referendum. Currently, 43 counties levy this tax. The untapped capacity for this revenue source is an estimated \$23 million.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3164, F.S., to define the term “financial feasibility.”

Section 2 amends s. 163.3177(2), F.S., to require a local government’s comprehensive plan to be financially feasible. It amends subsection (3) to require that the capital improvements element in a local comprehensive plan include a schedule of improvements to ensure the adopted level-of-service standards are achieved and maintained. Capital improvements to be funded by a developer must be supported by an enforceable development agreement. If the planned revenue sources are not realized, the local government must identify other sources to fund capital projects or amend its comprehensive plan. The schedule must be consistent with the applicable metropolitan planning organizations long-range transportation plan.

This PCS requires an annual review of the capital improvements element to maintain a financially feasible 5-year schedule of capital improvements. Amendments to include the required schedule in the capital improvements element must be filed no later than December 1, 2007. A local government may not adopt any plan amendments, if it fails to adopt an updated schedule by that time or to annually update the schedule, until the schedule of capital improvements is found in compliance. If a local government cannot adequately address the deficit in level-of-service standards for existing development in a 10-year plan, DCA may allow the plan to address the deficit to be extended over a 15-year period.

Subsection (6) of s. 163.3177, F.S., is amended to strengthen the link between development approval and water supply planning. Specifically, the potable water element must be consistent with the applicable regional water supply plan by December 1, 2006. It allows a local government to prepare its own water supply analysis as an alternative.

Subsection (12) of s. 163.3177, F.S., is amended to require a county and each municipality to adopt a consistent public school facilities element and to enter into an interlocal agreement under s. 163.31777. The local governments may receive a waiver from this requirement if DCA determines certain criteria have been met. The DCA must set a schedule to ensure that each local government adopts the element and updates the interlocal agreement by December 1, 2008. These plan amendments are exempt from the twice-per-year limitation on the frequency of plan amendments.

Subsection (13) is added to encourage local governments to develop a community vision. The process of developing a community vision requires the local government to hold a workshop with stakeholders and two public hearings.

Subsection (14) encourages local governments to adopt an urban service boundary. This area must be appropriate for compact, contiguous urban development within a 10-year planning

timeframe. The establishment of an urban service boundary does not preclude development outside the boundary.

A county that has adopted an urban service boundary may levy the charter county transit system surtax and the infrastructure surtax under s. 212.055, F.S., by majority vote. A small county that has adopted a community vision and an urban service boundary may levy the infrastructure surtax and small county surtax under s. 212.055, F.S., by majority vote for a combined rate of up to 2 percent.

A county that has adopted a community vision may levy the local option fuel tax and the ninth-cent fuel tax by majority vote.

Section 3 repeals s. 163.31776, F.S., relating to the public educational facilities element in a comprehensive plan.

Section 4 amends s. 163.31777, F.S., relating to the public schools interlocal agreement. It eliminates language making it optional to include a process in the interlocal agreement that requires a school board to inform the local government of the effect of comprehensive plan amendments on school capacity. The PCS also revises the language providing an exemption for municipalities from the interlocal agreement requirement.

Section 5 amends s. 163.3180, F.S., to include schools in the list of infrastructure subject to the concurrency requirement on a statewide basis. Transportation facilities must be in place when the local government approves the commencement of construction of each stage or phase of a development or the facility must be under actual construction within 3 years of such approval. Also, this PCS requires that the adopted level-of-service standards for the Strategic Intermodal System facilities within a transportation concurrency exception area be maintained unless a variance has been issued under s. 120.542, F.S. The PCS also specifies criteria for guidelines addressing the designation of a transportation concurrency exception area. When establishing adequate level-of-service standards for arterial and collector roads, a local government must consider the roadway facility's adopted level-of-service standards in adjacent jurisdictions.

The PCS encourages local governments to initially apply school concurrency on a district-wide basis. Within five years after the adoption of school concurrency, local governments are required to apply school concurrency on a less than district-wide basis.

The PCS requires adequate school facilities within 3 years of subdivision or site approval. It provides mitigation options for schools, including the contribution of land; the construction, expansion, or payment for land acquisition or construction of a public school facility; or the creation of a mitigation bank for school construction in exchange for the sale of capacity credits. In addition to the mitigation provision, the developer is entitled to a credit as specified in s. 163.3180(13)(e)2., F.S.

Also, this PCS requires that the adopted level-of-service standards for the Strategic Intermodal System facilities within a multimodal transportation district be maintained unless a variance has been issued under s. 120.542, F.S. The PCS provides for an optional method to address the impacts of development on transportation facilities through cooperative funding efforts of the

public and private sectors. Specifically, when authorized by a comprehensive plan, a local government may create a mitigation bank for transportation.

Section 6 amends s. 163.3184, F.S., to provide for expedited plan amendment review within an established urban service boundary.

Section 7 amends s. 163.3191, F.S., to require a municipality that no longer meets the exemption criteria for a public schools interlocal agreement to enter into such agreement in order to fully participate in the school concurrency system.

It requires a local government's evaluation and appraisal report (EAR) to determine how successful the local government has been in identifying water supply sources and the degree to which the work plan for water supply facilities has been implemented.

This PCS requires amendments based on an evaluation and appraisal report to be adopted during a single amendment cycle within 18 months after the report is determined to be sufficient. Failure to adopt such amendments will result in a prohibition against any further plan amendments by the local government until the EAR amendments have been adopted and found in compliance by DCA. Also, a local government must provide a copy of the updated comprehensive plan within 6 months after the effective date of the updated amendments to DCA and all agencies designated by rule.

Section 8 amends s. 212.055, F.S., to allow a county that has adopted community vision and an urban service boundary to levy the charter county transit system surtax and the infrastructure surtax under s. 212.055, F.S., by majority vote. The charter county transit system surtax is expanded to allow a non-charter to levy this surtax under certain circumstances for regionally significant transportation projects. The proceeds from the levy of the charter county transit surtax and the infrastructure surtax may only be expended within the urban service boundary, with the exception of regionally significant transportation projects. A municipality within a county that levies this tax by a majority vote may not share in the tax proceeds unless it has also completed this requirement.

Also, a small county that has adopted a community vision and an urban service boundary may levy the infrastructure surtax and small county surtax under s. 212.055, F.S., by majority vote for a combined rate of up to 2 percent. The PCS allows a county to levy the school capital outlay surtax by majority vote of the governing body.

The levy of any of these taxes by majority vote requires the establishment of an advisory board to make recommendations to the county commissioners regarding the project list. The advisory board must hold at least 2 public workshops to develop a project list and the county must hold at least two public hearings. Any amendments to the project list would require a notice of intent by the county commission to add or remove projects recommended by the advisory board. The bill does not allow the project list to be approved at the same public meeting at which it is amended. Once the project list has been approved by the board of county commissioners, the county may adopt the ordinance enacting the tax at a subsequent public meeting.

Section 9 amends s. 206.41, F.S., to provide for the indexing of local option gas taxes.

Section 10 amends s. 336.021, F.S., to authorize a county to levy the ninth-cent gas tax by majority vote of the local governing body. A county must adopt a community vision under s. 163.3177(13), F.S., before levying this tax by majority vote. A municipality within a county that levies this tax by a majority vote may not share the tax proceeds unless it has also completed this requirement.

Section 11 amends s. 336.025, F.S., to authorize a county to levy the local option fuel tax by majority vote of the local governing body. A county must adopt a community vision under s. 163.3177(13), F.S., before levying this tax by majority vote. A municipality within a county that levies this tax by a majority vote may not share in the tax proceeds unless it has also completed this requirement.

Section 12 amends s. 339.135, F.S., to allow local governments to rely on the first 3 years of the tentative work program relating to the State Transportation Trust Fund for planning and concurrency purposes.

Section 13 directs the Office of Program Policy Analysis and Government Accountability to perform a study by December 31, 2005, regarding adjustments to the boundaries of the Florida Regional Planning Councils, Florida Water Management Districts, and Department of Transportation Districts. This study must be submitted to the Governor and the Legislature by January 15, 2006.

Section 14 creates s. 163.3247, F.S., establishing the 21-member Century Commission to be appointed by the Governor. One member shall be designated by the Governor as Chairman. Up to four members shall be members of the Legislature who shall be appointed with the advice and consultation of the President of the Senate, and the Speaker of the House of Representatives. The Secretary of the Department of Community Affairs, the Commissioner of Agriculture, Secretary of the Department of Transportation, the Secretary of the Department of Environmental Protection, and the Executive Director of the Fish and Wildlife Conservation Commission shall serve as voting members. The other 12 appointments shall reflect the diversity of Florida's citizens, and should include individuals with interests in the following: growth management; business and economic development; environmental protection; agriculture; city government; county government; regional planning entities; education; public safety; planning; transportation planners; and urban infill and redevelopment.

Section 15 appropriates the sum of \$250,000 from the General Revenue Fund to the Department of Community Affairs for the funding of the Commission and staff during the 2005-2006 fiscal year.

Section 16 provides effective dates.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill authorizes counties to levy certain local option taxes by majority vote rather than by referendum, extraordinary vote, or a majority plus one. A county is authorized to levy the local option fuel tax and ninth-cent fuel tax by majority vote. Also, this bill provides for the indexing of local option gas taxes. Residents of counties levying these taxes will experience an increase in the price of certain items.

B. Private Sector Impact:

This PCS would have a positive fiscal impact on the private sector by providing needed infrastructure which leads to increased economic development.

C. Government Sector Impact:

The unrealized revenue capacity for these local option taxes would provide an estimated \$5 billion that could be bonded to fund transportation, school, and water supply facilities.

Charter County Transit Tax - \$2 billion

Infrastructure Sales Surtax - \$1.5 billion

Local Option Gas Taxes - \$255 million

Ninth Cent Gas Tax - \$23 million

School Capital Outlay Surtax - \$1 billion

Raising the cap on Small County Surtax - \$62 million

Gas Tax Indexing - \$99 million

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
