



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

*Provide limited government* – The bill may reduce government responsibility when development meets criteria for full or partial exemptions, waivers and small scale amendments.

*Ensure lower taxes* – The bill may reduce some fees related to development of regional impact or comprehensive plan amendment review when development meets criteria for full or partial exemptions, waivers and small scale amendments.

*Safeguard individual liberty* – The bill may increase the options of an individual or a private organization regarding the conduct of their own affairs when development meets criteria for full or partial exemptions, waivers and small scale amendments.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background:**

##### **Ch. 2005-290, L.O.F.**

The 2005 Legislature enacted ch. 2005-290, L.O.F. (the Act) relating to infrastructure planning and funding. The Act was the subject of a conference committee during the last two days of the 2005 Session. This bill addresses policy refinements related to the substance of the Act.

##### **Comprehensive Plans & Adoption of Amendments**

All of Florida's counties and municipalities are required to adopt local government comprehensive plans that guide future growth and development. Each comprehensive plan contains elements that address future land use, housing, transportation infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements. Local governments may amend their comprehensive plans twice a year. Exemptions from the frequency of comprehensive plan amendments are provided for various circumstances. Citizens are afforded several opportunities to challenge decisions that may be inconsistent with the Local Government Comprehensive Planning and Land Development Regulation Act., ss. 163.3161-163.3246, F.S.

##### **Concurrency**

Concurrency is the concept that the infrastructure necessary to support new development or redevelopment be in place concurrent with that development. The Act established stricter concurrency related to transportation, schools, and water infrastructure. Specifically, the Act provided that:

- Transportation facilities must be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval.
- Adequate school facilities must be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval.
- Prior to the approval of a building permit or its functional equivalent, a local government is required to consult with the applicable water supplier to determine whether adequate water supplies will be available to serve the new development at the certificate of occupancy.

##### **Century Commission for a Sustainable Florida**

Formed by the Florida Legislature in 2005, the Century Commission for a Sustainable Florida (Commission) is comprised of 15 volunteer members, appointed by the Governor, President of the Senate, and the Speaker of the House of Representatives. The Commission is responsible for exploring the impact of estimated population increases and other emerging trends and issues, creating

a vision for the future, and developing a strategic action plan to achieve that vision using 15 and 50 year planning time horizons. Each year the Commission is to provide a written report containing specific recommendations for addressing growth management issues.

### **Transportation Regional Incentive Program (TRIP)**

Formed by the Florida Legislature in 2005, TRIP was created to assist in the improvement of regionally significant transportation facilities. State funds are available throughout Florida to provide incentives for local governments and the private sector to help pay for projects that benefit regional travel and commerce. Under current law, the Department of Transportation will match 50 percent of project costs, or up to 50 percent of the nonfederal share of project costs for public transportation facility projects.

### **Developments of Regional Impact (DRI)**

The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. Under existing law, urban service boundaries, infill and redevelopment areas, and rural land stewardship areas are exempt from DRI review provided that a binding agreement is reached between the local government, adjacent jurisdictions, and the Department of Transportation.

## **Effect of Proposed Changes**

### **Comprehensive Plan**

The bill removes the requirement that the entire comprehensive plan adopted by a local government be financially feasible.

The bill provides that the challenge to the addition of a facility, or the elimination, deferral or delay of a project may only occur when the facility is first added to the 5-year schedule of capital improvements or when the project is proposed to be eliminated, deferred or delayed.

The bill provides that a third party challenge, or the outcome of such challenge, to the five-year schedule of capital improvements does not affect adoption of further plan amendments to the future land use map.

### **Concurrency**

#### **Transportation Concurrency**

The bill provides that when a local government, in cooperation with the Department of Transportation (DOT), adopts a five-year or longer term transportation improvement plan and makes financial commitments to fund the plan, the local government is deemed to meet transportation concurrency even if in any particular year the improvements are not concurrent.

The bill provides for an exemption from the transportation concurrency requirements if a municipality has either an area-wide DRI or a downtown development authority, which DRI boundaries have not increased after July 1, 2005, and which has adopted a plan to address transportation mitigation, including identified funding to address transportation deficiencies if one has not been adopted as part of the creation of such an area-wide DRI.

The bill provides legislative findings that urban infill and redevelopment is a high state priority in Florida and should be promoted with incentives.

The bill provides for a waiver of transportation concurrency requirements for two types of development activities: 1) certain urban infill and redevelopment that are designated in the comprehensive plan, pursuant to s. 163.2517, F.S.; or 2) for areas designated in the comprehensive plan prior to January 1, 2006, as urban infill development, urban redevelopment, or downtown revitalization. To qualify, the local government must have created a long-term vision that includes adequate funding, services, and multimodal transportation options.

The bill provides for a waiver of transportation concurrency requirements for municipalities that are at least 90 percent built-out. The bill defines "built-out" related to this exemption as "90 percent of the property within the municipality's boundaries, excluding lands that are designated as conservation, preservation, recreation, or public facilities categories, have been developed, or are the subject of an approved development order that has received a building permit and the municipality has an average density of five units per acre for residential developments." The bill further requires the following in order to receive the waiver from transportation concurrency:

- The local government and the DOT shall cooperatively establish a plan for maintaining the adopted level-of-service standards established by the DOT for Strategic Intermodal System facilities.
- The municipality must have adopted an ordinance that provides the methodology for determining its built-out percentage, declares that transportation concurrency requirements are waived within its municipal boundary or within a designated area of the municipality, and addresses multimodal options and strategies.
- Prior to the adoption of the ordinance, the DOT shall be consulted by the local government to assess the impact that the waiver of the transportation concurrency requirements is expected to have on the adopted level-of-service standards.
- If a municipality annexes any property, the municipality must recalculate its built-out percentage pursuant to the methodology set forth in its ordinance to verify whether the annexed property may be included within this exemption.
- If the municipality receives this exemption, the municipality must adopt a comprehensive plan amendment which updates its transportation element to reflect the transportation concurrency requirements waiver and must submit a copy of its ordinance to the Department of Community Affairs (DCA).

The bill removes record keeping and reporting requirements related to transportation de minimis impacts.

#### School concurrency

The bill provides that a "not-in-compliance" determination by DCA for an amendment to a local government comprehensive plan shall not be based upon school capacity until December 1, 2008, provided that data and analysis is submitted to DCA demonstrating coordination between the school board and the local government to plan to address capacity issues.

The bill removes the requirement that the school interlocal agreement establish a process and schedule for the mandatory incorporation of the school concurrency service areas and the criteria and standards for establishment of the service areas into the local comprehensive plan.

### **Comprehensive Plan Amendments**

#### Frequency of Amendments

The bill provides that municipalities that are 90% built-out, are exempt from the statutory limits on the frequency of consideration of amendments to the local comprehensive plan provided that the amendment involves a use of 100 acres or fewer and:

- The municipality has adopted a comprehensive plan amendment which updates its transportation element to reflect the transportation concurrency requirements waiver and must submit a copy of its ordinance to the DCA.
- The cumulative annual effect of the acreage for all amendments adopted does not exceed 500 acres.
- The proposed amendment does not involve the same property that has been granted a change within the prior 12 months.

- The proposed amendment does not involve the same owner's property within 200 feet of property granted a change within the prior 12 months.
- The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan but only proposes a land use change to the future land use map for a site-specific small scale development activity.
- The property that is the subject of the proposed amendment is not located within an area of critical state concern.

#### Definition of "built-out"

- The bill defines the term "built-out" as "90 percent of the property within the municipality's boundaries, excluding lands that are designated as conservation, preservation, recreation, or public facilities categories, have been developed or are the subject of an approved development order that has received a building permit and the municipality has an average density of five units per acre for residential development."

#### Notice Requirements

- The bill provides that a local government is not required to comply with notice requirements so long as they comply with the provisions of s. 166.041(3)(c), F.S. however, the bill expressly requires public notice of comprehensive plan amendments initiated by someone other than the local government.
- The local government shall send copies of the notice and amendment to the state land planning agency, the regional planning council, and any other person or entity requesting a copy, along with a statement identifying any property subject to the amendment that is located within a coastal high hazard area as identified in the local comprehensive plan.

#### Public Hearing

- The bill provides that amendments adopted pursuant to the provisions of this bill will require only one public hearing before the governing board, which shall be an adoption hearing, and are not subject to the requirements of s.163.3184 (3) – (6), F.S., unless the local government elects to have them subjected to those requirements.

#### Annexation

- The bill provides that a municipality may not have the benefit of this exemption if it annexes unincorporated property that decreases the percentage of build-out to an amount below 90%.

#### Notice of buildout

- The bill provides that the local government must notify DCA in writing of its built-out percentage prior to the submission of any local comprehensive plan amendments under this bill.

### **Century Commission for a Sustainable Florida**

The bill provides that the Commission shall function independently of the control and direction of DCA, except for administrative and fiscal assistance. Further, the bill provides that the Commission shall develop and submit a budget, that is not subject to change by DCA, to the Governor along with DCA's budget.

### **Transportation Regional Incentive Program**

The bill provides that federal urban attributable funds are eligible as a local match for transit projects under the TRIP by removing the requirement that the local match be nonfederal share of the project cost for a public transportation facility project.

### **Developments of Regional Impact**

The bill provides that the transportation agreement required by the current law for an exemption from DRI review for urban service boundaries, infill and redevelopment areas, and rural land stewardship

areas will be limited to transportation absent such an agreement. Further, the local government must notify DCA if they do not reach such an agreement.

C. SECTION DIRECTORY:

Section 1: Amends s. 163.3177, F.S., relating to required and optional elements of comprehensive plan.

Section 2: Amends s. 163.3180, F.S., relating to concurrency.

Section 3: Amends s. 163.3187, F.S., relating to amendments of adopted comprehensive plans.

Section 4: Amends s. 163.3247, F.S., relating to powers and duties of the Century Commission for a Sustainable Florida.

Section 5: Amends s. 339.2819, F.S., relating to the Transportation Regional Incentive Program.

Section 6: Amends s. 380.06, F.S., relating to Developments of Regional Impact.

Section 7: Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may result in increased state expenditures when development meets criteria for full or partial exemptions, waivers and small scale amendments by virtue of infrastructure facility needs that result from the development but are not addressed concurrent with that development.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may result in increased local government expenditures when development meets criteria for full or partial exemptions, waivers and small scale amendments by virtue of infrastructure facility needs that result from the development but are not addressed concurrent with that development.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in decreased costs associated with some development when that development meets criteria for full or partial exemptions, waivers and small scale amendments.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Growth Management Committee adopted amendments to the PCB on March 28, 2006. The amendments made the following changes:

- Provides that a third party challenge, or the outcome of such challenge, to the 5-year schedule of capital improvements does not affect adoption of further plan amendments to the future land use map.
- Provides that challenge to the addition, elimination, deferral or delay of a facility to the 5-year schedule of capital improvements may only occur when the project is first proposed for such addition, elimination, deferral or delay.
- Provides that when a local government, in cooperation with the DOT adopts a 5-year or longer term transportation improvement plan and makes financial commitments to fund the plan, is deemed to meet transportation concurrency even if in any particular year the improvements are not concurrent.
- Provides an exemption from transportation concurrency for municipalities that have an area-wide development of regional impact or downtown development authority, which boundaries has not changed since 2005, and which has adopted a plan to address transportation deficiencies.
- Provides for a transportation concurrency exemption for municipalities 90% built-out and provides criteria to be eligible for such an exemption.
- Prevents a “not – in – compliance” determination based upon school capacity until December 1, 2008, provided that data and analysis is submitted to DCA demonstrating coordination between the school board and the local government to plan to address capacity issues.
- Removes the requirement to incorporate the school concurrency service areas and establish criteria and standards into the comprehensive plan, when school concurrency is applied on a less than district-wide basis.
- Clarifies the organization reporting structure for the Century Commission for a Sustainable Florida and provides guidance for the development of its annual budget.
- Provides that federal urban attributable funds are eligible as a local match for transit projects under TRIP by removing the provision that the matching funds may be up to 50 percent of the nonfederal share of the eligible project cost for a public transportation facility project.
- Creates a partial development of regional impact exemption for urban service boundaries, infill and redevelopment areas, and rural land stewardship areas if the required binding agreement between the local government, impacted jurisdictions, and DOT required for the full exemption is not attained.