HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7253 CS PCB GM 06-02 Growth Management
SPONSOR(S): Growth Management Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Growth Management Committee	8 Y, 1 N	Strickland	Grayson
1) Transportation & Economic Development Appropriations Committee	14 Y, 0 N	McAuliffe	Gordon
2) State Infrastructure Council	10 Y, 0 N, w/CS	Strickland	Havlicak
3)			
4)			
5)			

SUMMARY ANALYSIS

House Bill 7253 revises current law related to growth management. The bill:

- Removes the requirement that the entire local comprehensive plan be financially feasible.
- 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 for certain exemptions from transportation concurrency.
- Provides for a waiver of the transportation facilities concurrency requirements for certain urban infill, redevelopment, and downtown revitalization areas.
- Deletes record keeping and reporting requirements related to transportation de minimis impacts.
- Provides that a “not-in-compliance” determination for an amendment to a local government comprehensive plan by the Department of Community Affairs may not be based on school capacity under certain conditions.
- Removes the requirement to incorporate the school concurrency service areas and establishing criteria and standards into the comprehensive plan, when school concurrency is applied on a less than district-wide basis.
- Revises the organization reporting structure for the Century Commission for a Sustainable Florida, provides guidance for the development of its annual budget, and provides further criteria relating to membership.
- Provides that federal urban attributable funds are eligible as a local match for transit projects under the Transportation Regional Incentive Program by removing the requirement that the match be a nonfederal share of the project cost for a public transportation facility project.
- Provides for a partial exemption from development of regional impact review for urban service boundaries, infill and redevelopment areas, and rural land stewardship areas if the required binding agreement for the full exemption is not attained.
- Provides for small scale amendments for certain built-out municipalities.

The bill includes a $25 million appropriation to the Conservation and Recreation Lands Program Trust Fund from the General Revenue Funds to fund conservation easements and agreements pursuant to s. 570.71, F.S

The bill provides an effective date of July 1, 2006.

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 (Century Commission) is comprised of 15 volunteer members, appointed by the Governor, President of the Senate, and the Speaker of the House of Representatives. The Century 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 Century 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.

An areawide DRI is a vehicle by which separate developments may be combined. An areawide DRI is reviewed under the standards of s. 380.06, F.S., but the review must include an areawide development plan. Pursuant to s. 380.06(19)(c), F.S., an areawide development plan must, at a minimum:

- Encompass a defined planning area approved and include at least two or more developments;
- Map and define the land uses proposed, including the amount of development by use and development phasing;
- Integrate a capital improvements program to ensure the availability of facilities and services for the development;
- Incorporate land development regulations, covenants, and restrictions necessary to protect resources of statewide and regional significance.

Downtown Development Authority

A downtown development authority (DDA) is defined in s. 380.031(5), F.S., as "a local governmental agency established under part III of chapter 163 or created with similar powers and responsibilities by special act for the purpose of planning, coordinating, and assisting in the implementation, revitalization, and redevelopment of a specific downtown area of a city." A DDA is authorized under s. 380.06(22), F.S., to submit a DRI application and shall be considered the developer of the project. Within the application for development approval within the DDA, the DDA shall specify the total amount of development planned for each land use category. In addition to the requirements set forth in s. 380.06(15), F.S., a development order must specify the amount of development approved within each land use category. Development in conformance with the development order does not require any further review.

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 prohibit the adoption of further plan amendments to the future land use map.

Concurrency

Transportation Concurrency

The bill provides that a long-term transportation management system adopted for a specially designated district or an area where significant backlog exists, shall be deemed concurrent throughout the duration of the plan even if the transportation improvements are not concurrent in any particular year.

The bill provides an exemption from transportation concurrency for areawide DRIs and DRIs granted to DDAs under the following circumstances:

- DRI boundaries have not increased after July 1, 2005; and
- A mitigation plan with identified funding has been submitted and approved by the Department of Transportation to address transportation deficiencies, if the approved development order did not address such deficiencies.

The bill further provides that new applications for development approval that are located outside of but are adjacent and contiguous to the specified exempt DRI boundaries of the areawide DRI or DDA may not include the trips generated by such exempt development of regional impact as part of their transportation concurrency calculations

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 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 for a built-out municipality 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 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 Century Commission for a Sustainable Florida (Century 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.

The bill provides that the members of the Century Commission must appoint four additional members to the commission no later than October 1, 2006, and provides for staggered terms.

The bill also provides that the membership of the Century Commission must reflect the demographic makeup of the state.

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.

Conservation Easements and Agreements

The bill appropriates $25 million in the General Revenue Funds for the Conservation and Recreation Lands Program Trust Fund with the Department of Agriculture and Consumer Services, for the purposes of conservation easements and agreements pursuant to s. 570.71, F.S.

Permanent Reference Monuments

The bill amends existing law to eliminate the requirement of a permanent reference monument (PRM) to be set before the recording of a plat.

The bill provides that in any county or municipality that does not require subdivision improvements and does not accept bonds or escrow accounts to construct improvements, PRMs may be set prior to the recording of the plat and shall be set witin 1 year after the date the plat is recorded.

The bill provides that in any county or municipality that requires subdivision improvements, such as bonding requirements, PRMs shall be set prior to the expiration of the bond or other surety.

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. 177.091, F.S., relating to plats made for recording.

Section 6: Amends s. 339.2819, F.S., relating to the Transportation Regional Incentive Program.

Section 7: Amends s. 380.06, F.S., relating to Developments of Regional Impact.

Section 8: Provides legislative findings and requires the DOT conduct a study relating to a per-trip fee.

Section 9: Provides a $25 million appropriation to the Conservation and Recreation Lands Program Trust Fund from the General Revenue Funds to fund conservation easements and agreements pursuant to s. 570.71, F.S.

Section 10: 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:

   The bill appropriates $25 million dollars from General Revenue Funds to the Conservation and Recreation Lands Program Trust Fund.

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 areawide 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.

On April 18, 2006, the State Infrastructure Council adopted nine amendments to HB 7253. The adopted amendments made the following changes:

- <u>Comprehensive plan amendments</u> -
    - Removes the provision that does not allow amendments, adopted during the pendency of a third-party challenge to a 5-year schedule of capital improvements, to be affected by the final determination.

- Concurrency –
    - Removes the provision allowing a local government that adopts, in cooperation with the DOT, a 5-year or longer term transportation improvement plan and makes financial commitments to fund the plan, to be deemed to meet transportation concurrency even if in any particular year the improvements are not concurrent.
    - Provides that a long-term transportation management system adopted for a *specially designated district* or an area where *significant backlog exists*, shall be deemed concurrent throughout the duration of the plan even if the transportation improvements are not concurrent in any particular year.
- Century Commission –
    - Provides that the Century Commission for a Sustainable Florida (Century Commission) must appoint 4 additional members to the commission no later than October 1, 2006, and provides for staggered terms.
    - Provides that the membership of the Century Commission must reflect the demographic makeup of the state.
- Per-trip fee –
    - Provides legislative findings that local governments should have the ability to require all new development to mitigate the development's impact on transportation facilities, by payment of a per-trip fee.
    - Provides that DOT must conduct a study to determine if a per-trip fee would provide local government with an effective method to ensure that the cost of transportation facilities is equitable and equally distributed and submit a report to the Legislature by December 1, 2006.
- Conservation easements and agreements –
    - Provides a $25 million appropriation to the Conservation and Recreation Lands Program Trust Fund from the General Revenue Funds to fund conservation easements and agreements pursuant to s. 570.71, F.S.
- Permanent reference monuments –
    - Amends existing law to eliminate the requirement of a permanent reference monument to be set before the recording of a plat.
    - Provides that in any county or municipality that does not require subdivision improvements and does not accept bonds or escrow accounts to construct improvements, PRMs may be set prior to the recording of the plat and shall be set within 1 year after the date the plat is recorded.
    - Provides that in any county or municipality that requires subdivision improvements, such as bonding requirements, PRMs shall be set prior to the expiration of the bond or other surety.