A bill to be entitled

An act relating to growth management; amending s. 163.3177, F.S.; deleting a requirement that the entire comprehensive plan be financially feasible; specifying limitations on challenges to certain changes in a 5-year schedule of capital improvements; authorizing local governments to continue adopting land use plan amendments during challenges to the plan; amending s. 163.3180, F.S.; providing that certain local governments are concurrent with an adopted transportation improvements plan notwithstanding certain improvements not being concurrent; providing for a waiver of transportation facilities concurrency requirements for certain urban infill, redevelopment, and downtown revitalization areas and certain built-out municipalities; requiring local governments and the Department of Transportation to establish a plan for maintaining certain level-of-service standards; providing requirements for the waiver for such built-out municipalities; exempting certain municipalities from certain transportation concurrency requirements; deleting record-keeping and reporting requirements related to transportation de minimis impacts; providing that school capacity is not a basis for finding a comprehensive plan amendment not in compliance; deleting a requirement to incorporate the school concurrency service areas and criteria and standards for establishment of the service areas into the local government comprehensive plan; amending s. 163.3187, F.S.; authorizing approval of

certain small scale amendments to a comprehensive plan for certain built-out municipalities; providing criteria, requirements, and procedures; providing for nonapplication under certain circumstances; amending s. 163.3247, F.S.; assigning the Century Commission for a Sustainable Florida to the Department of Community Affairs for administrative and fiscal accountability purposes; requiring the commission to develop a budget; providing budget requirements; amending s. 339.2819, F.S.; revising criteria for matching funds for the Transportation Regional Incentive Program; amending s. 380.06, F.S.; revising an exemption from development of regional impact review for certain developments within an urban service boundary; limiting development-of-regional-impact review of certain urban service boundaries, urban infill and redevelopment areas, and rural land stewardship areas to transportation impacts only under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) and paragraph (b) of subsection (3) of section 163.3177, Florida Statutes, are amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.--

(2) Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be

consistent, and the comprehensive plan shall be ~~financially~~ feasible. ~~Financial~~ Feasibility shall be determined using professionally accepted methodologies.

(3)

(b)1. The capital improvements element shall be reviewed on an annual basis and modified as necessary in accordance with s. 163.3187 or s. 163.3189 in order to maintain a financially feasible 5-year schedule of capital improvements. Corrections and modifications concerning costs; revenue sources; or acceptance of facilities pursuant to dedications which are consistent with the plan may be accomplished by ordinance and shall not be deemed to be amendments to the local comprehensive plan. A copy of the ordinance shall be transmitted to the state land planning agency. An amendment to the comprehensive plan is required to update the schedule on an annual basis or to eliminate, defer, or delay the construction for any facility listed in the 5-year schedule. An affected person may challenge the addition of a facility, or the elimination, deferral, or delay of a project, only 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. All public facilities shall be consistent with the capital improvements element. Amendments to implement this section must be adopted and transmitted no later than December 1, 2007. Thereafter, a local government may not amend its future land use map, except for plan amendments to meet new requirements under this part and emergency amendments pursuant to s. 163.3187(1)(a), after December 1, 2007, and every year thereafter, unless and until

the local government has adopted the annual update and it has been transmitted to the state land planning agency. If an affected party challenges the 5-year schedule of capital improvements, a local government may continue to adopt plan amendments to the future land use map during the pendency of the challenge and any related litigation. The outcome of a third-party challenge to the 5-year schedule of capital improvements shall not affect any amendments adopted during the pendency of such challenge and any related litigation.

2. Capital improvements element amendments adopted after the effective date of this act shall require only a single public hearing before the governing board which shall be an adoption hearing as described in s. 163.3184(7). Such amendments are not subject to the requirements of s. 163.3184(3)-(6).

Section 2. Paragraph (c) of subsection (2), subsection (6), and paragraphs (d) and (g) of subsection (13) of section 163.3180, Florida Statutes, are amended, and paragraphs (h) and (i) are added to subsection (5) of that section, to read:

163.3180 Concurrency.--

(2)

(c) Consistent with the public welfare, and except as otherwise provided in this section, transportation facilities needed to serve new development shall be in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation. However, local governments that adopt, in cooperation with the Department of Transportation, a 5-year or longer transportation improvements plan for future

development and make the financial commitments to fund such plan shall be deemed concurrent throughout the duration of the plan even if, in any particular year, such transportation improvements are not concurrent.

(5)

(h) It is a high state priority that urban infill and redevelopment be promoted and provided incentives. By promoting the revitalization of existing communities of this state, a more efficient maximization of space and facilities may be achieved and urban sprawl discouraged. If a local government creates a long-term vision for its community that includes adequate funding, services, and multimodal transportation options, the transportation facilities concurrency requirements of paragraph (2)(c) are waived:

1.a. For urban infill and redevelopment areas designated in the comprehensive plan under s. 163.2517; or

b. For areas designated in the comprehensive plan prior to January 1, 2006, as urban infill development, urban redevelopment, or downtown revitalization.

The local government and the Department of Transportation shall cooperatively establish a plan for maintaining the adopted level-of-service standards established by the Department of Transportation for Strategic Intermodal System facilities, as defined in s. 339.64.

2. For municipalities that are at least 90 percent built-out. For purposes of this exemption:

a. The term "built-out" means that 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.

b. 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, including alternative modes of transportation within the municipality. Prior to the adoption of the ordinance, the local government shall consult with the Department of Transportation to assess the impact that the waiver of the transportation concurrency requirements is expected to have on the adopted level-of-service standards established for Strategic Intermodal System facilities, as defined in s. 339.64. Further, the local government shall cooperatively establish a plan for maintaining the adopted level-of-service standards established by the department for Strategic Intermodal System facilities, as described in s. 339.64.

c. 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 the exemption.

d. If transportation concurrency requirements are waived

under this subparagraph, the municipality must adopt a comprehensive plan amendment pursuant to s. 163.3187(1)(c), which updates its transportation element to reflect the transportation concurrency requirements waiver, and must submit a copy of its ordinance, adopted in sub-subparagraph b., to the state land planning agency.

(i) A municipality that has an areawide development of regional impact created under s. 380.06(25) or a downtown development authority created under 380.06(22) is exempt from the requirements of transportation concurrency within the designated area if the municipality has not increased the boundaries of the development of regional impact after July 1, 2005, and adopts a mitigation plan, with funding identified, to address transportation deficiencies if one has not been adopted as part of the creation of the areawide development of regional impact.

(6) The Legislature finds that a de minimis impact is consistent with this part. A de minimis impact is an impact that would not affect more than 1 percent of the maximum volume at the adopted level of service of the affected transportation facility as determined by the local government. No impact will be de minimis if the sum of existing roadway volumes and the projected volumes from approved projects on a transportation facility would exceed 110 percent of the maximum volume at the adopted level of service of the affected transportation facility; provided however, that an impact of a single family home on an existing lot will constitute a de minimis impact on all roadways regardless of the level of the deficiency of the

roadway. Further, no impact will be de minimis if it would exceed the adopted level-of-service standard of any affected designated hurricane evacuation routes. ~~Each local government shall maintain sufficient records to ensure that the 110 percent criterion is not exceeded. Each local government shall submit annually, with its updated capital improvements element, a summary of the de minimis records. If the state land planning agency determines that the 110-percent criterion has been exceeded, the state land planning agency shall notify the local government of the exceedance and that no further de minimis exceptions for the applicable roadway may be granted until such time as the volume is reduced below the 110 percent. The local government shall provide proof of this reduction to the state land planning agency before issuing further de minimis exceptions.~~

(13) School concurrency shall be established on a districtwide basis and shall include all public schools in the district and all portions of the district, whether located in a municipality or an unincorporated area unless exempt from the public school facilities element pursuant to s. 163.3177(12). The application of school concurrency to development shall be based upon the adopted comprehensive plan, as amended. All local governments within a county, except as provided in paragraph (f), shall adopt and transmit to the state land planning agency the necessary plan amendments, along with the interlocal agreement, for a compliance review pursuant to s. 163.3184(7) and (8). The minimum requirements for school concurrency are the following:

(d) Financial feasibility.--The Legislature recognizes that financial feasibility is an important issue because the premise of concurrency is that the public facilities will be provided in order to achieve and maintain the adopted level-of-service standard. This part and chapter 9J-5, Florida Administrative Code, contain specific standards to determine the financial feasibility of capital programs. These standards were adopted to make concurrency more predictable and local governments more accountable.

1. A comprehensive plan amendment seeking to impose school concurrency shall contain appropriate amendments to the capital improvements element of the comprehensive plan, consistent with the requirements of s. 163.3177(3) and rule 9J-5.016, Florida Administrative Code. The capital improvements element shall set forth a financially feasible public school capital facilities program, established in conjunction with the school board, that demonstrates that the adopted level-of-service standards will be achieved and maintained.

2. Such amendments shall demonstrate that the public school capital facilities program meets all of the financial feasibility standards of this part and chapter 9J-5, Florida Administrative Code, that apply to capital programs which provide the basis for mandatory concurrency on other public facilities and services.

3. When the financial feasibility of a public school capital facilities program is evaluated by the state land planning agency for purposes of a compliance determination, the

evaluation shall be based upon the service areas selected by the local governments and school board.

4. School capacity shall not be the basis to find any amendment to a local government comprehensive plan not in compliance pursuant to s. 163.3184 until the date established pursuant to s. 163.3177(12)(i), provided data and analysis are submitted to the state land planning agency demonstrating coordination between the school board and the local government to plan on addressing capacity issues.

(g) Interlocal agreement for school concurrency.--When establishing concurrency requirements for public schools, a local government must enter into an interlocal agreement that satisfies the requirements in ss. 163.3177(6)(h)1. and 2. and 163.31777 and the requirements of this subsection. The interlocal agreement shall acknowledge both the school board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis, and the land use authority of local governments, including their authority to approve or deny comprehensive plan amendments and development orders. The interlocal agreement shall be submitted to the state land planning agency by the local government as a part of the compliance review, along with the other necessary amendments to the comprehensive plan required by this part. In addition to the requirements of ss. 163.3177(6)(h) and 163.31777, the interlocal agreement shall meet the following requirements:

1. Establish the mechanisms for coordinating the development, adoption, and amendment of each local government's

public school facilities element with each other and the plans of the school board to ensure a uniform districtwide school concurrency system.

2. Establish a process for the development of siting criteria which encourages the location of public schools proximate to urban residential areas to the extent possible and seeks to collocate schools with other public facilities such as parks, libraries, and community centers to the extent possible.

3. Specify uniform, districtwide level-of-service standards for public schools of the same type and the process for modifying the adopted level-of-service standards.

4. Establish a process for the preparation, amendment, and joint approval by each local government and the school board of a public school capital facilities program which is financially feasible, and a process and schedule for incorporation of the public school capital facilities program into the local government comprehensive plans on an annual basis.

5. Define the geographic application of school concurrency. If school concurrency is to be applied on a less than districtwide basis in the form of concurrency service areas, the agreement shall establish criteria and standards for the establishment and modification of school concurrency service areas. ~~The agreement shall also 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 government comprehensive plans.~~ The agreement shall ensure maximum utilization of school capacity, taking into account transportation costs and court-

approved desegregation plans, as well as other factors. The agreement shall also ensure the achievement and maintenance of the adopted level-of-service standards for the geographic area of application throughout the 5 years covered by the public school capital facilities plan and thereafter by adding a new fifth year during the annual update.

6. Establish a uniform districtwide procedure for implementing school concurrency which provides for:

a. The evaluation of development applications for compliance with school concurrency requirements, including information provided by the school board on affected schools, impact on levels of service, and programmed improvements for affected schools and any options to provide sufficient capacity;

b. An opportunity for the school board to review and comment on the effect of comprehensive plan amendments and rezonings on the public school facilities plan; and

c. The monitoring and evaluation of the school concurrency system.

7. Include provisions relating to amendment of the agreement.

8. A process and uniform methodology for determining proportionate-share mitigation pursuant to subparagraph (e)1.

Section 3. Paragraph (p) is added to subsection (1) of section 163.3187, Florida Statutes, to read:

163.3187 Amendment of adopted comprehensive plan.--

(1) Amendments to comprehensive plans adopted pursuant to this part may be made not more than two times during any calendar year, except:

(p)1. For municipalities that are more than 90 percent built-out, any municipality's comprehensive plan amendments may be approved without regard to limits imposed by law on the frequency of consideration of amendments to the local comprehensive plan only if the proposed amendment involves a use of 100 acres or fewer and:

a. The cumulative annual effect of the acreage for all amendments adopted pursuant to this paragraph does not exceed 500 acres.

b. The proposed amendment does not involve the same property granted a change within the prior 12 months.

c. The proposed amendment does not involve the same owner's property within 200 feet of property granted a change within the prior 12 months.

d. 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.

e. The property that is the subject of the proposed amendment is not located within an area of critical state concern.

2. For purposes of this paragraph, the term "built-out" means 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.

3.a. A local government that proposes to consider a plan amendment pursuant to this paragraph is not required to comply with the procedures and public notice requirements of s. 163.3184(15)(c) for such plan amendments if the local government complies with the provisions of s. 166.041(3)(c). If a request for a plan amendment under this paragraph is initiated by other than the local government, public notice of the amendment is required.

b. 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. This information shall also include 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.

4. Amendments adopted pursuant to this paragraph require only one public hearing before the governing board, which shall be an adoption hearing as described in s. 163.3184(7), and are not subject to the requirements of s. 163.3184(3)-(6) unless the local government elects to have them subject to those requirements.

5. This paragraph shall not apply if a municipality annexes unincorporated property that decreases the percentage of build-out to an amount below 90 percent.

6. A municipality shall notify the state land planning agency in writing of the municipality's built-out percentage

prior to the submission of any comprehensive plan amendments under this subsection.

Section 4. Paragraphs (h) and (i) are added to subsection (4) of section 163.3247, Florida Statutes, to read:

163.3247 Century Commission for a Sustainable Florida.--

(4) POWERS AND DUTIES.--The commission shall:

(h) Be assigned to the Office of the Secretary of the Department of Community Affairs for administrative and fiscal accountability purposes but shall otherwise function independently of the control and direction of the department.

(i) Develop a budget pursuant to chapter 216. The budget is not subject to change by the department but shall be submitted to the Governor together with the department's budget.

Section 5. Subsection (2) of section 339.2819, Florida Statutes, is amended to read:

339.2819 Transportation Regional Incentive Program.--

(2) The percentage of matching funds provided from the Transportation Regional Incentive Program shall be 50 percent of project costs~~, or up to 50 percent of the nonfederal share of the eligible project cost for a public transportation facility project~~.

Section 6. Paragraphs (l) and (n) of subsection (24) of section 380.06, Florida Statutes, are amended, and subsection (28) is added to that section, to read:

380.06 Developments of regional impact.--

(24) STATUTORY EXEMPTIONS.--

(l) Any proposed development within an urban service boundary established under s. 163.3177(14) is exempt from the

provisions of this section if the local government having jurisdiction over the area where the development is proposed has adopted the urban service boundary, ~~and~~ has entered into a binding agreement with ~~adjacent~~ jurisdictions that would be impacted and with the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate share methodology pursuant to s. 163.3180(16).

(n) Any proposed development or redevelopment within an area designated as an urban infill and redevelopment area under s. 163.2517 is exempt from ~~the provisions of~~ this section if the local government has entered into a binding agreement with jurisdictions that would be impacted and the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate share methodology pursuant to s. 163.3180(16).

(28) PARTIAL STATUTORY EXEMPTIONS.--

(a) If the binding agreement referenced under paragraph (24)(l) for urban service boundaries is not entered into within 12 months after establishment of the urban service boundary, the development-of-regional-impact review for projects within the urban service boundary must address transportation impacts only.

(b) If the binding agreement referenced under paragraph (24)(n) for designated urban infill and redevelopment areas is not entered into within 12 months after the designation of the area or July 1, 2007, whichever occurs later, the development-of-regional-impact review for projects within the urban infill and redevelopment area must address transportation impacts only.

(c) If the binding agreement referenced under paragraph (24)(m) for rural land stewardship areas is not entered into within 12 months after the designation of a rural land stewardship area, the development-of-regional-impact review for projects within the rural land stewardship area must address transportation impacts only.

(d) A local government that does not wish to enter into a binding agreement or that is unable to agree on the terms of the agreement referenced under paragraph (24)(l), paragraph (24)(m), or paragraph (24)(n) shall provide written notification to the state land planning agency of the desire not to enter into a binding agreement or a failure to enter into a binding agreement within the 12-month period referenced in paragraph (a), paragraph (b), or paragraph (c). Following the notification of the state land planning agency, the development-of-regional-impact review for projects within the urban service boundary under paragraph (24)(l), within a rural land stewardship area under paragraph (24)(m), or for an urban infill and redevelopment area under paragraph (24)(n) must address transportation impacts only.

Section 7. This act shall take effect July 1, 2006.