

Bill No. HB 7203, 2nd Eng.

Barcode 113368

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Garcia moved the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Subsections (26) and (32) of section 163.3164, Florida Statutes, are amended to read:

163.3164 Local Government Comprehensive Planning and Land Development Regulation Act; definitions.--As used in this act:

(26) "Urban redevelopment" means demolition and reconstruction or substantial renovation of existing buildings or infrastructure within urban infill areas, ~~or~~ existing urban service areas, or community redevelopment areas created pursuant to part III.

(32) "Financial feasibility" means that sufficient revenues are currently available or will be available from committed funding sources for the first 3 years, or will be available from committed or planned funding sources for years 4 and 5, of a 5-year capital improvement schedule for

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1 financing capital improvements, such as ad valorem taxes,  
2 bonds, state and federal funds, tax revenues, impact fees, and  
3 developer contributions, which are adequate to fund the  
4 projected costs of the capital improvements identified in the  
5 comprehensive plan necessary to ensure that adopted  
6 level-of-service standards are achieved and maintained within  
7 the period covered by the 5-year schedule of capital  
8 improvements. A comprehensive plan shall be deemed financially  
9 feasible for transportation and school facilities throughout  
10 the planning period addressed by the capital improvements  
11 schedule if it can be demonstrated that the level-of-service  
12 standards will be achieved and maintained by the end of the  
13 planning period even if in a particular year such improvements  
14 are not concurrent as required by s. 163.3180. The requirement  
15 that level-of-service standards be achieved and maintained  
16 shall not apply if the proportionate share process set forth  
17 in s. 163.3180(12) and (16) is used.

18 Section 2. Subsections (2) and (3) of section  
19 163.3177, Florida Statutes, are amended to read:

20 163.3177 Required and optional elements of  
21 comprehensive plan; studies and surveys.--

22 (2) Coordination of the several elements of the local  
23 comprehensive plan shall be a major objective of the planning  
24 process. The several elements of the comprehensive plan shall  
25 be consistent, and the comprehensive plan shall be financially  
26 feasible. Financial feasibility shall be determined using  
27 professionally accepted methodologies and applies to the  
28 5-year planning period, except in the case of a long-term  
29 transportation or school concurrency management system, in  
30 which case a 10-year or 15-year period applies.

31 (3)(a) The comprehensive plan shall contain a capital

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1 improvements element designed to consider the need for and the  
2 location of public facilities in order to encourage the  
3 efficient use ~~utilization~~ of such facilities and set forth:

4       1. A component that ~~which~~ outlines principles for  
5 construction, extension, or increase in capacity of public  
6 facilities, as well as a component that ~~which~~ outlines  
7 principles for correcting existing public facility  
8 deficiencies, which are necessary to implement the  
9 comprehensive plan. The components shall cover at least a  
10 5-year period.

11       2. Estimated public facility costs, including a  
12 delineation of when facilities will be needed, the general  
13 location of the facilities, and projected revenue sources to  
14 fund the facilities.

15       3. Standards to ensure the availability of public  
16 facilities and the adequacy of those facilities including  
17 acceptable levels of service.

18       4. Standards for the management of debt.

19       5. A schedule of capital improvements which includes  
20 publicly funded projects, and which may include privately  
21 funded projects for which the local government has no fiscal  
22 responsibility, necessary to ensure that adopted  
23 level-of-service standards are achieved and maintained. For  
24 capital improvements that will be funded by the developer,  
25 financial feasibility shall be demonstrated by being  
26 guaranteed in an enforceable development agreement or  
27 interlocal agreement pursuant to paragraph (10)(h), or other  
28 enforceable agreement. These development agreements and  
29 interlocal agreements shall be reflected in the schedule of  
30 capital improvements if the capital improvement is necessary  
31 to serve development within the 5-year schedule. If the local

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1 government uses planned revenue sources that require referenda  
 2 or other actions to secure the revenue source, the plan must,  
 3 in the event the referenda are not passed or actions do not  
 4 secure the planned revenue source, identify other existing  
 5 revenue sources that will be used to fund the capital projects  
 6 or otherwise amend the plan to ensure financial feasibility.

7           6. The schedule must include transportation  
 8 improvements included in the applicable metropolitan planning  
 9 organization's transportation improvement program adopted  
 10 pursuant to s. 339.175(7) to the extent that such improvements  
 11 are relied upon to ensure concurrency and financial  
 12 feasibility. The schedule must also be coordinated with the  
 13 applicable metropolitan planning organization's long-range  
 14 transportation plan adopted pursuant to s. 339.175(6).

15           (b)1. The capital improvements element must ~~shall~~ be  
 16 reviewed on an annual basis and modified as necessary in  
 17 accordance with s. 163.3187 or s. 163.3189 in order to  
 18 maintain a financially feasible 5-year schedule of capital  
 19 improvements. Corrections and modifications concerning costs;  
 20 revenue sources; or acceptance of facilities pursuant to  
 21 dedications which are consistent with the plan may be  
 22 accomplished by ordinance and shall not be deemed to be  
 23 amendments to the local comprehensive plan. A copy of the  
 24 ordinance shall be transmitted to the state land planning  
 25 agency. An amendment to the comprehensive plan is required to  
 26 update the schedule on an annual basis or to eliminate, defer,  
 27 or delay the construction for any facility listed in the  
 28 5-year schedule. All public facilities must ~~shall~~ be  
 29 consistent with the capital improvements element. Amendments  
 30 to implement this section must be adopted and transmitted no  
 31 later than December 1, 2008 ~~2007~~. Thereafter, a local

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1 government may not amend its future land use map, except for  
 2 plan amendments to meet new requirements under this part and  
 3 emergency amendments pursuant to s. 163.3187(1)(a), after  
 4 December 1, 2008 ~~2007~~, and every year thereafter, unless and  
 5 until the local government has adopted the annual update and  
 6 it has been transmitted to the state land planning agency.

7         2. Capital improvements element amendments adopted  
 8 after the effective date of this act shall require only a  
 9 single public hearing before the governing board which shall  
 10 be an adoption hearing as described in s. 163.3184(7). Such  
 11 amendments are not subject to the requirements of s.  
 12 163.3184(3)-(6).

13         (c) If the local government does not adopt the  
 14 required annual update to the schedule of capital improvements  
 15 ~~or the annual update is found not in compliance~~, the state  
 16 land planning agency must notify the Administration  
 17 Commission. A local government that has a demonstrated lack of  
 18 commitment to meeting its obligations identified in the  
 19 capital improvements element may be subject to sanctions by  
 20 the Administration Commission pursuant to s. 163.3184(11).

21         (d) If a local government adopts a long-term  
 22 concurrency management system pursuant to s. 163.3180(9), it  
 23 must also adopt a long-term capital improvements schedule  
 24 covering up to a 10-year or 15-year period, and must update  
 25 the long-term schedule annually. The long-term schedule of  
 26 capital improvements must be financially feasible.

27         (e) At the discretion of the local government and  
 28 notwithstanding the requirements of this subsection, a  
 29 comprehensive plan, as revised by an amendment to the plan's  
 30 future land use map, shall be deemed to be financially  
 31 feasible and to have achieved and maintained level-of-service

1 standards with respect to transportation facilities if the  
 2 amendment to the future land use map is supported by a:  
 3       1. Condition in a development order for a development  
 4 of regional impact or binding agreement that addresses  
 5 proportionate-share mitigation consistent with s.  
 6 163.3180(12); or  
 7       2. Binding agreement addressing proportionate  
 8 fair-share mitigation consistent with s. 163.3180(16)(f) and  
 9 the property subject to the amendment to the future land use  
 10 map is located within an area designated in a comprehensive  
 11 plan for urban infill, urban redevelopment, downtown  
 12 revitalization, urban infill and redevelopment, or an urban  
 13 service area. The binding agreement must be based on the  
 14 maximum amount of development identified by the future land  
 15 use map amendment.

16       Section 3. Subsections (5), (12), and (16) of section  
 17 163.3180, Florida Statutes, are amended to read:

18       163.3180 Concurrency.--

19       (5)(a) The Legislature finds that under limited  
 20 circumstances dealing with transportation facilities,  
 21 countervailing planning and public policy goals may come into  
 22 conflict with the requirement that adequate public facilities  
 23 and services be available concurrent with the impacts of such  
 24 development. The Legislature further finds that often the  
 25 unintended result of the concurrency requirement for  
 26 transportation facilities is the discouragement of urban  
 27 infill development and redevelopment. Such unintended results  
 28 directly conflict with the goals and policies of the state  
 29 comprehensive plan and the intent of this part. Therefore,  
 30 exceptions from the concurrency requirement for transportation  
 31 facilities may be granted as provided by this subsection.

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1 (b) A local government may grant an exception from the  
 2 concurrency requirement for transportation facilities if the  
 3 proposed development is otherwise consistent with the adopted  
 4 local government comprehensive plan and is a project that  
 5 promotes public transportation or is located within an area  
 6 designated in the comprehensive plan for:

- 7 1. Urban infill development;~~i~~;
- 8 2. Urban redevelopment;~~i~~;
- 9 3. Downtown revitalization;~~i~~; ~~or~~
- 10 4. Urban infill and redevelopment under s. 163.2517;~~i~~

11 ~~or~~;

12 5. An urban service area specifically designated as a  
 13 transportation-concurrency-exception area which includes lands  
 14 appropriate for compact, contiguous urban development, which  
 15 does not exceed the amount of land needed to accommodate the  
 16 projected population growth at densities consistent with the  
 17 adopted comprehensive plan within the 10-year planning period,  
 18 and which is served or is planned to be served with public  
 19 facilities and services as provided by the capital  
 20 improvements element.

21 (c) The Legislature also finds that developments  
 22 located within urban infill, urban redevelopment, existing  
 23 urban service, or downtown revitalization areas or areas  
 24 designated as urban infill and redevelopment areas under s.  
 25 163.2517 which pose only special part-time demands on the  
 26 transportation system should be excepted from the concurrency  
 27 requirement for transportation facilities. A special  
 28 part-time demand is one that does not have more than 200  
 29 scheduled events during any calendar year and does not affect  
 30 the 100 highest traffic volume hours.

31 (d) A local government shall establish guidelines in

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1 the comprehensive plan for granting the exceptions authorized  
2 in paragraphs (b) and (c) and subsections (7) and (15) which  
3 must be consistent with and support a comprehensive strategy  
4 adopted in the plan to promote the purpose of the exceptions.

5 (e) The local government shall adopt into the plan and  
6 implement long-term strategies to support and fund mobility  
7 within the designated exception area, including alternative  
8 modes of transportation. The plan amendment must ~~shall~~ also  
9 demonstrate how strategies will support the purpose of the  
10 exception and how mobility within the designated exception  
11 area will be provided. In addition, the strategies must  
12 address urban design; appropriate land use mixes, including  
13 intensity and density; and network connectivity plans needed  
14 to promote urban infill, redevelopment, or downtown  
15 revitalization. The comprehensive plan amendment designating  
16 the concurrency exception area must ~~shall~~ be accompanied by  
17 data and analysis justifying the size of the area.

18 (f) Prior to the designation of a concurrency  
19 exception area, the state land planning agency and the  
20 Department of Transportation shall be consulted by the local  
21 government to assess the impact that the proposed exception  
22 area is expected to have on the adopted level-of-service  
23 standards established for Strategic Intermodal System  
24 facilities, as defined in s. 339.64, and roadway facilities  
25 funded in accordance with s. 339.2819. Further, the local  
26 government shall, in consultation ~~cooperation~~ with the state  
27 land planning agency and the Department of Transportation,  
28 develop a plan to mitigate any impacts to the Strategic  
29 Intermodal System, including, if appropriate, the development  
30 of a long-term concurrency management system pursuant to  
31 subsection (9) and s. 163.3177(3)(d). The exceptions may be

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1 available only within the specific geographic area of the  
 2 jurisdiction designated in the plan. Pursuant to s. 163.3184,  
 3 any affected person may challenge a plan amendment  
 4 establishing these guidelines and the areas within which an  
 5 exception could be granted.

6 (g) Transportation concurrency exception areas  
 7 existing prior to July 1, 2005, must ~~shall meet~~, at a minimum,  
 8 meet the provisions of this section by July 1, 2006, or at the  
 9 time of the comprehensive plan update pursuant to the  
 10 evaluation and appraisal report, whichever occurs last.

11 (12) ~~When authorized by a local comprehensive plan, A~~  
 12 multiuse development of regional impact may satisfy the  
 13 transportation concurrency requirements of the local  
 14 comprehensive plan, the local government's concurrency  
 15 management system, and s. 380.06 by payment of a  
 16 proportionate-share contribution for local and regionally  
 17 significant traffic impacts, if:

18 ~~(a) The development of regional impact meets or~~  
 19 ~~exceeds the guidelines and standards of s. 380.0651(3)(h) and~~  
 20 ~~rule 28-24.032(2), Florida Administrative Code, and includes a~~  
 21 ~~residential component that contains at least 100 residential~~  
 22 ~~dwelling units or 15 percent of the applicable residential~~  
 23 ~~guideline and standard, whichever is greater;~~

24 ~~(a)(b)~~ The development of regional impact which, based  
 25 on its location or mix of land uses, ~~contains an integrated~~  
 26 ~~mix of land uses and~~ is designed to encourage pedestrian or  
 27 other nonautomotive modes of transportation;

28 ~~(b)(c)~~ The proportionate-share contribution for local  
 29 and regionally significant traffic impacts is sufficient to  
 30 pay for one or more required mobility improvements that will  
 31 benefit a regionally significant transportation facility;

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1           ~~(c)(d)~~ The owner and developer of the development of  
2 regional impact pays or assures payment of the  
3 proportionate-share contribution; and  
4           ~~(d)(e)~~ If the regionally significant transportation  
5 facility to be constructed or improved is under the  
6 maintenance authority of a governmental entity, as defined by  
7 s. 334.03(12), other than the local government with  
8 jurisdiction over the development of regional impact, the  
9 developer is required to enter into a binding and legally  
10 enforceable commitment to transfer funds to the governmental  
11 entity having maintenance authority or to otherwise assure  
12 construction or improvement of the facility.  
13  
14 The proportionate-share contribution may be applied to any  
15 transportation facility to satisfy the provisions of this  
16 subsection and the local comprehensive plan, but, for the  
17 purposes of this subsection, the amount of the  
18 proportionate-share contribution shall be calculated based  
19 upon the cumulative number of trips from the proposed  
20 development expected to reach roadways during the peak hour  
21 from the complete buildout of a stage or phase being approved,  
22 divided by the change in the peak hour maximum service volume  
23 of roadways resulting from construction of an improvement  
24 necessary to maintain the adopted level of service, multiplied  
25 by the construction cost, at the time of developer payment, of  
26 the improvement necessary to maintain the adopted level of  
27 service. For purposes of this subsection, "construction cost"  
28 includes all associated costs of the improvement.  
29 Proportionate-share mitigation shall be limited to ensure that  
30 a development of regional impact meeting the requirements of  
31 this subsection mitigates its impact on the transportation

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1 system but is not responsible for the additional cost of  
2 reducing or eliminating backlogs.

3 (16) It is the intent of the Legislature to provide a  
4 method by which the impacts of development on transportation  
5 facilities can be mitigated by the cooperative efforts of the  
6 public and private sectors. The methodology used to calculate  
7 proportionate fair-share mitigation under this section shall  
8 be as provided for in subsection (12).

9 (a) By December 1, 2006, each local government shall  
10 adopt by ordinance a methodology for assessing proportionate  
11 fair-share mitigation options. By December 1, 2005, the  
12 Department of Transportation shall develop a model  
13 transportation concurrency management ordinance with  
14 methodologies for assessing proportionate fair-share  
15 mitigation options.

16 (b)1. In its transportation concurrency management  
17 system, a local government shall, by December 1, 2006, include  
18 methodologies that will be applied to calculate proportionate  
19 fair-share mitigation. A developer may choose to satisfy all  
20 transportation concurrency requirements by contributing or  
21 paying proportionate fair-share mitigation if transportation  
22 facilities or facility segments identified as mitigation for  
23 traffic impacts are specifically identified for funding in the  
24 5-year schedule of capital improvements in the capital  
25 improvements element of the local plan or the long-term  
26 concurrency management system or if such contributions or  
27 payments to such facilities or segments are reflected in the  
28 5-year schedule of capital improvements in the next regularly  
29 scheduled update of the capital improvements element. Updates  
30 to the 5-year capital improvements element which reflect  
31 proportionate fair-share contributions may not be found not in

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1 compliance based on ss. 163.3164(32) and 163.3177(3) if  
2 additional contributions, payments or funding sources are  
3 reasonably anticipated during a period not to exceed 10 years  
4 to fully mitigate impacts on the transportation facilities.

5         2. Proportionate fair-share mitigation shall be  
6 applied as a credit against impact fees to the extent that all  
7 or a portion of the proportionate fair-share mitigation is  
8 used to address the same capital infrastructure improvements  
9 contemplated by the local government's impact fee ordinance.

10         (c) Proportionate fair-share mitigation includes,  
11 without limitation, separately or collectively, private funds,  
12 contributions of land, and construction and contribution of  
13 facilities and may include public funds as determined by the  
14 local government. Proportionate fair-share mitigation may be  
15 directed toward one or more specific transportation  
16 improvements reasonably related to the mobility demands  
17 created by the development and such improvements may address  
18 one or more modes of travel. The fair market value of the  
19 proportionate fair-share mitigation shall not differ based on  
20 the form of mitigation. A local government may not require a  
21 development to pay more than its proportionate fair-share  
22 contribution regardless of the method of mitigation.  
23 Proportionate fair-share mitigation shall be limited to ensure  
24 that a development meeting the requirements of this section  
25 mitigates its impact on the transportation system but is not  
26 responsible for the additional cost of reducing or eliminating  
27 backlogs.

28         (d) ~~Nothing in~~ This subsection does not shall require  
29 a local government to approve a development that is not  
30 otherwise qualified for approval pursuant to the applicable  
31 local comprehensive plan and land development regulations.

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1           (e) Mitigation for development impacts to facilities  
 2 on the Strategic Intermodal System made pursuant to this  
 3 subsection requires the concurrence of the Department of  
 4 Transportation.

5           (f) If ~~In the event~~ the funds in an adopted 5-year  
 6 capital improvements element are insufficient to fully fund  
 7 construction of a transportation improvement required by the  
 8 local government's concurrency management system, a local  
 9 government and a developer may still enter into a binding  
 10 proportionate-share agreement authorizing the developer to  
 11 construct that amount of development on which the  
 12 proportionate share is calculated if the proportionate-share  
 13 amount in such agreement is sufficient to pay for one or more  
 14 improvements which will, in the opinion of the governmental  
 15 entity or entities maintaining the transportation facilities,  
 16 significantly benefit the impacted transportation system. The  
 17 ~~improvement or~~ improvements funded by the proportionate-share  
 18 component must be adopted into the 5-year capital improvements  
 19 schedule of the comprehensive plan at the next annual capital  
 20 improvements element update. The funding of improvements that  
 21 significantly benefit the impacted transportation system must  
 22 satisfy concurrency as a mitigation of the development's  
 23 impact upon the overall transportation system.

24           (g) Except as provided in subparagraph (b)1., ~~nothing~~  
 25 ~~in~~ this section may not ~~shall~~ prohibit the Department of  
 26 Community Affairs from finding other portions of the capital  
 27 improvements element amendments not in compliance as provided  
 28 in this chapter.

29           (h) The provisions of this subsection do not apply to  
 30 a ~~multiuse~~ development of regional impact satisfying the  
 31 requirements of subsection (12).

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1 Section 4. Subsection (14) is added to section  
2 163.3191, Florida Statutes, to read:

3 163.3191 Evaluation and appraisal of comprehensive  
4 plan.--

5 (14) The prohibition on plan amendments in subsection  
6 (10) does not apply to a proposed plan amendment adopted by a  
7 local government in order to integrate a port master plan with  
8 the coastal management plan element of the local comprehensive  
9 plan required under s. 163.3178(2)(k), if the port master plan  
10 or the proposed plan amendment do not cause or contribute to  
11 the local government's failure to comply with the requirements  
12 of the evaluation and appraisal report.

13 Section 5. Paragraph (c) of subsection (19) of section  
14 380.06, Florida Statutes, is amended to read:

15 380.06 Developments of regional impact.--

16 (19) SUBSTANTIAL DEVIATIONS.--

17 (c) An extension of the date of buildout of a  
18 development, or any phase thereof, by more than 7 years is  
19 ~~shall be~~ presumed to create a substantial deviation subject to  
20 further development-of-regional-impact review. An extension of  
21 the date of buildout, or any phase thereof, of more than 5  
22 years but not more than 7 years is ~~shall be~~ presumed not to  
23 create a substantial deviation. The extension of the date of  
24 buildout of an areawide development of regional impact by more  
25 than 5 years but less than 10 years is presumed not to create  
26 a substantial deviation. These presumptions may be rebutted by  
27 clear and convincing evidence at the public hearing held by  
28 the local government. An extension of 5 years or less is not a  
29 substantial deviation. For the purpose of calculating when a  
30 buildout or phase date has been exceeded, the time shall be  
31 tolled during the pendency of administrative or judicial

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1 proceedings relating to development permits. Any extension of  
 2 the buildout date of a project or a phase thereof shall  
 3 automatically extend the commencement date of the project, the  
 4 termination date of the development order, the expiration date  
 5 of the development of regional impact, and the phases thereof  
 6 if applicable by a like period of time. In recognition of the  
 7 2007 real estate market conditions, all phase, buildout, and  
 8 expiration dates for projects that are developments of  
 9 regional impact and under active construction on July 1, 2007,  
 10 are extended for 3 years regardless of any prior extension.  
 11 The 3-year extension is not a substantial deviation, is not  
 12 subject to further development-of-regional-impact review, and  
 13 may not be considered when determining whether a subsequent  
 14 extension is a substantial deviation under this subsection.

Section 6. This act shall take effect July 1, 2007.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to comprehensive planning;  
 amending s. 163.3164, F.S.; redefining the  
 terms "urban redevelopment" and "financial  
 feasibility" for purposes of the Local  
 Government Comprehensive Planning and Land  
 Development Regulation Act; amending s.  
 163.3177, F.S.; providing for application of  
 requirements for financial feasibility with

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1           respect to the elements of a comprehensive  
2           plan; delaying the deadline for amendments  
3           conforming public facilities with the capital  
4           improvements element; specifying circumstances  
5           under which transportation and school  
6           facilities shall be deemed to be financially  
7           feasible and to have achieved level-of-service  
8           standards; amending s. 163.3180, F.S. ;  
9           providing an additional exemption from  
10          concurrency requirements for an urban service  
11          area under specified circumstances; requiring  
12          that a local government consult with the state  
13          land planning agency regarding the designation  
14          of a concurrency exception area; revising  
15          provisions providing an exception from  
16          transportation concurrency requirements for a  
17          multiuse development of regional impact;  
18          providing requirements for proportionate-share  
19          mitigation and proportionate fair-share  
20          mitigation with respect to transportation  
21          improvements; amending s. 163.3191, F.S. ;  
22          exempting from a prohibition on plan amendments  
23          certain amendments to local comprehensive plans  
24          concerning the integration of port master  
25          plans; amending s. 380.06, F.S. ; extending the  
26          buildout and expiration dates for certain  
27          projects that are developments of regional  
28          impact; providing an effective date.

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30  
31