

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Community Affairs Committee

BILL: CS/SB 800

INTRODUCER: Committee on Community Affairs and Senator Garcia

SUBJECT: Growth Management

DATE: April 18, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CA	Fav/CS
2.			GO	
3.			TA	
4.			RC	
5.				
6.				

I. Summary:

The committee substitute (CS) makes several revisions to part II of ch. 163, F.S., as part of a glitch package for CS/CS/CS/SB 360 that was enacted in 2005. These changes include:

- Revising the definitions of “urban redevelopment”;
- Revising the definition of “financial feasibility” to provide that a local comprehensive plan is financially feasible for purposes of transportation and school concurrency if the adopted level-of-service standards are achieved and maintained by the end of the appropriate planning period;
- Extending the deadline by one year, to December 1, 2008, for local governments to begin the annual process of updating the capital improvements schedule;
- Extending the penalty deadline by one year, to December 1, 2008, for local governments that do not update their capital improvements schedule;
- Providing that a comprehensive plan is financially feasible if, at a local government’s discretion, a plan amendment is supported by a development-of-regional impact (DRI) development order condition or binding agreement that satisfies the requirements of s. 163.3180(12), F.S., or s. 163.3180(16), F.S., for projects in certain areas;
- Expanding those areas that are appropriate for a transportation concurrency exception area (TCEA), provided certain conditions are met;
- Revising the roles of the Department of Community Affairs (DCA or the state land planning agency) and the Florida Department of Transportation (FDOT) relating to the assessment and mitigation of impacts to Strategic Intermodal System (SIS) facilities;
- Broadening the proportionate-share-contribution language for multiuse DRIs in s. 163.3180(12), F.S., to include all DRIs;

- Allowing proportionate fair-share mitigation under s. 163.3180(16), F.S., to be used for “pipelining” or multiple transportation improvements reasonably related to the development and those improvements may address one or more modes of travel; and
- Limiting proportionate share mitigation and proportionate fair-share mitigation to the impacts a development has on a transportation system and expressly stating this does not include reducing or eliminating backlogs.

In addition to the changes recommended to address CS/CS/CS/SB 360 implementation issues, the CS also:

- Provides an exception to a prohibition on plan amendments, which applies when a local government fails to timely adopt and transmit plan amendments based on its evaluation and appraisal report, for those plan amendments integrating a port master plan into a local comprehensive plan.
- Provides a 3-year extension of phase, buildout, and expiration dates for developments-of-regional impact which are under active construction on July 1, 2007, and excepts the extension from further review as a substantial deviation.

This bill substantially amends sections 163.3164, 163.3177, 163.3180, 163.3191, and 380.06 of the Florida Statutes.

II. Present Situation:

In 2005, the Legislature enacted CS/CS/CS/SB 360 that appropriated \$1.5 billion in new money for various transportation, water and school infrastructure programs and made numerous changes to the laws governing growth management in Florida.

Capital Improvements Element

A local government’s comprehensive plan is required to be financially feasible and the capital improvements element in a local comprehensive plan to include a schedule of improvements that ensure the adopted level-of-service standards are achieved and maintained. Each local government is required to submit an annual update of its capital improvements element to demonstrate it is maintaining a financially feasible 5-year schedule of capital improvements. The required capital improvements element update or amendment must be adopted and transmitted no later than December 1, 2007. DCA is required to notify the Administration Commission (the Governor and Cabinet) if the local government does not adopt the required update or the update is found not in compliance. The Administration Commission is authorized to sanction the local government.

Transportation Concurrency

The Growth Management Act of 1985 requires local governments to use a systematic process to ensure new development does not occur unless adequate infrastructure is in place to support the growth. The requirement for public facilities and infrastructure to be available concurrent with new development is known as concurrency. Transportation concurrency uses a graded scale of roadway level of service (LOS) standards assigned to all public roads. The LOS standards are a proxy for the allowable level of congestion on a given road in a given area. Stringent standards

(i.e., fewer vehicles allowed) are applied in rural areas and easier standards (i.e., more vehicles) are allowed in urban areas to help promote compact urban development.

Over the years it became apparent that irrespective of the easier standards in urban areas, new developments are often located in rural areas due to an abundance of highway capacity on rural roads. In 1992, Transportation Concurrency Management Areas were authorized, allowing an areawide LOS standard (rather than facility-specific) to promote urban infill and redevelopment and provide greater mobility in those areas through alternatives such as public transit systems. Subsequently, two additional relaxations of concurrency were authorized: Transportation Concurrency Exception Areas (TCEA) and Long-term Transportation Concurrency Management Systems. Specifically, the TCEA is intended to “reduce the adverse impact transportation concurrency may have on urban infill and redevelopment” by exempting certain areas from the concurrency requirement. Long-term Transportation Concurrency Management Systems are intended to address significant backlogs.

Strategic Intermodal System

The Florida Department of Transportation (FDOT) is responsible for establishing level-of-service standards on the highway component of SIS and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.

In 2005, CS/CS/CS/SB 360 revised transportation concurrency requirements. Specifically, it requires transportation facilities to be in place or under actual construction within 3 years from the local government’s approval of a building permit or its functional equivalent that results in traffic generation. Each local government was required to adopt a methodology for assessing proportionate fair-share mitigation options by December 1, 2006.

Proportionate Fair-Share Mitigation

CS/CS/CS/SB 360 also provided a method for mitigating the impacts of development on transportation facilities through the cooperative efforts of the public and private sectors. This method, called proportionate fair-share mitigation, can be used by a local government to determine a developer’s fair-share of costs to meet concurrency. The developer’s fair-share may be combined with public funds to construct future improvements; however, the improvements must be part of a plan or program adopted by the local government or FDOT. If an improvement is not part of the local government’s plan or program, the developer may still enter into a binding agreement at the local government’s option provided the improvement satisfies part II of ch. 163, F.S., and:

- the proposed improvement satisfies the significant benefit test; or
- the local government plans for additional contributions or payments from developers to fully mitigate transportation impacts in the area within 10 years.

Proportionate Share Mitigation

Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. 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.¹ Multiuse developments contain a mix of land uses and multiuse DRIs meeting certain criteria are eligible to satisfy transportation concurrency requirements under s. 163.3180(12), F.S. The proportionate share option under subsection (12) has been used to allow the mitigation collected from certain multiuse DRIs to be “pipelined” or used to make a single improvement that mitigates the impact of the development because this may be the best option where there are insufficient funds to improve all of the impacted roadways.

Developments-of-Regional Impact

Section 380.06, F.S., governs the Development of Regional Impact (DRI) program and establishes the basic process for DRI review. 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.² Under s. 380.06(19), F.S., any proposed change to a previously approved DRI which creates a reasonable likelihood of additional regional impact or any type of regional impact, resulting from a change not previously reviewed by the regional planning council, constitutes a "substantial deviation" that subjects the development to further DRI review and entry of a new or amended local development order. Section 380.06(19), F.S., provides a proposed change to a previously approved DRI which, either individually or cumulatively with other changes, exceeds specified criteria constitutes a substantial deviation and is subject to further DRI review.

The extension of the date of buildout of a DRI, or any phase thereof, by more than 5 years but not more than 7 years is presumed not to create a substantial deviation. However, the extension of buildout by 7 or more years is presumed to create a substantial deviation and is subject to further DRI review. However, this presumption may be rebutted by clear and convincing evidence at the public hearing held by the local government.³ When calculating whether a buildout date has been exceeded, time is tolled during the pendency of administrative or judicial proceedings relating to development permits.⁴ An extension 5 years or less is not a substantial deviation.

Evaluation and Appraisal Reports

Local governments are required to adopt an evaluation and appraisal report (EAR) once every 7 years to assess the progress in implementing the local government’s comprehensive plan.⁵ Section 163.3191(10), F.S., requires a local government to update its local comprehensive plan based on recommendations in the EAR. Amendments based on the EAR must be adopted during a single amendment cycle within 18 months after DCA determines the EAR is sufficient. A local government that does not timely adopt and transmit its EAR amendments is prohibited from adopting amendments to its local comprehensive plan until the EAR amendments are adopted and transmitted to DCA.

Port Master Plans

¹ S. 380.06(1), F.S.

² S. 380.06(1), F.S.

³ S. 380.06(19), F.S.

⁴ S. 380.06(19)(c), F.S.

⁵ S. 163.3191(1), F.S.

Section 189.4155, F.S., requires the construction or expansion of a public facility, or major alteration, which is undertaken by a special district or other entity and affects the level-of-service standards for a public facility, to be consistent with applicable local government's comprehensive plan. Certain ports that operate in compliance with a port master plan which has been incorporated into the appropriate local government comprehensive plan are deemed in compliance with the requirements of s. 189.4155, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3164, F.S., to include community redevelopment areas created under part III of ch. 163, F.S., in the definition of "urban redevelopment." The term "financial feasibility" is amended to delete an exemption to the requirement that adopted level-of-service standards be achieved and maintained. The exemption states that it applies to projects using the proportionate share process under subsections (12) and (16) of s. 163.3164, F.S. ; however, its applicability has been the subject of debate.

The exemption is replaced with language that provides a local government's comprehensive plan is financially feasible for purposes of transportation and school facilities if level-of-service standards are achieved and maintained by the end of the planning period. In other words, a comprehensive plan will still satisfy the financial feasibility requirement for transportation facilities even if level-of-service standards are not met in a particular year as long as it is not the end of the planning period.

Section 2 amends s. 163.3177, F.S., to clarify that the requirement for a local comprehensive plan to be "financially feasible" applies to the appropriate planning period. The appropriate planning period shall be a minimum of five years under the capital improvements element for transportation or school concurrency, but may also be a long-term concurrency system that covers 10 or 15 years.

Section 163.3177(3)(b)1., F.S., requires each local government to update its capital improvements schedule to demonstrate the schedule is financially feasible. Amendments to implement this provision must be adopted and transmitted by December 1, 2007. This bill extends that date to December 1, 2008.

Section 163.3177(3)(b)1., F.S., also prohibits a local government who fails to adopt and transmit the annual update of its capital improvements schedule to address financial feasibility from adopting any future land use map amendments until the annual update has been adopted and transmitted to DCA. This prohibition is schedule to take effect December 1, 2007, but the PCS extends that date to December 1, 2008.

This section of the bill also deletes a provision requiring DCA to notify the Administration Commission if a local government's annual update to its schedule of capital improvements is not in compliance. Under this CS, the penalty applies only if a local government does not adopt the required annual update.

This bill deems a local comprehensive plan to be financially feasible if a future land use map amendment is supported, at the discretion of the local government, by a DRI development order condition or a binding agreement that addresses proportionate share payments consistent with the requirements of:

- s. 163.3180(12), F.S., relating to transportation concurrency requirements for DRIs; or
- s. 163.3180(16)(f), F.S., relating to transportation improvements that provide a significant benefit, if the area covered by the plan amendment is designated in the comprehensive plan as an urban infill, urban redevelopment, downtown revitalization, urban infill and redevelopment, or an urban service area.

The binding agreement must be based on the maximum amount of development allowed under the future land use map amendment.

Section 3 amends s. 163.3180(5), F.S., to allow a local government to grant an exception from transportation concurrency requirements for projects within an urban service area specifically designated as a TCEA that includes lands:

- appropriate for compact, contiguous urban development;
- needed to accommodate the projected population growth at densities consistent with the adopted comprehensive plan for the 10-year planning timeframe; and
- served or planned to be served with public facilities and services as provided for in the capital improvements element.

The CS requires local governments with a TCEA to adopt long-term strategies to support and fund mobility in the designated area. The role of FDOT with respect to TCEAs is revised so that DCA and FDOT will be consulted by the local government regarding the impact of a proposed exception area on the adopted level-of-service standards for SIS facilities and certain other roadway facilities. Also, the local government will consult with DCA and FDOT to develop a plan to mitigate any impacts to SIS.

Subsection (12) of s. 163.3180, F.S., is amended so that it applies to all DRIs, not just multi-use DRIs. The CS deletes a criterion requiring a specified number of residential units for a multi-use DRI to use the provisions of subsection (12). It broadens the type of improvements that can be funded with a proportionate-share contribution by referring to “mobility” improvements. It also specifically states that proportionate-share mitigation under subsection (12) is limited to ensure that a DRI mitigates its impact upon the transportation system, but is not responsible for reducing or eliminating any backlogs on the system.

Finally, the CS amends subsection (16) of s. 163.3180, F.S., to provide that proportionate fair-share mitigation to satisfy transportation concurrency may be “pipelined” or used for multiple transportation improvements reasonably related to the demands created by the development and these improvements may address one or more modes of travel. This CS expressly limits proportionate fair-share mitigation to those impacts that a development has on the transportation system and does not allow such mitigation to be collected for the purpose of reducing or eliminating backlogs.

Section 4 amends s. 163.3191, F.S., to provide an exception to a prohibition on plan amendments, which applies when a local government fails to timely adopt and transmit plan amendments based on its evaluation and appraisal report, for those plan amendments integrating a port master plan into a local comprehensive plan. This provision applies only if the port master plan or the proposed plan amendment do not cause or contribute to the local government's failure to comply with the requirements of the evaluation and appraisal report.

Section 5 provides a 3-year extension of phase, buildout, and expiration dates for developments-of-regional impact which are under active construction on July 1, 2007, notwithstanding any prior extensions. It also excepts the extension from further review as a substantial deviation and does not allow this extension to be considered when determining if a subsequent extension is a substantial deviation.

Section 6 provides the CS takes effect July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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