

1 certain amendments to local comprehensive plans
2 concerning the integration of port master
3 plans; amending s. 380.06, F.S.; extending the
4 buildout and expiration dates for certain
5 projects that are developments of regional
6 impact; providing an effective date.
7

8 Be It Enacted by the Legislature of the State of Florida:
9

10 Section 1. Subsections (26) and (32) of section
11 163.3164, Florida Statutes, are amended to read:

12 163.3164 Local Government Comprehensive Planning and
13 Land Development Regulation Act; definitions.--As used in this
14 act:

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

20 (32) "Financial feasibility" means that sufficient
21 revenues are currently available or will be available from
22 committed funding sources for the first 3 years, or will be
23 available from committed or planned funding sources for years
24 4 and 5, of a 5-year capital improvement schedule for
25 financing capital improvements, such as ad valorem taxes,
26 bonds, state and federal funds, tax revenues, impact fees, and
27 developer contributions, which are adequate to fund the
28 projected costs of the capital improvements identified in the
29 comprehensive plan necessary to ensure that adopted
30 level-of-service standards are achieved and maintained within
31 the period covered by the 5-year schedule of capital

1 improvements. A comprehensive plan shall be deemed financially
2 feasible for transportation and school facilities throughout
3 the planning period addressed by the capital improvements
4 schedule if it can be demonstrated that the level-of-service
5 standards will be achieved and maintained by the end of the
6 planning period even if in a particular year such improvements
7 are not concurrent as required by s. 163.3180. The requirement
8 ~~that level of service standards be achieved and maintained~~
9 ~~shall not apply if the proportionate share process set forth~~
10 ~~in s. 163.3180(12) and (16) is used.~~

11 Section 2. Subsections (2) and (3) of section
12 163.3177, Florida Statutes, are amended to read:

13 163.3177 Required and optional elements of
14 comprehensive plan; studies and surveys.--

15 (2) Coordination of the several elements of the local
16 comprehensive plan shall be a major objective of the planning
17 process. The several elements of the comprehensive plan shall
18 be consistent, and the comprehensive plan shall be financially
19 feasible. Financial feasibility shall be determined using
20 professionally accepted methodologies and applies to the
21 5-year planning period, except in the case of a long-term
22 transportation or school concurrency management system, in
23 which case a 10-year or 15-year period applies.

24 (3)(a) The comprehensive plan shall contain a capital
25 improvements element designed to consider the need for and the
26 location of public facilities in order to encourage the
27 efficient ~~use~~ utilization of such facilities and set forth:

28 1. A component ~~that~~ which outlines principles for
29 construction, extension, or increase in capacity of public
30 facilities, as well as a component ~~that~~ which outlines
31 principles for correcting existing public facility

1 deficiencies, which are necessary to implement the
2 comprehensive plan. The components shall cover at least a
3 5-year period.

4 2. Estimated public facility costs, including a
5 delineation of when facilities will be needed, the general
6 location of the facilities, and projected revenue sources to
7 fund the facilities.

8 3. Standards to ensure the availability of public
9 facilities and the adequacy of those facilities including
10 acceptable levels of service.

11 4. Standards for the management of debt.

12 5. A schedule of capital improvements which includes
13 publicly funded projects, and which may include privately
14 funded projects for which the local government has no fiscal
15 responsibility, necessary to ensure that adopted
16 level-of-service standards are achieved and maintained. For
17 capital improvements that will be funded by the developer,
18 financial feasibility shall be demonstrated by being
19 guaranteed in an enforceable development agreement or
20 interlocal agreement pursuant to paragraph (10)(h), or other
21 enforceable agreement. These development agreements and
22 interlocal agreements shall be reflected in the schedule of
23 capital improvements if the capital improvement is necessary
24 to serve development within the 5-year schedule. If the local
25 government uses planned revenue sources that require referenda
26 or other actions to secure the revenue source, the plan must,
27 in the event the referenda are not passed or actions do not
28 secure the planned revenue source, identify other existing
29 revenue sources that will be used to fund the capital projects
30 or otherwise amend the plan to ensure financial feasibility.

31

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

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

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

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

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

21 (e) At the discretion of the local government and
22 notwithstanding the requirements of this subsection, a
23 comprehensive plan, as revised by an amendment to its future
24 land use map, shall be deemed to be financially feasible and
25 to have achieved and maintained level-of-service standards
26 with respect to transportation facilities as required by this
27 section if the amendment to the future land use map is
28 supported by a:

29 1. Condition in a development order for a development
30 of regional impact or binding agreement that addresses
31

1 proportionate-share mitigation consistent with s.

2 163.3180(12); or

3 2. Binding agreement addressing proportionate
4 fair-share mitigation consistent with s. 163.3180(16)(f) and
5 the amendment to the future land use map is located within an
6 area designated in a comprehensive plan for urban infill,
7 urban redevelopment, downtown revitalization, urban infill and
8 redevelopment, or an urban service area. The binding agreement
9 must be based on the maximum amount of development identified
10 by the future land use map amendment.

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

13 163.3180 Concurrency.--

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

27 (b) A local government may grant an exception from the
28 concurrency requirement for transportation facilities if the
29 proposed development is otherwise consistent with the adopted
30 local government comprehensive plan and is a project that
31

1 promotes public transportation or is located within an area
2 designated in the comprehensive plan for:

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

7 ~~or~~

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

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

27 (d) A local government shall establish guidelines in
28 the comprehensive plan for granting the exceptions authorized
29 in paragraphs (b) and (c) and subsections (7) and (15) which
30 must be consistent with and support a comprehensive strategy
31 adopted in the plan to promote the purpose of the exceptions.

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

14 (f) Prior to the designation of a concurrency
15 exception area, the state land planning agency and the
16 Department of Transportation shall be consulted by the local
17 government to assess the impact that the proposed exception
18 area is expected to have on the adopted level-of-service
19 standards established for Strategic Intermodal System
20 facilities, as defined in s. 339.64, and roadway facilities
21 funded in accordance with s. 339.2819. Further, the local
22 government shall, in consultation ~~cooperation~~ with the state
23 land planning agency and the Department of Transportation,
24 develop a plan to mitigate any impacts to the Strategic
25 Intermodal System, including, if appropriate, the development
26 of a long-term concurrency management system pursuant to
27 subsection (9) and s. 163.3177(3)(d). The exceptions may be
28 available only within the specific geographic area of the
29 jurisdiction designated in the plan. Pursuant to s. 163.3184,
30 any affected person may challenge a plan amendment
31

1 establishing these guidelines and the areas within which an
2 exception could be granted.

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

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

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

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

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

29 (c)(d) The owner and developer of the development of
30 regional impact pays or assures payment of the
31 proportionate-share contribution; and

1 ~~(d)(e)~~ If the regionally significant transportation
2 facility to be constructed or improved is under the
3 maintenance authority of a governmental entity, as defined by
4 s. 334.03(12), other than the local government with
5 jurisdiction over the development of regional impact, the
6 developer is required to enter into a binding and legally
7 enforceable commitment to transfer funds to the governmental
8 entity having maintenance authority or to otherwise assure
9 construction or improvement of the facility.

10
11 The proportionate-share contribution may be applied to any
12 transportation facility to satisfy the provisions of this
13 subsection and the local comprehensive plan, but, for the
14 purposes of this subsection, the amount of the
15 proportionate-share contribution shall be calculated based
16 upon the cumulative number of trips from the proposed
17 development expected to reach roadways during the peak hour
18 from the complete buildout of a stage or phase being approved,
19 divided by the change in the peak hour maximum service volume
20 of roadways resulting from construction of an improvement
21 necessary to maintain the adopted level of service, multiplied
22 by the construction cost, at the time of developer payment, of
23 the improvement necessary to maintain the adopted level of
24 service. For purposes of this subsection, "construction cost"
25 includes all associated costs of the improvement.

26 Proportionate-share mitigation shall be limited to ensure that
27 a development of regional impact meeting the requirements of
28 this subsection mitigates its impact on the transportation
29 system but is not responsible for the additional cost of
30 reducing or eliminating backlogs.

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

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

14 (b)1. In its transportation concurrency management
15 system, a local government shall, by December 1, 2006, include
16 methodologies that will be applied to calculate proportionate
17 fair-share mitigation. A developer may choose to satisfy all
18 transportation concurrency requirements by contributing or
19 paying proportionate fair-share mitigation if transportation
20 facilities or facility segments identified as mitigation for
21 traffic impacts are specifically identified for funding in the
22 5-year schedule of capital improvements in the capital
23 improvements element of the local plan or the long-term
24 concurrency management system or if such contributions or
25 payments to such facilities or segments are reflected in the
26 5-year schedule of capital improvements in the next regularly
27 scheduled update of the capital improvements element. Updates
28 to the 5-year capital improvements element which reflect
29 proportionate fair-share contributions may not be found not in
30 compliance based on ss. 163.3164(32) and 163.3177(3) if
31 additional contributions, payments or funding sources are

1 reasonably anticipated during a period not to exceed 10 years
2 to fully mitigate impacts on the transportation facilities.

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

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

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

30 (e) Mitigation for development impacts to facilities
31 on the Strategic Intermodal System made pursuant to this

1 subsection requires the concurrence of the Department of
2 Transportation.

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

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

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

31

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, which is required under s. 163.3178(2)(k), if the port
10 master plan or the proposed plan amendment do not cause or
11 contribute to the local government's failure to comply with
12 the requirements 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 shall
19 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 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

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 as of the
10 | effective date of this paragraph are extended for 3 years,
11 | regardless of any prior extensions. This 3-year extension is
12 | not a substantial deviation, may not be subject to further
13 | development-of-regional-impact review, and may not be
14 | considered when determining whether any subsequent extension
15 | is a substantial deviation under this subsection.

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

17 |
18 | STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
19 | COMMITTEE SUBSTITUTE FOR
20 | Senate Bill 800

21 | The committee substitute provides an exception to a
22 | prohibition on plan amendments, which applies when a local
23 | government fails to timely adopt and transmit plan amendments
24 | based on its evaluation and appraisal report, for those plan
25 | amendments integrating a port master plan into a local
26 | comprehensive plan. It also provides a 3-year extension of
27 | phase, buildout, and expiration dates for developments-of
28 | regional impact which are under active construction on July 1,
29 | 2007, and excepts the extension from further review s a
30 | substantial deviation.
31 |