By the Committee on Community Affairs; and Senator Bennett

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A bill to be entitled

An act relating to growth management; amending s. 163.3164, F.S.; redefining the term "existing urban service area" as "urban service area"; defining the term "dense urban land area"; requiring the Office of Economic and Demographic Research to annually calculate the population and density criteria needed to determine which jurisdictions qualify as dense urban land areas; providing for the use of certain data and certain boundaries for such determination; requiring the Office of Economic and Demographic Research to submit to the state land planning agency the list of jurisdictions that meet certain criteria by a specified date; requiring the state land planning agency to publish such list; amending s. 163.3177, F.S.; authorizing the state land planning agency to allow for a projected 5-year capital outlay full-time equivalent student growth rate to exceed certain percent under certain circumstances; amending s. 163.3180, F.S.; revising concurrency requirements; revising legislative findings; providing for the applicability of transportation concurrency exception areas; deleting certain requirements for transportation concurrency exception areas; requiring that a local government that has certain transportation concurrency exception area adopt land use and transportation strategies within a specified timeframe; requiring the state land planning agency to submit certain finding to the Administration

Commission; providing that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees and does not affect any contract or agreement entered into or development order rendered before such designation; requiring that the Office of Program Policy Analysis and Government Accountability submit a report to the Legislature by a specified date; requiring that the report contain certain information relating to transportation concurrency exception areas; providing for an exemption from level-of-service standards for proposed development related to qualified job creation projects; revising provisions relating to school concurrency requirements; requiring that charter schools be considered as a mitigation option under certain circumstances; creating s. 163.31802, F.S.; prohibiting the establishment of local security standards requiring businesses to expend funds to enhance local governmental services or functions under certain circumstances; providing an exception; amending s. 171.091, F.S.; requiring that a municipality submit a copy of any revision to the charter boundary article which results from an annexation or contraction to the Office of Economic and Demographic Research; providing legislative findings and determinations relating to replacing the transportation concurrency system with a mobility fee system; requiring that the state land planning agency

and the Department of Transportation develop a methodology for a mobility fee system; requiring that the state land planning agency and the department submit joint reports to the Legislature by a specified date; extending certain permits, orders, or applications that are due to expire on or before September 1, 2011; providing for application of the extension to certain related activities; providing exceptions; providing a declaration of important state interest; providing an effective date.

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

Section 1. Subsection (29) of section 163.3164, Florida Statutes, is amended, and subsection (34) is added to that section, to read:

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

(29) "~~Existing~~ Urban service area" means built-up areas where public facilities and services, including, but not limited to, central water and sewer ~~such as sewage treatment systems~~, roads, schools, and recreation areas, are already in place. In addition, for counties that qualify as dense urban land areas under subsection (34), the nonrural area of a county, which has adopted into the county charter a rural area designation or areas identified in the comprehensive plan as urban service areas or urban growth boundaries on or before July 1, 2009, are also urban service areas under this definition.

(34) "Dense urban land area" means:

(a) A municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;

(b) A county, including the municipalities located therein, which has an average of at least 1,000 people per square mile of land area; or

(c) A county, including the municipalities located therein, which has a population of at least 1 million.

The Office of Economic and Demographic Research within the Legislature shall annually calculate the population and density criteria needed to determine which jurisdictions qualify as dense urban land areas by using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates determined pursuant to s. 186.901. If any local government has had an annexation, contraction, or new incorporation, the Office of Economic and Demographic Research shall determine the population density using the new jurisdictional boundaries as recorded in accordance with s. 171.091. The Office of Economic and Demographic Research shall submit to the state land planning agency a list of jurisdictions that meet the total population and density criteria necessary for designation as a dense urban land area by July 1, 2009, and every year thereafter. The state land planning agency shall publish the list of jurisdictions on its Internet website within 7 days after the list is received. The designation of jurisdictions that qualify or do not qualify as a dense urban land area is effective upon publication on the

state land planning agency's Internet website.

Section 2. Paragraph (a) of subsection (12) of section 163.3177, Florida Statutes, is amended to read:

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

(12) A public school facilities element adopted to implement a school concurrency program shall meet the requirements of this subsection. Each county and each municipality within the county, unless exempt or subject to a waiver, must adopt a public school facilities element that is consistent with those adopted by the other local governments within the county and enter the interlocal agreement pursuant to s. 163.31777.

(a) The state land planning agency may provide a waiver to a county and to the municipalities within the county if the capacity rate for all schools within the school district is no greater than 100 percent and the projected 5-year capital outlay full-time equivalent student growth rate is less than 10 percent. The state land planning agency may allow for a projected 5-year capital outlay full-time equivalent student growth rate to exceed 10 percent when the projected 10-year capital outlay full-time equivalent student enrollment is fewer than 2,000 students and the capacity rate for all schools within the school district in the 10th year will not exceed the 100 percent limitation. The state land planning agency may allow for a single school to exceed the 100-percent limitation if it can be demonstrated that the capacity rate for that single school is not greater than 105 percent. In making this determination, the state land planning agency shall consider the following

criteria:

1. Whether the exceedance is due to temporary circumstances;

2. Whether the projected 5-year capital outlay full time equivalent student growth rate for the school district is approaching the 10-percent threshold;

3. Whether one or more additional schools within the school district are at or approaching the 100-percent threshold; and

4. The adequacy of the data and analysis submitted to support the waiver request.

Section 3. Subsections (5) and (10) and paragraph (e) of subsection (13) of section 163.3180, Florida Statutes, are amended to read:

163.3180 Concurrency.—

(5)(a) The Legislature finds that under limited circumstances ~~dealing with transportation facilities~~, countervailing planning and public policy goals may come into conflict with the requirement that adequate public transportation facilities and services be available concurrent with the impacts of such development. The Legislature further finds that ~~often~~ the unintended result of the concurrency requirement for transportation facilities is often the discouragement of urban infill development and redevelopment. Such unintended results directly conflict with the goals and policies of the state comprehensive plan and the intent of this part. The Legislature also finds that in urban centers, transportation cannot be effectively managed and mobility cannot be improved solely through the expansion of roadway capacity, that the expansion of roadway capacity is not always physically

or financially possible, and that a range of transportation alternatives are essential to satisfy mobility needs, reduce congestion, and achieve healthy, vibrant centers. ~~Therefore, exceptions from the concurrency requirement for transportation facilities may be granted as provided by this subsection.~~

(b)1. The following are transportation concurrency exception areas:

a. A municipality that qualifies as a dense urban land area under s. 163.3164(34);

b. An urban service area under s. 163.3164(29) which has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area under s. 163.3164(34), except limited urban service areas are not included as an urban service area unless the parcel is defined as 163.3164(33); and

c. A county, including the municipalities located therein, which has a population of at least 900,000 and qualifies as a dense urban land area under s. 163.3164(34), but does not have an urban service area designated in the local comprehensive plan.

2. A municipality that does not qualify as a dense urban land area pursuant to s. 163.3164(34) may designate in its local comprehensive plan the following areas as transportation concurrency exception areas:

a. Urban infill as defined in s. 163.3164(27);

b. Community redevelopment areas as defined in s. 163.340(10);

c. Downtown revitalization areas as defined in s. 163.3164(25);

d. Urban infill and redevelopment under s. 163.2517; or

e. Urban service areas as defined in s. 163.3164(29) or areas within a designated urban service boundary under s. 163.3177(14).

3. A county that does not qualify as a dense urban land area pursuant to s. 163.3164(34) may designate in its local comprehensive plan the following areas as transportation concurrency exception areas:

a. Urban infill as defined in s. 163.3164(27);

b. Urban infill and redevelopment under s. 163.2517; or

c. Urban service areas as defined in s. 163.3164(29).

4. A local government that has a transportation concurrency exception area designated pursuant to subparagraph 1., subparagraph 2., or subparagraph 3. must, within 2 years after the designated area becomes exempt, adopt into its local comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. Local governments are encouraged to adopt complementary land use and transportation strategies that reflect the region's shared vision for its future. If the state land planning agency finds insufficient cause for the local government's failure to adopt into its comprehensive plan land use and transportation strategies to support and fund mobility within the designated exception area after 2 years, the agency shall submit the finding to the Administration Commission, which may impose any of the sanctions set forth in s. 163.3184(11)(a) and (b) against the local government.

5. Transportation concurrency exception areas designated

under subparagraph 1., subparagraph 2., or subparagraph 3. do not apply to designated transportation concurrency districts located within a county that has a population of at least 1.5 million, has implemented and uses a transportation-related concurrency assessment to support alternative modes of transportation, including, but not limited to, mass transit, and does not levy transportation impact fees within the concurrency district.

6. A local government that does not have a transportation concurrency exception area designated pursuant to subparagraph 1., subparagraph 2., or subparagraph 3. may grant an exception from the concurrency requirement for transportation facilities if the proposed development is otherwise consistent with the adopted local government comprehensive plan and is a project that promotes public transportation or is located within an area designated in the comprehensive plan for:

a.~~1.~~ Urban infill development;

b.~~2.~~ Urban redevelopment;

c.~~3.~~ Downtown revitalization;

d.~~4.~~ Urban infill and redevelopment under s. 163.2517; or

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

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

(d) Except for transportation concurrency exception areas designated pursuant to subparagraph (b)1., subparagraph (b)2., or subparagraph (b)3., the following requirements apply: ~~A local government shall establish guidelines in the comprehensive plan for granting the exceptions authorized in paragraphs (b) and (c) and subsections (7) and (15) which must be consistent with and support a comprehensive strategy adopted in the plan to promote the purpose of the exceptions.~~

1.~~(c)~~ The local government shall both adopt into the comprehensive plan and implement long-term strategies to support and fund mobility within the designated exception area, including alternative modes of transportation. The plan amendment must also demonstrate how strategies will support the purpose of the exception and how mobility within the designated exception area will be provided.

2. ~~In addition,~~ The strategies must address urban design; appropriate land use mixes, including intensity and density; and network connectivity plans needed to promote urban infill, redevelopment, or downtown revitalization. The comprehensive

plan amendment designating the concurrency exception area must be accompanied by data and analysis justifying the size of the area.

(e) ~~(f)~~ Before designating ~~Prior to the designation of~~ a concurrency exception area pursuant to subparagraph (b)6., the state land planning agency and the Department of Transportation shall be consulted by the local government to assess the impact that the proposed exception area is expected to have on the adopted level-of-service standards established for regional transportation facilities identified pursuant to s. 186.507, including the Strategic Intermodal System ~~facilities, as defined in s. 339.64,~~ and roadway facilities funded in accordance with s. 339.2819. Further, the local government shall provide a plan for the mitigation of~~, in consultation with the state land planning agency and the Department of Transportation, develop a plan to mitigate any~~ impacts to the Strategic Intermodal System, including, if appropriate, access management, parallel reliever roads, transportation demand management, and other measures ~~the development of a long-term concurrency management system pursuant to subsection (9) and s. 163.3177(3)(d)~~. ~~The exceptions may be available only within the specific geographic area of the jurisdiction designated in the plan. Pursuant to s. 163.3184, any affected person may challenge a plan amendment establishing these guidelines and the areas within which an exception could be granted.~~

~~(g) Transportation concurrency exception areas existing prior to July 1, 2005, must, at a minimum, meet the provisions of this section by July 1, 2006, or at the time of the comprehensive plan update pursuant to the evaluation and~~

~~appraisal report, whichever occurs last.~~

(f) The designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. This subsection does not affect any contract or agreement entered into or development order rendered before the creation of the transportation concurrency exception area.

(g) The Office of Program Policy Analysis and Government Accountability shall submit to the President of the Senate and the Speaker of the House of Representatives by February 1, 2015, a report on transportation concurrency exception areas created pursuant to this subsection. At a minimum, the report must address the methods that local governments have used to implement and fund transportation strategies to achieve the purposes of designated transportation concurrency exception area; the effects of the strategies on mobility, congestion, urban design; the density and intensity of land use mixes; and the network connectivity plans used to promote urban infill, redevelopment, or downtown revitalization.

(10) Except in transportation concurrency exception areas, with regard to roadway facilities on the Strategic Intermodal System designated in accordance with s. 339.63 ~~ss. 339.61, 339.62, 339.63, and 339.64, the Florida Intrastate Highway System as defined in s. 338.001, and roadway facilities funded in accordance with s. 339.2819~~, local governments shall adopt the level-of-service standard established by the Department of Transportation by rule. However, if the Office of Tourism, Trade, and Economic Development concurs in writing with the local government that the proposed development is for a

qualified job creation project under s. 288.0656 or s. 403.973, the affected local government, after consulting with the Department of Transportation, may allow for a waiver of transportation concurrency for the project. For all other roads on the State Highway System, local governments shall establish an adequate level-of-service standard that need not be consistent with any level-of-service standard established by the Department of Transportation. In establishing adequate level-of-service standards for any arterial roads, or collector roads as appropriate, which traverse multiple jurisdictions, local governments shall consider compatibility with the roadway facility's adopted level-of-service standards in adjacent jurisdictions. Each local government within a county shall use a professionally accepted methodology for measuring impacts on transportation facilities for the purposes of implementing its concurrency management system. Counties are encouraged to coordinate with adjacent counties, and local governments within a county are encouraged to coordinate, for the purpose of using common methodologies for measuring impacts on transportation facilities for the purpose of implementing their concurrency management systems.

(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:

(e) *Availability standard.*—Consistent with the public welfare, a local government may not deny an application for site plan, final subdivision approval, or the functional equivalent for a development or phase of a development authorizing residential development for failure to achieve and maintain the level-of-service standard for public school capacity in a local school concurrency management system where adequate school facilities will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. School concurrency is satisfied if the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by actual development of the property, including, but not limited to, the options described in subparagraph 1. Options for proportionate-share mitigation of impacts on public school facilities must be established in the public school facilities element and the interlocal agreement pursuant to s. 163.31777.

1. Appropriate mitigation options include the contribution of land; the construction, expansion, or payment for land acquisition or construction of a public school facility; the construction of a charter school that complies with the requirements of s. 1002.33(18)(f); or the creation of mitigation banking based on the construction of a public school facility in

exchange for the right to sell capacity credits. Such options must include execution by the applicant and the local government of a development agreement that constitutes a legally binding commitment to pay proportionate-share mitigation for the additional residential units approved by the local government in a development order and actually developed on the property, taking into account residential density allowed on the property prior to the plan amendment that increased the overall residential density. The district school board must be a party to such an agreement. As a condition of its entry into such a development agreement, the local government may require the landowner to agree to continuing renewal of the agreement upon its expiration.

2. If the education facilities plan and the public educational facilities element authorize a contribution of land; the construction, expansion, or payment for land acquisition; ~~or~~ the construction or expansion of a public school facility, or a portion thereof; or the construction of a charter school that complies with the requirements of s. 1002.33(18)(f), as proportionate-share mitigation, the local government shall credit such a contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis at fair market value.

3. Any proportionate-share mitigation must be directed by the school board toward a school capacity improvement identified in a financially feasible 5-year district work plan that satisfies the demands created by the development in accordance with a binding developer's agreement.

4. If a development is precluded from commencing because there is inadequate classroom capacity to mitigate the impacts of the development, the development may nevertheless commence if there are accelerated facilities in an approved capital improvement element scheduled for construction in year four or later of such plan which, when built, will mitigate the proposed development, or if such accelerated facilities will be in the next annual update of the capital facilities element, the developer enters into a binding, financially guaranteed agreement with the school district to construct an accelerated facility within the first 3 years of an approved capital improvement plan, and the cost of the school facility is equal to or greater than the development's proportionate share. When the completed school facility is conveyed to the school district, the developer shall receive impact fee credits usable within the zone where the facility is constructed or any attendance zone contiguous with or adjacent to the zone where the facility is constructed.

5. This paragraph does not limit the authority of a local government to deny a development permit or its functional equivalent pursuant to its home rule regulatory powers, except as provided in this part.

Section 4. Section 163.31802, Florida Statutes, is created to read:

163.31802 Prohibited standards for security.—A county, municipality, or other local government entity may not adopt or maintain in effect an ordinance or rule that establish standards for security devices which require a lawful business to expend funds to enhance the services or functions provided by local

government unless specifically provided by general law. This section does not apply to municipalities that have a total population of 50,000 or fewer which adopted an ordinance or rule establishing standards for security devices before February 1, 2009.

Section 5. Section 171.091, Florida Statutes, is amended to read:

171.091 Recording.—Any change in the municipal boundaries through annexation or contraction shall revise the charter boundary article and shall be filed as a revision of the charter with the Department of State within 30 days. A copy of such revision must be submitted to the Office of Economic and Demographic Research along with a statement specifying the population census effect and the affected land area.

Section 6. (1)(a) The Legislature finds that the existing transportation concurrency system has not adequately addressed the transportation needs of this state in an effective, predictable, and equitable manner and is not producing a sustainable transportation system for the state. The Legislature finds that the current system is complex, inequitable, lacks uniformity among jurisdictions, is too focused on roadways to the detriment of desired land use patterns and transportation alternatives, and frequently prevents the attainment of important growth management goals.

(b) The Legislature determines that the state shall evaluate and consider the implementation of a mobility fee. The mobility fee should be designed to provide for mobility needs, ensure that all development provides mitigation for its impacts on the transportation system in approximate proportionality to

those impacts, fairly distribute financial burdens, and promote compact, mixed-use, and energy efficient development.

(2) The state land planning agency and the Department of Transportation shall continue their current mobility fee studies and submit to the President of the Senate and the Speaker of the House of Representatives joint reports no later than December 1, 2009.

Section 7. (1) Except as provided in subsection (4), and in recognition of the 2009 real estate market conditions, any permit issued by the Department of Environmental Protection, any permit issued by a water management district under part IV of chapter 373, Florida Statutes, any development order issued by the Department of Community Affairs pursuant to s. 380.06, Florida Statutes, and any development order, building permit, or other land use approval issued by a local government which expired or will expire on or after September 1, 2008, but before September 1, 2011, is extended and renewed for a period of 2 years after its date of expiration. For development orders and land use approvals, including, but not limited to, certificates of concurrency and development agreements, this extension also includes phase, commencement, and buildout dates, including any buildout date extension previously granted under s. 380.06(19)(c), Florida Statutes. This subsection does not prohibit conversion from the construction phase to the operation phase upon completion of construction for combined construction and operation permits.

(2) The completion date for any required mitigation associated with a phased construction project shall be extended and renewed so that mitigation takes place in the same timeframe

relative to the phase as originally permitted.

(3) The holder of an agency or district permit, or a development order, building permit, or other land use approval issued by a local government which is eligible for the 2-year extension shall notify the authorizing agency in writing no later than September 30, 2010, identifying the specific authorization for which the holder intends to use the extended or renewed permit, order, or approval.

(4) The extensions and renewals provided for in subsection (1) do not apply to:

(a) A permit or other authorization under any programmatic or regional general permit issued by the United States Army Corps of Engineers.

(b) An agency or district permit or a development order, building permit, or other land use approval issued by a local government and held by an owner or operator determined to be in significant noncompliance with the conditions of the permit, order, or approval as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency.

(5) Permits, development orders, and other land use approvals that are extended and renewed under this section shall continue to be governed by rules in effect at the time the permit, order, or approval was issued. This subsection applies to any modification of the plans, terms, and conditions of such permit, development order, or other land use approval which lessens the environmental impact, except that any such modification does not extend the permit, order, or other land

use approval beyond the 2 years authorized under subsection (1).

Section 8. The Legislature finds that this act fulfills an important state interest.

Section 9. This act shall take effect upon becoming a law.