The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL:	CS/SB 1742
INTRODUCER:	Community Affairs Committee and Senator Bennett
SUBJECT:	Growth Management
DATE:	March 4, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Fav/CS**
2.			TR	
3.			WPSC	
4.				
5.				
6.				

I. Summary:

This Committee Substitute (CS):

- Creates a definition of "transit oriented development."
- Gives comprehensive plan amendments related to transportation concurrency exception areas expedited review and an exemption from the twice a year limitation on plan amendments.
- Requires proportionate-share contributions that include trips from an earlier phase of development to credit mitigation done in the earlier phase and adjust for the time value of money.
- Provides for cost sharing among jurisdictions for mitigation for transportation concurrency. Disputes will be resolved through the Chapter 164 dispute resolution process.
- Allows transit oriented developments and large land owners to require local governments to designate transportation backlog areas.
- States that local governments may only impose proportionate-share, proportionate fair-share, and impact fees on new development within a transportation concurrency backlog area.
- Exempts transit oriented development from the transportation requirements of the development of regional impact process.
- Provides a statement of important state interest.

This CS substantially amends sections 163.3164, 163.3180, and 163.3182 of the Florida Statutes.

II. Present Situation:

Growth Management

Adopted by the 1985 Legislature, the Local Government Comprehensive Planning and Land Development Regulation Act[1] - also known as Florida's Growth Management Act - requires all of Florida's 67 counties and 410 municipalities to adopt Local Government Comprehensive Plans that guide future growth and development. Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements. A key component of the Act is its "concurrency" provision that requires infrastructure facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Community Affairs (DCA).

Section 163.3161, F.S., lays out the intent and purpose of the Local Government Comprehensive Planning and Land Development Regulation Act, but the Act is implemented throughout Chapter 163, Part II, F.S. Specifically, s. 163.3161, F.S., of law states that it is the intent of the Legislature to:

- utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and control future development.
- preserve and enhance present advantages of local governments; encourage the most appropriate use of land, water, and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within their jurisdictions.
- preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; prevent the overcrowding of land and avoid undue concentration of population; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions.
- encourage and assure cooperation between and among municipalities and counties and to encourage and assure coordination of planning and development activities of units of local government with the planning activities of regional agencies and state government in accord with applicable provisions of law.
- give adopted comprehensive plans the legal status set out in this act and no public or private development is permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.
- direct units of local government in the preparation and adoption of comprehensive plans, or elements to be conducted in conformity with the provisions of this act.
- make the provisions of the act minimum requirements necessary to accomplish intent, purposes, and objectives of the act; to protect human, environmental, social, and economic resources; and to maintain, through orderly growth and development, the character and stability of present and future land use and development in this state.

[1] *See* Chapter 163, Part II, F.S.

- reconfirm that the act provides the necessary statutory direction and basis for municipal and county officials to carry out their comprehensive planning and land development regulation powers, duties, and responsibilities.
- respect private property rights. Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking, as provided by law. Any such relief must be determined in a judicial action.

Transportation Concurrency

The Growth Management Act of 1985 required local governments to use a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place to support the growth. Transportation concurrency is a growth management strategy aimed at ensuring transportation facilities and services are available "concurrent" with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. The Florida Department of Transportation (FDOT) is responsible for establishing level-of-service standards on the highway component of the strategic intermodal system (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 1992, Transportation Concurrency Management Areas (TCMA) were authorized, allowing an area-wide 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.

In 2009, Senate Bill 360, also known as the Community Renewal Act, made certain local governments automatic transportation concurrency exception areas.[2] The goals of the Legislature were to stimulate economic development and to reduce the unintended consequences that the transportation concurrency system created. The Department of Community Affairs interpreted the change as removing state-mandated transportation concurrency within the specified jurisdictions while preserving transportation concurrency ordinances and the transportation concurrency provisions the local governments had already adopted into their comprehensive plans. The Department no longer has the authority to review plan amendments in the transportation concurrency exception area for compliance with state-mandated transportation

[2] These areas are municipalities that are designated as dense urban land areas and the urban service area of counties designated as dense urban land areas. Section 163.3164, F.S., defines "dense urban land area" as (1) "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;" (2) "A county, including the municipalities located therein, which has an average of at least 1,000 people per square mile of land area; or" (3) "A county, including the municipalities located therein, which has a population of at least 1 million."

concurrency requirements, including the "achieve and maintain"[3] standard. The Department continues to review plan amendments in transportation concurrency exception areas for compliance with all other state-mandated planning requirements in Chapter 163, Part II, Florida Statutes, and Chapter 9J-5, Florida Administrative Code, including other transportation planning requirements and internal consistency.[4]

Senate Bill 360 requires local governments to amend their comprehensive plans within two years of becoming a transportation concurrency exception area to address land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. Several local governments have challenged the constitutionality of SB 360. While some local governments have amended their comprehensive plans to remove or revise transportation practices, some jurisdictions are reluctant to act because of uncertainty regarding the lawsuit and future actions of the Legislature or because they prefer the existing transportation concurrency system. In those jurisdictions, under the Department's interpretation of Senate Bill 360, transportation concurrency continues through local comprehensive plans and ordinances despite the fact that the jurisdiction is officially exempt from state-mandated concurrency.

The Transportation Impact Assessment Process

For the purposes of assessing the degree to which land development projects affect the transportation system, the FDOT and local governments estimate and quantify the specific transportation-related impacts of a development proposal, on the surrounding transportation network. The basic process consists of the following components:

1. *Existing Conditions* of the physical characteristics of the transportation system and traffic operating conditions of roadways and intersections are identified using level of service (LOS) guidelines and standards or other accepted techniques and the latest traffic volume counts.
2. *Background traffic, i.e.*, the expected increase in traffic from other development, is estimated for future years. Background traffic is manually determined using a trend of historical volumes or a travel demand forecasting model.
3. The *Trip Generation* step estimates the amount of travel associated with the proposed land use. A trip is defined as "a single or one-direction vehicle movement with either the origin or destination inside the study site"[5]. Due to a mix of land uses contained within a development, some trips may be made between land uses within the development. This interaction is referred to as internal capture and is expressed as a rate (percentage of trips that occurs within the site).
4. Once the amount of travel associated with a land use is determined in trip generation, *Trip Distribution* is performed to allocate these trips to origin and destination land uses and areas external to the site. Pass-by trips are then estimated. Pass-by trips are external to the development but are already on the transportation system (i.e., not new trips on the

[3] *See* 163.3177(3)(f), F.S. ("A local government's comprehensive plan and plan amendments for land uses within all transportation concurrency exception areas that are designated and maintained in accordance with s. 163.3180(5) shall be deemed to meet the requirement to achieve and maintain level-of-service standards for transportation.").

[4] *See generally* DEPARTMENT OF COMMUNITY AFFAIRS, NOTICE TO LOCAL GOVERNMENTS OF TRANSPORTATION PLANNING OPTIONS UNDER SENATE BILL 360 FOR TRANSPORTATION CONCURRENCY EXCEPTION AREAS IN DENSE URBAN LAND AREAS, *available at* http://www.dca.state.fl.us/fdcp/dcp/Legislation/2009/NoticeToLocalGovernments.pdf.

[5] "Trip Generation Handbook, 2nd Edition, An ITE Recommended Practice", Institute of Transportation Engineers.

roadway). These trips enter the site as an intermediate stop *e.g.*, stopping at the grocery store on the way home from work. Trips are then assigned to the transportation system manually or using a model.

5. Analysis of *Future Conditions* assesses the impacts of the development-generated traffic on the transportation system using the LOS guidelines and standards. If the development causes the LOS on a roadway to be unacceptable or is a significant portion of the traffic on a roadway with an existing unacceptable LOS, the effects of the traffic impacts are required to be mitigated through physical or operational improvements, travel demand management strategies, fair-share contributions, or a combination of these and other strategies.
6. Finally, if a *Mitigation Analysis* is required, it includes an improvement plan that identifies a specific phasing of projects and level of project development which may be permitted before system improvements are necessary. This plan also identifies the responsible party or agency for implementing the improvements.

Backlog

Sections 163.3180 and 163.3182, F.S., govern transportation concurrency backlogs. Section 162.3180(12)(b) and (16)(i) define backlog as "a facility or facilities on which the adopted level-of-service standard is exceeded by the existing trips, plus additional projected background trips from any source other than the development project under review that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review." In s. 163.3182, F.S., transportation concurrency backlog is defined as a deficiency where the existing extent of traffic volume exceeds the level-of-service standard adopted in a local government comprehensive plan for a transportation authority.[6]

A county or municipality with an identified transportation concurrency backlog can create a transportation concurrency backlog authority. The local government's governing board serves as the authority's membership. The authority is tasked with developing and implementing a plan to eliminate all backlogs within its jurisdiction. The plan must identify all roads designated as failing to meet concurrency requirements and include a schedule for financing and construction to eliminate the backlog within 10 years of plan adoption. The plan is not subject to the twice-per-year restrictions on comprehensive plan amendments. To fund the plan's implementation, each authority must collect and earmark, in a trust fund, tax increment funds equal to 25% of the difference between the ad valorem taxes collected in a given year and the ad valorem taxes which would have been collected using the same rate in effect when the authority is created. Upon adoption of the transportation concurrency backlog plan, all backlogs within the jurisdiction are deemed financed and fully financially feasible for purposes of calculating transportation concurrency and a landowner may proceed with development (if all other requirements are met) and no proportionate share or impact fees for backlogs may be assessed. The authority is dissolved upon completion of all backlogs.

[6] Section 163.3182(1)(d), F.S.

Proportionate Fair-Share Mitigation
Proportionate fair-share mitigation is a method for mitigating the impacts of development on transportation facilities through the cooperative efforts of the public and private sectors. 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 a 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 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.[7] Multi-use developments contain a mix of land uses and multi-use 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.

Impact Fees
Impact fees are a total or partial payment to counties, municipalities, special districts, and school districts for the cost of additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources and the local government's determination to charge the full cost of the fee's earmarked purposes.

Alternative State Review Process
In 2007, the Legislature created a pilot program to provide an alternate, expedited process for plan amendments with limited state agency review. Pilot communities transmit plan amendments, along with supporting data and analyses to specified state agencies and local governmental entities after the first public hearing on the plan amendment. Comments from state agencies may include technical guidance on issues of agency jurisdiction as it relates to ch. 163, part II, F.S., the Growth Management Act. Comments are due back to the local government proposing the plan amendment within 30 days of receipt of the amendment.

Following a second public hearing that shall be an adoption hearing on the plan amendment, the local government transmits the amendment with supporting data and analyses to DCA and any

[7] Section 380.06(1), F.S.

other state agency or local government that provided timely comments. An affected person, as defined in s. 163.3184(1)(a), F.S., or DCA may challenge a plan amendment adopted by a pilot community within 30 days after adoption of the amendment. DCA's challenge is limited to those issues raised in the comments by the reviewing agencies, but the statute encourages the DCA to focus its challenges on issues of regional or statewide importance. DCA does not issue a report detailing its objections, recommendations, and comments. The alternative state review process shortens statutorily prescribed timeline for comprehensive plan amendments process from 136 days to 65 days.

Transit Oriented Development

The Florida Departments of Transportation and Community Affairs are developing transit oriented development design guidelines to provide general parameters and strategies to local governments and agencies to promote and implement 'transit ready' development patterns.[8] They have held workshops throughout the state in an effort to define transit oriented development. They plan to issue some preliminary findings in April. The departments are in the process of entering into contracts to further develop policies governing transit oriented development over the next two years. This process has involved a substantial amount of agency resources.

III. Effect of Proposed Changes:

Section 1 of the CS amends s. 163.3164, F.S., to define transit oriented development as a project or projects in areas that may be served by existing or anticipated transit service and are compact, mixed-use, interconnected, pedestrian and bicycle friendly communities designed to reduce per capita greenhouse gas emissions and vehicular trips and include the densities, intensities, and amenities needed to support frequent transit service on identified or dedicated transit facilities that enable an individual to live, work, play, and shop in a community without the need to rely solely on a motor vehicle for mobility.

Section 2 amends s. 163.3180, F.S., to give comprehensive plan amendments that implement transportation concurrency exception areas an exemption from the twice a year limitation on plan amendments and allow them to use the alternative state review process.

The CS modifies the existing provisions related to how proportionate-share is calculated. The new language states that if the number of trips used to calculate the proportionate-share contribution includes trips from an earlier phase of development, the present value of the mitigation provided in the earlier phase of development shall be taken into consideration when calculating the required mitigation or proportionate-share of the subsequent phase. The new language defines present value as "the fair market value of a right-of-way at the time of contribution and, if applicable, the actual dollar value of the construction improvements on the date of completion as adjusted by the Consumer Price Index."

The CS provides that costs of mitigation for transportation impact shall be distributed to all affected jurisdictions by the local government having jurisdiction over project or development approval. Distribution shall be proportionate to the percentage of the total transportation

[8] FLORIDA DEPARTMENT OF TRANSPORTATION, TRANSIT ORIENTED DEVELOPMENT, *available at* http://www.floridatod.com/docs/Products/TODGuide041409.pdf.

mitigation costs incurred by an affected jurisdiction. Any dispute between jurisdictions shall be resolved pursuant to the governmental dispute process in Chapter 164.

Section 3 of the CS amends s. 163.3182, F.S., to require local governments to create transportation concurrency backlog authorities on request of a landowner or developer in a transit oriented development or a large landowner or developer under certain circumstances. Landowners or developers within a large-scale development area of 500 cumulative acres or more may request the local government create a transportation concurrency backlog authority for roadways significantly affected by traffic from the development if those roadways are or will be backlogged. If a development permit is issued or a comprehensive plan amendment is approved within the development area, the local government must designate the area as a transportation concurrency backlog area if the funding is sufficient to address one or more transportation improvements necessary to satisfy the additional deficiencies coexisting or anticipated to occur concurrent with the new development. New development is expected to pay for its own impacts. The transportation concurrency backlog area shall be created by ordinance and shall be used to satisfy all proportionate-share or proportionate fair-share contributions of the development not otherwise satisfied by impact fees. The local government shall manage the area acting as a transportation concurrency backlog authority and all applicable provisions of this section apply, except the tax increment levied pursuant to s. 163.3182(5), F.S., shall be used to satisfy transportation concurrency requirements not otherwise satisfied by impact fees.

Section 4 amends s. 380.06(24), F.S., to exempt transit oriented development for review of their transportation impacts under the DRI process. These exemptions do not apply within areas of critical state concern, within the Wekiva Study Area, or within 2 miles of the boundary of the Everglades Protection Area.

Section 5 provides a finding of important state interest.

Section 6 of the CS provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this CS requires cities and counties to expend funds to develop and fund transportation concurrency backlog areas, the provisions of Section 18(a) of Article VII of the Florida Constitution may apply. If the CS is determined to have more than an insignificant fiscal impact, then none of the constitutional exceptions or exemptions apply. Therefore, the CS would require a two-thirds vote of the membership of each house of the Legislature and a finding of important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The large landowners or developments within transit oriented developments may require the local government to divert some of its tax increment financing to pay for roads in the backlog authority area. Improved roads should help increase the value of these developments.

C. Government Sector Impact:

It also requires local governments to create transportation concurrency backlog areas if (1) petitioned by a large landowner/developer or a developer within a transit oriented development that (2) received either a development permit or a comprehensive plan amendment. A transportation backlog authority has a number of planning requirements and must create a backlog trust fund area financed through a tax increment from ad valorem taxes in the transportation backlog area. This effectively removes a local government's ability to use other cures currently in use (e.g., TCEAs) and compels local governments to spend their ad valorem revenue prescriptively (i.e., on backlogged roads) rather than on other locally-identified priorities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 4, 2010:
New provisions:

- Creates a definition of "transit oriented development."
- Gives comprehensive plan amendments related to transportation concurrency exception areas expedited review and an exemption from the twice a year limitation on plan amendments.
- Creates a provision that provides for cost sharing among jurisdictions for mitigation for transportation concurrency. Disputes will be resolved through the Chapter 164 dispute resolution process.
- Allows transit oriented developments to require local governments to designate transportation backlog areas.

- Exempts transit oriented development from the transportation requirements of the development of regional impact process.
- Provides a statement of important state interest.

Deletes the following provisions from the bill:

- Expands provisions that currently govern long-term transportation and school concurrency management systems to apply not only to backlogged areas affecting current development but also backlogged areas where development has been "previously approved."
- Makes any local ordinances relating to transportation concurrency ineffective within state designated transportation concurrency exception areas.
- States that s. 163.3161, F.S., (stating the legislative intent for the Local Government Comprehensive Planning and Land Development Regulation Act) does not apply within state created transportation concurrency exception areas.
- States that local governments that are "dense urban land areas" and local governments that are not "dense urban land areas" can enter into interlocal agreements for sharing funds collected for transportation impacts.
- States that development orders must still be processed even if funds are insufficient to construct a transportation improvement required by the local government's concurrency management system to support the new development.

B. Amendments:

None.