

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 319 Community Transportation Projects

SPONSOR(S): Transportation and Highway Safety Subcommittee; Economic Development & Tourism Subcommittee; Ray

TIED BILLS: **IDEN./SIM. BILLS:** 972

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N, As CS	Flegiel	West
2) Transportation & Highway Safety Subcommittee	12 Y, 1 N, As CS	Flegiel	Miller
3) Economic Affairs Committee	16 Y, 0 N, As CS	Flegiel	Creamer

SUMMARY ANALYSIS

Transportation concurrency is a growth management strategy aimed at ensuring transportation facilities and services are available concurrent with the impacts of development. Implementing transportation concurrency is optional for local governments. Local governments that choose to implement transportation concurrency are required to follow the guidelines set forth in s. 163.3180, F.S. The guidelines dictate standards local governments must follow when setting level of service (LOS) standards and proportionate share contributions.

Local governments may implement development regulations similar to transportation concurrency, such as mobility plans. By implementing these similar but not identical mobility funding systems, local governments have chosen to opt out of the transportation concurrency guidelines provided for in s. 163.3180, F.S.

CS/HB 319 requires any local government implementing an alternative mobility funding system to follow the same general principles as local governments implementing transportation concurrency. Alternative funding systems must provide a means for new development to pay for its impacts and proceed with development. If an alternative funding system is not mobility fee based, it may not require new developments to pay for existing transportation deficiencies.

The bill allows local governments to pool contributions from multiple applicants toward one planned facility improvement and clarifies when s. 163.3180(5)(h), F.S., applies to local governments implementing transportation concurrency or development agreements. The bill also provides that an applicant may satisfy concurrency requirements by making a good faith offer to enter into a binding agreement and requires local governments to provide the basis upon which landowners will be assessed a proportionate share of costs.

This bill does not appear to have a fiscal impact on state or local funds.

The bill will take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Transportation Concurrency

Transportation concurrency is a growth management strategy aimed at ensuring that transportation facilities and services are available concurrent with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate LOS for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. If adequate capacity is not available, then the developer must provide the necessary improvements, provide monetary contribution toward the improvements, or wait until government provides the necessary improvements.¹

Level of Service

Level of service (LOS) is a technical measure of the quality of service provided by a roadway. LOS is graded on an A through F scale based on the average arterial speed of a roadway. An uncongested roadway with a high average arterial speed will receive an A, while a congested roadway with a low average arterial speed will receive an F.² Local governments, in conjunction with the Florida Department of Transportation (FDOT), are responsible for setting LOS standards for roadways.³

Proportionate Share

Proportionate share is the amount of money a developer must contribute to mitigate the transportation impacts of a new development. Proportionate share contributions are triggered when a new development will cause a decrease in the LOS grade below a set standard. When a proportionate share contribution is triggered, a developer must, at minimum, contribute money toward one or several mobility improvements. However, developers are only required to contribute toward deficiencies they create, and are not required to correct existing deficiencies.⁴

Transportation Concurrency in Florida

Florida adopted the concept of transportation concurrency with the passage of the 1985 Growth Management Act. Since adoption, the legislature has frequently revisited the concept of transportation concurrency, most recently making substantial changes to s. 163.3180, F.S., in 2005, 2007, 2009 and 2011.⁵

Transportation concurrency in urban areas is often more costly and functionally difficult than in non-urban areas.⁶ As a result, transportation concurrency can result in urban sprawl and the

¹ Fla. Dep't of Comty. Affairs, *Transportation Concurrency: Best Practices Guide* pg. 5 (2007), retrieved from www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (3/11/2013).

² *Id.* at 53.

³ Fl. Stat. 163.3180(5)(b) (2012).

⁴ Fl. Stat. 163.3180(5)(h) (2012).

⁵ See L.O.F. s. 5, ch. 2005-290 (Providing requirements for proportionate share mitigation), s. 11, ch. 2007-196 (Authorizing study on multimodal districts, providing for concurrency backlog an satisfaction of concurrency requirements), s. 3, ch. 2007-204 (provides exception from concurrency for airports and urban service area, revises transportation concurrency exceptions for multiuse Developments of Regional Impact (DRIs), Revises proportionate share, provides requirements for proportionate share mitigation and fair-share), s. 5, ch. 2009-85 (provides definition for backlog, provides legislative findings and declarations on backlog, adds provisions on debt incurred from transportation concurrency backlog projects, requires funding of backlog trust funds), s. 4, ch. 2009-96 (revises concurrency requirements, deletes requirements for concurrency exception areas, requires the Office of Program Policy Analysis & Governmental Accountability (OPPAGA) to submit report to legislature concerning the effects of transportation exception areas, revises requirements for impact fees), s. 4, ch. 2011-14 (reenacts s. 163.3180(5), (10), (13)(b) and (e), relating to concurrency requirements for transportation facilities), s. 15, ch. 2011-139 (revises and provides provisions related to concurrency, revises application and findings, revises local government requirements, provides for urban infill, redevelopment, downtown revitalization, provides for DRIs, revises provisions relating to transportation deficiency plans).

⁶ *Transportation Concurrency: Best Practices Guide* at 11.

discouragement of development in urban areas, in direct conflict with the general goals and policies of part II, ch. 163, F.S. Also, transportation concurrency can prevent the implementation of viable forms of alternative transit.⁷

Additionally, the frequent changes to transportation concurrency requirements have affected local governments in different ways. In some cases, the changes have provided more flexibility, less state oversight and created more planning tools for local governments, but in other cases, the changes created solutions that were inflexible and unworkable for all but a few local governments, with many local governments having difficulty implementing a transportation concurrency system or local governments implementing highly inconsistent policies.⁸

Recent legislative changes to transportation concurrency have sought to address these problems. In 2011, the Legislature passed the Community Planning Act, which made comprehensive changes to growth management regulation in Florida. As part of the act, the Legislature overhauled transportation concurrency and made it optional for local governments.⁹ The act also gave local governments the option of adopting alternative mobility funding systems.¹⁰

Local governments choosing to implement transportation concurrency must still follow established guidelines related to LOS standards and proportionate share contributions.¹¹ However, local governments that implement alternative mobility funding systems similar to concurrency, but not under the auspices of s. 163.3180, F.S., are not required to follow the LOS and proportionate share guidelines established by s. 163.3180, F.S.

Effect of Proposed Changes

CS/HB 319 amends s. 163.3180(5), F.S., by placing new requirements on local governments that implement alternative mobility funding systems. The bill requires these alternative systems to allow developers to “pay and go” for new development. Under the bill, once a developer pays for its identified transportation impacts, the local government must allow the development process to move forward. The bill encourages local governments without a transportation concurrency funding system to implement an alternative mobility funding system.

The bill prohibits alternative mobility funding systems that are not mobility fee based from requiring developers to pay for existing transportation deficiencies. Local governments must apply revenue they collect from alternative funding systems to implement the needs upon which the revenue collection was based and mobility fees must comply with the dual rationale nexus test. Under the dual rationale nexus test, a court will find an impact fee reasonable if: 1) it offsets needs that are sufficiently attributable to the new development and 2) the fees collected are adequately earmarked for the benefit of the residents of the new development.¹²

The bill makes the following changes to transportation concurrency mechanisms:

- Allows developers to satisfy the transportation concurrency requirements of a local comprehensive plan by making a good faith offer to enter a binding agreement to pay for or construct its proportionate share of impacts.
- Allows local government to pool contributions from multiple applicants to apply toward one regionally significant transportation facility.
- Requires local governments to provide the basis upon which landowners will be assessed a proportionate share of cost addressing the transportation impacts from a proposed development.

⁷ *Id.* at 10.

⁸ *Id.* at 10-12.

⁹ L.O.F. s. 15, ch. 2011-139, “The 2011 Community Planning Act.”

¹⁰ *Id.*

¹¹ Fl. Stat. s. 163.3180(5) (2012).

¹² *Hollywood, Inc. v. Broward Cnty.*, 431 So. 2d 606, 611 (Fla. 4th DCA 1983).

- Clarifies s. 163.3180(5)(h), F.S., applies to local governments that continue to implement transportation concurrency.
- Clarifies when local governments are not required to approve new development.

The bill will take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends. 163.3180(5)(h), F.S., to clarify when the sub-section applies; provides for development agreements; allows applicants to satisfy concurrency requirements by making a good faith offer; allows local governments to pool contributions from multiple applicants; requires local governments to provide the basis for certain costs; encourages local governments to adopt an alternative funding systems and prohibits alternative systems from delaying the application process under certain circumstances; restricts where revenue generated from a funding mechanism may be applied; requires mobility fees to comply with the dual rational nexus test; and prohibits alternative systems from holding new developments responsible for existing impacts.

Section 2: Provides that the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

CS/HB 319 may reduce required contributions from developers for new developments in certain local government jurisdictions and could reduce delays for developer projects.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13th, 2013, the House Economic Development and Tourism Subcommittee adopted a strike-all amendment and passed the bill as a CS. The CS differs from the original bill as follows:

- Removes definition of mobility plan.
- Removes language applying transportation concurrency requirements to level of service based systems and mobility fee based systems.
- Removes prohibition on calculating proportionate share contributions based on mass transit operation or maintenance.
- Removes jurisdictional expansion of transportation development authorities.
- Removes modification of voting districts for the Board of Supervisors.
- Clarifies that 163.3180(5)(h), F.S., applies only to local governments that continue to implement a transportation concurrency plan.
- Provides for development agreements.
- Clarifies when applicants may satisfy concurrency requirements.
- Allows local governments to pool contributions from multiple applicants.
- Requires local governments to provide the basis upon which landowners will be assessed certain costs.
- Encourages local governments without transportation concurrency to adopt an alternative funding system.
- Clarifies that a developer may “pay and go” for its impacts.
- Requires revenue generated from a funding system to be applied to implement the needs upon which the revenue is based.
- Requires mobility fees to comply with the dual rational nexus test
- Prohibits alternative systems from holding new developments responsible for existing impacts.

The analysis has been updated to reflect the strike all amendment.

On March 20th, 2013, the House Transportation and Highway Safety Subcommittee adopted two minor technical amendments and passed the bill as a CS. The CS differs from CS/HB 319 as follows:

- Clarifies when local governments are not required to approve new development.

- Clarifies that the alternative system referenced in paragraph (i) is an alternative mobility funding system.

The analysis has been updated to reflect the two amendments incorporated in CS/CS/HB 319.

On March 28th, 2013, the House Economic Affairs Committee adopted one technical amendment and passed the bill as a CS. The CS differs from CS/CS/HB 319 as follows:

- Further clarifies when local governments are not required to approve new development.

The analysis has been updated to reflect the one amendment incorporated into CS/CS/CS/HB 319.