

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 321 Community Development

**SPONSOR(S):** Economic Affairs Committee; Finance & Tax Subcommittee; Economic Development & Tourism Subcommittee; La Rosa

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	9 Y, 2 N, As CS	Flegiel	West
2) Finance & Tax Subcommittee	14 Y, 2 N, As CS	Aldridge	Langston
3) Economic Affairs Committee	9 Y, 4 N, As CS	Flegiel	Creamer

### SUMMARY ANALYSIS

Impact fees, "proportionate share," and "concurrency" are tools local governments use to manage growth and provide adequate facilities like sewer, water, parks, roads and schools to citizens. CS/CS/HB 321 exempts certain new development from having to comply with impact fee, concurrency or proportionate share requirements for transportation impacts for three years. The exemption lasts from July 1, 2013, through June 30, 2016. The exemption window will not apply to a new development if it is revoked by a majority vote of the local government's governing authority, alters a local government's financing contracts or bonds, or the developer elects to not have the exemption applied.

The Revenue Estimating Conference has not estimated the potential impact of the bill. Staff estimates that there will be a negative indeterminate impact on local government revenues.

The bill provides an effective date of July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Concurrency and Proportionate Share

Concurrency requires public facilities and services to be available concurrent with the impacts of new development. Concurrency in Florida is required for sanitary sewer, solid waste, drainage, and potable water.<sup>1</sup> Concurrency was formerly required for transportation, schools, and parks and recreation, but in 2011 the Legislature made concurrency for these facilities optional with the passage of the Community Planning Act.<sup>2</sup> Many local governments continue to exercise the option to impose concurrency on transportation and school facilities.

Concurrency is tied to provisions requiring local governments to adopt level-of-service (LOS) standards, address existing deficiencies, and provide infrastructure to accommodate new growth reflected in the comprehensive plan.<sup>3</sup> Local governments are charged with setting LOS standards within their jurisdiction, and if the LOS standards are not met, development permits may not be issued without an applicable exception.

Proportionate share is a tool local governments may use to require developers to help mitigate the impacts of their development. Proportionate share requires developers to contribute to or build facilities necessary to offset a new development's impacts.<sup>4</sup> The State provides specific formulas local governments must use when calculating proportionate share and specify criteria for when developers have satisfied proportionate share. Local governments may require proportionate share contributions from developers for both transportation and school impacts.<sup>5</sup>

Chapter 2011-139, Laws of Florida, the Community Planning Act (Act), enacted fundamental changes to growth management, including the statutory requirements for transportation concurrency and the calculation of proportionate share contributions. Most notably, the Act made transportation concurrency optional. If local governments elect to retain transportation concurrency, then their comprehensive plans must comply with the requirements included in s. 163.3180(5), F.S.

According to the Florida Department of Transportation, as of January 2013, nineteen local governments in Florida had rescinded transportation concurrency. In several instances, these local governments replaced transportation concurrency with alternative transportation mitigation strategies such as mobility fees.

##### Impact Fees

Impact fees are enacted by local home rule ordinance. These fees require 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.

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<sup>1</sup> 163.3180(1), F.S. (2012)

<sup>2</sup> L.O.F. s. 15, ch. 2011-139, "The Community Planning Act."

<sup>3</sup> Id.

<sup>4</sup> Fla. Dep't of Comty. Affairs, Transportation Concurrency: Best Practices Guide pg. 64 (2007), retrieved from [www.cutr.usf.edu/pdf/DCA\\_TCBP%20Guide.pdf](http://www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf) (3/11/2013).

<sup>5</sup> 163.3180(5), F.S., and 163.3180(6), F.S. (2012).

The legislature has found that impact fees are an important source of revenue for local governments to use in funding the infrastructure necessitated by growth. Due to the growth of impact fee collections and local governments' reliance on impact fees, the legislature imposes minimum standards local governments must comply with when adopting impact fees.<sup>6</sup>

At minimum, an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must:

- Require that the calculation of the impact fee be based on the most recent and localized data.
- Provide for accounting and reporting of impact fee collections and expenditures. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity shall account for the revenues and expenditures of such impact fee in a separate accounting fund.
- Limit administrative charges for the collection of impact fees to actual costs.
- Require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee. A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.<sup>7</sup>

In 2009, HB 227 amended s. 163.31801, F.S., to codify the burden of proof for impact fee ordinance challenges.<sup>8</sup> Subsequently, several cities and counties and the Florida Association of Counties sued the Florida House and Senate claiming the bill was unconstitutional. One of the arguments raised by the plaintiffs was that the bill was an unconstitutional mandate.<sup>9</sup> As a result of the litigation, the legislature revisited the same bill in 2011, passing it as SB 410 with a vote of over two-thirds of both chambers to insure the constitutionality of the bill.<sup>10</sup>

According to the 2012 National Impact Fee Survey,<sup>11</sup> 58 Florida jurisdictions have impact fees in place. The same source indicates that 41 of Florida's 67 counties had enacted impact fees which cover a variety of facilities (roads, water, wastewater, school, etc.) It should be noted that at least 17 counties had voluntarily suspended the collection of impact fees at the time of the survey. Of the counties presently suspending impact fees eight are rural or designated Rural Areas of Critical Economic Concern.

### **Effect of Proposed Changes**

The bill creates a three year window exempting certain new development from satisfying transportation concurrency requirements and contributing to its corresponding proportionate share. The bill also exempts certain transportation impact fees from being imposed on new development.

The exemption window will apply to any new business development beginning on or after July 1, 2013, and before July 1, 2016. To qualify for the exemption, the development must be a new business development under 6,001 square feet in size and receive a certificate of occupancy by July 1, 2017.

The exemption window will not apply to a new development if it: is located in within the jurisdiction of a local government with a mobility fee-based funding system, is revoked by a majority vote of the local

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<sup>6</sup> S. 163.31801, F.S. (2012), the "Florida Impact Fee Act." Adopted by the legislature in 2006. s. 9, 2006-218, L.O.F.

<sup>7</sup> S. 163.31801(3), F.S. (2012).

<sup>8</sup> 2009-49, L.O.F.

<sup>9</sup> *Alachua County v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. 2010).

<sup>10</sup> 2011-149, L.O.F.

<sup>11</sup> Available at: [www.impactfees.com/publications%20pdf/2012\\_survey.pdf](http://www.impactfees.com/publications%20pdf/2012_survey.pdf).

government's governing authority, alters a local government's financing contracts or bonds, or the developer elects to not have the exemption applied.

**B. SECTION DIRECTORY:**

**Section 1:** Creates subsection (7) in s. 163.3180, F.S., to provide that a local government may not apply transportation concurrency or require proportionate-share contribution or construction for new development before July 1, 2016 unless authorized by a majority vote of the local government's governing authority; provides exceptions for existing developments; requires certification for occupancy by July 1, 2017 to maintain exemption; provides certain requirements for new development to qualify; provides exceptions; provides that the subsection expires on July 1, 2017.

**Section 2:** Creates subsection (6) in s. 163.31801, F.S., to prohibit local governments from imposing impact fees on new development until July 1, 2016 unless authorized by a majority vote of the local government's governing authority; provides exceptions for existing developments; requires certification for occupancy by July 1, 2017 to maintain exemption; provides that the subsection expires on July 1, 2017.

**Section 3:** Provides an effective date of July 1, 2013.

**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:

May impact the ability of some local governments to collect impact fees and proportionate share contributions from developers.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

May lower or eliminate certain fees imposed on some types of development for three year period.

**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 19<sup>th</sup>, 2013, the 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 the exemption from school concurrency requirements.
- Narrows the exemption to apply only to new business development, and not residential development.
- Narrows the size of new business development qualifying for the exemption from 10,000 square feet or less to 6,000 square feet or less.
- Changes the voting procedure for local governments to overturn the exemption from requiring a two-thirds vote to a majority vote.

On April 3, 2013, the Finance and Tax Subcommittee adopted an amendment that added a provision expanding the authority of counties to lease certain professional sports franchise facilities to include ancillary commercial development located on property that is part of or contiguous to the professional sports franchise facility.

On April 16, 2013, the Economic Affairs Committee adopted three amendments and passed the bill as CS/CS/CS/HB 321. The CS differs from CS/CS/HB 321 as follows:

- Removes provision expanding the authority of counties to lease certain professional sports franchise facilities to include ancillary commercial development located on property that is part of or contiguous to the professional sports franchise facility.
- Clarifies that provisions that prohibit concurrency and proportionate share contributions do not apply to local governments with mobility fee-based funding systems.
- Clarifies that exemption window for impact fees only applies to new business development of 6,000 sq. ft. in size or less. The analysis has been updated to reflect the amendment.

The analysis has been updated to reflect the amendments.