

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 706

INTRODUCER: Senator Perry

SUBJECT: School Concurrency

DATE: January 24, 2022

REVISED: \_\_\_\_\_

| ANALYST    | STAFF DIRECTOR | REFERENCE | ACTION             |
|------------|----------------|-----------|--------------------|
| 1. Hackett | Ryon           | CA        | <b>Pre-meeting</b> |
| 2. _____   | _____          | ED        | _____              |
| 3. _____   | _____          | RC        | _____              |

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**I. Summary:**

SB 706 concerns school concurrency, the process by which local governments ensure school capacity is not outpaced by population increase created by development. Concurrency requirements are local laws stating that certain infrastructure must be in place and available to serve new development before the local government may allow new citizens to live in the new development.

The bill requires that all local governments that apply school concurrency must do so on a districtwide basis. The bill further provides that school concurrency is satisfied if the developer in good faith offers to execute, rather than actually executes, a commitment to provide mitigation proportionate to the demand created by the development.

The bill also provides that such mitigation paid by a developer, rather than being immediately directed toward a school capacity improvement, may be set aside and not spent until an appropriate improvement is identified.

The bill takes effect July 1, 2022.

**II. Present Situation:**

**Concurrency**

“Concurrency” is a phrase referring to a set of land use regulations requiring local governments to ensure that new development does not outstrip a local government’s ability to provide necessary services. Developments meet concurrency requirements when the local government has the infrastructure capacity to serve the new growth.

In essence, a concurrency requirement is a law stating that certain infrastructure must be in place and available to serve new development before the local government may allow new citizens to live in the new development.<sup>1</sup> For example, before a local government can approve a building permit to allow a new development, it must consult with its water suppliers to ensure adequate supplies to serve the new development will be available by the time citizens can move in.<sup>2</sup> Certain services are subject to concurrency statewide (sanitary sewer, solid waste, drainage, and potable water) while other services, such as public transportation or schools, may optionally be subjected to concurrency by a local government.<sup>3</sup>

### **School Concurrency**

The Legislature prescribes the methods and regulations controlling when public school concurrency is imposed by a local government.<sup>4</sup> Local governments must include principles, guidelines, standards, strategies, and acceptable levels of service based on data in their comprehensive plans<sup>5</sup> and school-related interlocal agreements.<sup>6</sup> Local governments and school boards work in conjunction to determine whether adequate school capacity will be available to accommodate the development.

School concurrency requires a local government to deny an application for new residential development if adequate school capacity will not be available or under construction within three years of approving the application.<sup>7</sup> Typically the level of service required to be maintained is expressed in terms of student capacity (the maximum number of students a facility is designed to accommodate), student stations (the area necessary for a student to engage in learning), gross square footage of facilities, and facility utilization, versus the total number of students in a district or designated area.<sup>8</sup> Level of service can be separated into tiers of acceptability, as well as divided between different types of school- elementary, middle, high, and special purpose being the typical divisions.<sup>9</sup>

### **Concurrency Service Areas**

Local governments are encouraged, but not required, to apply school concurrency on a districtwide basis.<sup>10</sup> A local government choosing to enforce concurrency on a less than districtwide basis must delineate school attendance zones or concurrency service areas through

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<sup>1</sup> Section 163.3180(2), F.S.

<sup>2</sup> Id.

<sup>3</sup> Section 163.3180(1), F.S.

<sup>4</sup> Section 163.3180(6), F.S.

<sup>5</sup> Local government comprehensive plans provide the policy foundation for local planning and land use decisions on capital improvements, conservation, intergovernmental coordination, recreation, open space, future land use, housing, transportation, coastal management (where applicable) and public facilities.

<sup>6</sup> Section 613.3180(6)(a), F.S.

<sup>7</sup> Section 613.3180(h), F.S.

<sup>8</sup> See, e.g., Florida Planning and Development Lab at Florida State University, *Recommendations for Implementing School Concurrency*, Dec. 2007, available at <https://fpdl.coss.fsu.edu/sites/g/files/imported/storage/original/application/90a0cefe399a0d8424ca33f8e03d1bf5.pdf> (last visited January 20, 2022).

<sup>9</sup> Section 163.3180(6)(c), F.S.

<sup>10</sup> Section 163.3180(6)(f), F.S.

an interlocal agreement with the school district and other participating governments.<sup>11</sup> In order to implement attendance zones, a local government must first show that the utilization of school capacity is being used to its fullest capacity given transportation costs and other factors, and zones must be supported by data and analysis in the comprehensive plan.<sup>12</sup>

The Legislature has implemented some safeguards to encourage growth. Where school capacity is available on a districtwide basis but concurrency service areas constrict capacity, the local government must determine whether the needed capacity for a development exists in an adjacent service area.<sup>13</sup> If such coverage exists, the local government may not deny an application for the development, and must deduct the capacity from the adjacent area. Nonetheless, students from the development may not be required to attend school in the adjacent service area.<sup>14</sup>

### **Proportionate Share**

Proportionate share is a tool local governments may use to require developers to help mitigate the impacts of their development notwithstanding a failure to achieve and maintain the adopted level of service standards.<sup>15</sup> Proportionate share generally requires developers to contribute to costs, or build facilities, necessary to offset a new development's impacts.<sup>16</sup>

With respect to school concurrency applied by a local government, when a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a specified charter school is used as proportionate-share mitigation, the local government is required to credit such contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by a local ordinance for the same need, on a dollar-for-dollar basis.<sup>17</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 163.3180 (6), F.S., to require that all local governments choosing to apply school concurrency must do so on a districtwide basis. Those local governments applying school concurrency on a more granular level using concurrency service areas or school attendance zones must alter their regulations to enforce districtwide concurrency.

The bill also provides that school concurrency is satisfied if the developer in good faith offers to execute, rather than actually executes, a legally binding commitment to provide mitigation proportionate to the demand created by the development.

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<sup>11</sup> Section 163.3180(f),(i), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 163.3180(f) 2. b., F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Florida Department of Community Affairs (now Department of Economic Opportunity), *Transportation Concurrency: Best Practices Guide*, pg. 64 (2007), retrieved from [http://www.cutr.usf.edu/pdf/DCA\\_TCBP%20Guide.pdf](http://www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf) (last visited March 18, 2019).

<sup>16</sup> *Id.*

<sup>17</sup> Section 163.3180(6)(h)2.b., F.S.

The bill also provides that proportionate-share mitigation paid by a developer, rather than being immediately directed toward a school capacity improvement, may be set aside and not spent until an appropriate improvement is identified.

The bill takes effect July 1, 2022.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The county and municipality mandate provisions of Article VII, section 18 of the Florida Constitution may apply to the extent that ending less-than-districtwide school concurrency requires local governments to revise comprehensive plans and interlocal agreements to comply. Article VII, section 18 (a) of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

None of the constitutional exceptions appear to apply.

Article VII, section 18 (d) provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. Laws having an “insignificant fiscal impact” are exempt from the mandate requirements, which for Fiscal Year 2021-2022 is forecast at approximately \$2.3 million.<sup>18,19,20</sup> However, any local government costs associated with the bill are speculative and not readily estimable for purposes of determining whether the exemption for bills having an insignificant fiscal impact applies.

If the bill does qualify as a mandate, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

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<sup>18</sup> FLA. CONST. art. VII, s. 18(d).

<sup>19</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 7, 2022).

<sup>20</sup> Based on the Florida Demographic Estimating Conference’s March 3, 2021 population forecast for 2022 of 22,245,429. The conference packet is available at: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 7, 2022).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private sector development may benefit to the extent that the bill streamlines school concurrency requirements.

C. Government Sector Impact:

Local government applying school concurrency on a less than districtwide basis may experience costs associated with updating comprehensive plans, regulations, and interlocal agreements to reflect the change.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that school concurrency is deemed satisfied where a developer in good faith offers to execute a contract to provide proportionate share mitigation. The bill does not address how relevant improvements to public education in order to increase school capacity will follow in instances where a developer and local government fail to agree to definite terms on proportionate share mitigation. Such an occurrence would allow development to move forward without increased school capacity following, leaving a larger deficit of capacity before subsequent development.

**VIII. Statutes Affected:**

This bill substantially amends section 163.3180 Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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