By Senator DiCeglie

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A bill to be entitled

An act relating to land development; amending s. 163.3167, F.S.; revising the scope of power and responsibility of municipalities and counties under the Community Planning Act; amending s. 163.3180, F.S.; modifying requirements for local governments implementing a transportation concurrency system; amending s. 163.31801, F.S.; revising legislative intent with respect to the adoption of impact fees by special districts; clarifying circumstances under which a local government or special district must credit certain contributions toward the collection of an impact fee; deleting a provision that exempts water and sewer connection fees from the Florida Impact Fee Act; amending s. 380.06, F.S.; revising exceptions from provisions governing credits against local impact fees; revising procedures regarding local government review of changes to previously approved developments of regional impact; specifying types of changes that are not subject to local government review; authorizing changes to multimodal pathways, or the substitution of such pathways, in previously approved developments of regional impact if certain conditions are met; specifying that certain changes to comprehensive plan policies and land development regulations do not apply to a development of regional impact that has vested rights; revising acts that are deemed to constitute an act of reliance by a developer to vest rights; providing an effective date.

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

Section 1. Subsection (1) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(1) Notwithstanding any other provision of general law, the several incorporated municipalities and counties ~~shall~~ have exclusive power and responsibility:

(a) To plan for their future development and growth.

(b) To adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth.

(c) To implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations or elements thereof.

(d) To evaluate transportation impacts, apply concurrency, or assess any fee related to transportation improvements.

(e) To establish, support, and maintain administrative instruments and procedures to carry out the provisions and purposes of this act.

The powers and authority set out in this act may be employed by municipalities and counties individually or jointly by mutual agreement in accord with this act and in such combinations as their common interests may dictate and require.

Section 2. Paragraph (h) of subsection (5) of section 163.3180, Florida Statutes, is amended to read:

163.3180 Concurrency.—

(5)

(h)1. Notwithstanding any provision in a development order, an agreement, a local comprehensive plan, or a local land development regulation, local governments that continue to implement a transportation concurrency system, whether in the form adopted into the comprehensive plan before the effective date of the Community Planning Act, chapter 2011-139, Laws of Florida, or as subsequently modified, must:

a. Consult with the Department of Transportation when proposed plan amendments affect facilities on the strategic intermodal system.

b. Exempt public transit facilities from concurrency. For the purposes of this sub-subparagraph, public transit facilities include transit stations and terminals; transit station parking; park-and-ride lots; intermodal public transit connection or transfer facilities; fixed bus, guideway, and rail stations; and airport passenger terminals and concourses, air cargo facilities, and hangars for the assembly, manufacture, maintenance, or storage of aircraft. As used in this sub-subparagraph, the terms "terminals" and "transit facilities" do not include seaports or commercial or residential development constructed in conjunction with a public transit facility.

c. Allow an applicant for a development-of-regional-impact development order, development agreement, rezoning, or other land use development permit to satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06, when applicable, if:

(I) The applicant in good faith offers to enter into a binding agreement to pay for or construct its proportionate

share of required improvements in a manner consistent with this subsection.

(II) The proportionate-share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility. A local government may accept contributions from multiple applicants for a planned improvement if it maintains contributions in a separate account designated for that purpose.

d. Provide the basis upon which the landowners will be assessed a proportionate share of the cost addressing the transportation impacts resulting from a proposed development.

e. Credit the fair market value of any land dedicated to a governmental entity for transportation facilities against the total proportionate share payments computed pursuant to this section.

2. An applicant is ~~shall~~ not ~~be held~~ responsible for the additional cost of reducing or eliminating deficiencies. When an applicant contributes or constructs its proportionate share pursuant to this paragraph, a local government may not require payment or construction of transportation facilities whose costs would be greater than a development's proportionate share of the improvements necessary to mitigate the development's impacts.

a. The proportionate-share contribution shall be calculated based upon the number of trips from the proposed development expected to reach roadways during the peak hour from the stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain or achieve the adopted level of service, multiplied by the construction cost, at the

time of development payment, of the improvement necessary to maintain or achieve the adopted level of service.

b. In using the proportionate-share formula provided in this subparagraph, the applicant, in its traffic analysis, shall identify those roads or facilities that have a transportation deficiency in accordance with the transportation deficiency as defined in subparagraph 4. The proportionate-share formula provided in this subparagraph shall be applied only to those facilities that are determined to be significantly impacted by the project traffic under review. If any road is determined to be transportation deficient without the project traffic under review, the costs of correcting that deficiency shall be removed from the project's proportionate-share calculation and the necessary transportation improvements to correct that deficiency shall be considered to be in place for purposes of the proportionate-share calculation. The improvement necessary to correct the transportation deficiency is the funding responsibility of the entity that has maintenance responsibility for the facility. The development's proportionate share shall be calculated only for the needed transportation improvements that are greater than the identified deficiency.

c. When the provisions of subparagraph 1. and this subparagraph have been satisfied for a particular stage or phase of development, all transportation impacts from that stage or phase for which mitigation was required and provided shall be deemed fully mitigated in any transportation analysis for a subsequent stage or phase of development. ~~Trips from a previous stage or phase that did not result in impacts for which mitigation was required or provided may be cumulatively analyzed~~

~~with trips from a subsequent stage or phase to determine whether an impact requires mitigation for the subsequent stage or phase.~~

d. In projecting the number of trips to be generated by the development under review, any trips assigned to a toll-financed facility shall be eliminated from the analysis.

e. The applicant shall receive a credit on a dollar-for-dollar basis for impact fees, mobility fees, and other transportation concurrency mitigation requirements paid or payable in the future for the project. The credit shall be reduced up to 20 percent by the percentage share that the project's traffic represents of the added capacity of the selected improvement, or by the amount specified by local ordinance, whichever yields the greater credit.

3. This subsection does not require a local government to approve a development that, for reasons other than transportation impacts, is not qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

4. As used in this subsection, the term "transportation deficiency" means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing, committed, and vested trips, plus additional projected background trips from any source other than the development project under review, and trips that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida's 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.

Section 3. Subsection (2), paragraph (a) of subsection (5), and subsection (12) of section 163.31801, Florida Statutes, are amended to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—

(2) The Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction. Due to the growth of impact fee collections and local governments' reliance on impact fees, it is the intent of the Legislature to ensure that, when a county or municipality adopts an impact fee by ordinance or a special district, if authorized by its special act, adopts an impact fee by resolution, the governing authority complies with this section.

(5)(a) Notwithstanding any charter provision, comprehensive plan policy, ordinance, development order, development permit, agreement, or resolution to the contrary, the local government or special district must credit against the collection of the impact fee any contribution, whether identified in an ~~a proportionate share~~ agreement or other form of exaction, related to public facilities or infrastructure, including land dedication, site planning and design, or construction. Any contribution must be applied on a dollar-for-dollar basis at fair market value to reduce any impact fee collected for the general category or class of public facilities or infrastructure for which the contribution was made.

~~(12) This section does not apply to water and sewer~~

~~connection fees.~~

Section 4. Paragraph (d) of subsection (5) and subsections (7) and (8) of section 380.06, Florida Statutes, are amended to read:

380.06 Developments of regional impact.—

(5) CREDITS AGAINST LOCAL IMPACT FEES.—

(d) This subsection does not apply to internal, private onsite facilities required by local regulations or to any offsite facilities to the extent that such facilities are necessary to provide safe and adequate services solely to the development and not the general public.

(7) CHANGES.—

(a) Notwithstanding any provision to the contrary in any development order, agreement, local comprehensive plan, or local land development regulation, this section applies to all ~~any~~ proposed changes ~~change~~ to a previously approved development of regional impact. ~~shall be reviewed by~~ The local government must base its review ~~based~~ on the standards and procedures in its adopted local comprehensive plan and adopted local land development regulations, including, but not limited to, procedures for notice to the applicant and the public regarding the issuance of development orders. However, a change to a development of regional impact that has the effect of reducing the originally approved height, density, or intensity of the development or that changes only the location, types, or acreage of uses and infrastructure must be administratively approved and is not subject to review by the local government. The local government review of any proposed change to a previously approved development of regional impact and of any development

order required to construct the development set forth in the development of regional impact ~~must be reviewed by the local government based on the standards in the local comprehensive plan at the time the development was originally approved, and if the development would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change. If the revised development is approved, the developer may proceed as provided in s. 163.3167(5). For any proposed change to a previously approved development of regional impact, at least one public hearing must be held on the application for change, and any change must be approved by the local governing body before it becomes effective. The review~~ must abide by any prior agreements or other actions vesting the laws and policies governing the development. Development within the previously approved development of regional impact may continue, as approved, during the review in portions of the development which are not directly affected by the proposed change.

(b) The local government shall either adopt an amendment to the development order that approves the application, with or without conditions, or deny the application for the proposed change. Any new conditions in the amendment to the development order issued by the local government may address only those impacts directly created by the proposed change, and must be consistent with s. 163.3180(5)~~, the adopted comprehensive plan, and adopted land development regulations~~. Changes to a phase date, buildout date, expiration date, or termination date may also extend any required mitigation associated with a phased construction project so that mitigation takes place in the same

timeframe relative to the impacts as approved.

(c) This section is not intended to alter or otherwise limit the extension, previously granted by statute, of a commencement, buildout, phase, termination, or expiration date in any development order for an approved development of regional impact and any corresponding modification of a related permit or agreement. Any such extension is not subject to review or modification in any future amendment to a development order pursuant to the adopted local comprehensive plan and adopted local land development regulations.

(d) Any proposed change to a previously approved development of regional impact showing a dedicated multimodal pathway suitable for bicycles, pedestrians, and low-speed vehicles, as defined in s. 320.01, along any internal roadway must be approved so long as the right-of-way remains sufficient for the ultimate number of lanes of the internal road. Any proposed change to a previously approved development of regional impact which proposes to substitute a multimodal pathway suitable for bicycles, pedestrians, and low-speed vehicles, as defined in s. 320.01, in lieu of an internal road must be approved if the change does not result in any road within or adjacent to the development of regional impact falling below the local government's adopted level of service and does not increase the original distribution of trips on any road analyzed as part of the approved development of regional impact by more than 20 percent. If the developer has already dedicated right-of-way to the local government for the proposed internal roadway as part of the approval of the proposed change, the local government must return any interest it may have in the right-of-

way to the developer.

(8) VESTED RIGHTS.—Nothing in this section shall limit or modify the rights of any person to complete any development that was authorized by registration of a subdivision pursuant to former chapter 498, by recordation pursuant to local subdivision plat law, or by a building permit or other authorization to commence development on which there has been reliance and a change of position and which registration or recordation was accomplished, or which permit or authorization was issued, prior to July 1, 1973. If a developer has, by his or her actions in reliance on prior regulations, obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to the developer's interests, nothing in this chapter authorizes any governmental agency to abridge those rights. Consistent with s. 163.3167(5), comprehensive plan policies and land development regulations adopted after a development of regional impact has vested do not apply to proposed changes to an approved development of regional impact or to development approvals required to implement the approved development of regional impact.

(a) For the purpose of determining the vesting of rights under this subsection, approval pursuant to local subdivision plat law, ordinances, or regulations of a subdivision plat by formal vote of a county or municipal governmental body having jurisdiction after August 1, 1967, and prior to July 1, 1973, is sufficient to vest all property rights for the purposes of this subsection; and no action in reliance on, or change of position concerning, such local governmental approval is required for vesting to take place. Anyone claiming vested rights under this

paragraph must notify the department in writing by January 1, 1986. Such notification shall include information adequate to document the rights established by this subsection. When such notification requirements are met, in order for the vested rights authorized pursuant to this paragraph to remain valid after June 30, 1990, development of the vested plan must be commenced prior to that date upon the property that the state land planning agency has determined to have acquired vested rights following the notification or in a binding letter of interpretation. When the notification requirements have not been met, the vested rights authorized by this paragraph shall expire June 30, 1986, unless development commenced prior to that date.

(b) For the purpose of this act, the conveyance of property or compensation, or the agreement to convey~~,~~ property or compensation, to the county, state, or local government ~~as a prerequisite to zoning change approval~~ shall be construed as an act of reliance to vest rights as determined under this subsection~~, provided such zoning change is actually granted by such government~~.

Section 5. This act shall take effect upon becoming a law.