HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 479 Alternative Mobility Funding Systems
SPONSOR(S): Commerce Committee; Robinson, W., and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 688

FINAL HOUSE FLOOR ACTION: 115 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 479 passed the House on February 28, 2024, as amended, and subsequently passed the Senate on March 4, 2024.

Counties and municipalities are required to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan. All elements of a plan or plan amendment must be based on relevant, appropriate data and an analysis by the local government. Each comprehensive plan must include a transportation element addressing traffic circulation, including the types, locations, and extent of existing and proposed major thoroughfares and transportation routes, including bicycle and pedestrian ways.

Certain public facilities and services must be in place and available to serve new development no later than the issuance of a certificate of occupancy or its functional equivalent by a local government. Local governments may extend this concurrency requirement to additional public facilities such as transportation. Local governments electing to repeal transportation concurrency are encouraged to adopt an alternative mobility funding system. One method of funding local government transportation concurrency requirements is through the adoption and imposition of impact fees to fund the infrastructure needed to expand local services to meet the demands of population growth caused by new growth. Local governments may increase impact fees only under limited circumstances, including upon a showing of extraordinary circumstances.

In 2013, the concept of a mobility fee-based funding system was added to the comprehensive planning statutes as an encouraged alternative to transportation concurrency.

The bill defines "mobility fee" and "mobility plan" for use within the Community Planning Act.

The bill requires counties and municipalities that charge developers a fee for transportation capacity impacts to enter interlocal agreements to coordinate the mitigation of their respective transportation capacity impacts, provides criteria for the agreements, and establishes alternative processes to follow if local governments fail to enter into such agreements by October 1, 2025.

The bill provides that local governments adopting and collecting impact fees by ordinance or resolution must base impact fee calculations on a study using the most recent and localized data available within four years of the current impact fee update, unless the impact fee is increased, in which case the new study must be adopted by the local government within 12 months of the initiation. The bill provides that a local government must credit against the collection of the impact fee any contribution identified in the development order or any form of exaction, including monetary contributions.

The bill does not have a fiscal impact on state or local government.

The bill was approved by the Governor on June 25, 2024, ch. 2024-266, L.O.F., and will become effective on October 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Every local government, defined as any county and municipality,[1] is required to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan.[2] All elements of a plan or plan amendment must be based on relevant, appropriate data[3] and an analysis by the local government that may include surveys, studies, aspirational goals, and other data available at the time of adopting the plan or amendment.[4] The data supporting a plan or amendment must be taken from professionally accepted sources[5] and must be based on permanent and seasonal population estimates and projections.[6]

Each comprehensive plan must include a transportation element, the purpose of which is to plan for a multimodal transportation system emphasizing feasible public transportation, addressing mobility issues pertinent to the size and character of the local government, and designed to support all other elements of the comprehensive plan.[7] The transportation element must address traffic circulation, including the types, locations, and extent of existing and proposed major thoroughfares and transportation routes, including bicycle and pedestrian ways.[8] The plan of a local government with a population exceeding 50,000 that is not within the planning area of a metropolitan planning organization (MPO)[9] also must address mass transit, ports, and aviation[10] and related facilities.[11] The transportation planning element for a local government with a population exceeding 50,000 located within the area of a MPO specifically must address the following:

- All alternative modes of travel, including public transportation, pedestrian, and bicycle.
- Aviation, rail, and seaport facilities, access to those facilities, and intermodal transportation.
- Capability to evacuate coastal population prior to a natural disaster.
- Airports, projected airport and aviation development, and land use around airports.
- Identification of land use densities, building intensities, and transportation management programs to promote public transportation.[12]

The transportation planning element for a municipality with a population exceeding 50,000, or a county with a population exceeding 75,000, must provide for moving people by mass transit, including:

- Providing efficient, safe, and convenient public transit, including accommodation for the transportation disadvantaged.
- Plans for port, aviation, and related facilities.

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[1] S. 163.3164(29), F.S. For the purpose of the act, the Central Florida Tourism Oversight District may exercise the powers of a municipality for the area under its jurisdiction. S. 163.3167(6), F.S.; *see also* ch. 2023-5, Laws of Fla. (renaming the Reedy Creek Improvement District to the Central Florida Tourism Oversight District).
[2] Ss. 163.3167(2) and 163.3177(2), F.S.
[3] "To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." S. 163.3177(1)(f), F.S.
[4] S. 163.3177(1)(f), F.S.
[5] S. 163.3177(1)(f)2., F.S. The statute does not further define "professionally accepted sources."
[6] S. 163.3177(1)(f)3., F.S. Population estimates may be those published by the Office of Economic and Demographic Research or may be generated by the local government based upon a professionally acceptable methodology. *Id.*
[7] S. 163.3177(6)(b), F.S.
[8] S. 163.3177(6)(b)1., F.S.
[9] An MPO must be designated as provided in 23 U.S.C. s. 450.310(a) for each urbanized area with a population of more than 50,000. S. 339.175(2), F.S. Florida MPOs are intended specifically to develop plans and programs in metropolitan areas for the development and management of transportation systems and facilities, including pedestrian walkways and bicycle transportation facilities to function as an intermodal transportation system. S. 339.175(1), F.S.
[10] All local governments have the option to include within the transportation element an airport master plan, incorporated into the plan through the comprehensive plan amendment process. S. 163.3177(6)(b)4., F.S.
[11] S. 163.3177(6)(b), F.S.
[12] S. 163.3177(6)(b)2., F.S.

- Plans for circulation of recreational traffic, including bicycle and riding facilities and exercise trails.[13]

In addition to the general requirements for data supporting a comprehensive plan or amendment, the transportation planning element must include one or more maps showing the general location of existing and proposed transportation system features and data, analyses, and associated principles pertaining to:

- Existing transportation system levels of service and system needs and availability of transportation facilities and services.
- Growth trends and travel patterns, as well as interactions between land use and transportation;
- Current and projected intermodal[14] deficiencies and needs.
- Projected transportation system levels of service and system needs.
- How the local government will correct existing facility deficiencies, meet the needs of the projected transportation system, and advance the transportation purposes of the plan.[15]

Generally, local government transportation and mobility planning should address providing mobility options, such as automobile, bicycle, pedestrian, or mass transit, that minimize environmental impacts, expand transportation options, and increase connectivity between destinations.[16]

Transportation Concurrency

Certain public facilities and services must be in place and available to serve new development no later than the issuance of a certificate of occupancy or its functional equivalent by a local government.[17] Local governments may extend this concurrency requirement to additional public facilities such as transportation.[18] Where concurrency is applied to transportation, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service, to guide its application.[19] The plan must show that the included levels of service may reasonably be met.[20] Local governments utilizing transportation concurrency must use professionally accepted studies to evaluate levels of service and techniques to measure such levels of service when evaluating potential impacts of proposed developments.[21] While local governments implementing a transportation concurrency system are encouraged to develop and use certain tools and guidelines, such as addressing potential negative impacts on urban infill and redevelopment[22] and adopting long-term multimodal strategies,[23] such local governments must follow specific concurrency requirements including consulting with the Florida Department of Transportation if proposed amendments to the plan affect the Strategic Intermodal System, exempting public transit facilities from concurrency

[13] S. 163.3177(6)(b)3., F.S.
[14] "Intermodal transportation" is not defined in the statute but generally means the transportation by or involving more than one form of carrier in a single journey, particularly for moving cargo. *See* "intermodal," available at https://www.merriam-webster.com/dictionary/intermodal (last visited Jan. 14, 2024); "intermodal transport," available at https://www.ups.com/us/en/supplychain/insights/knowledge/glossary-term/intermodal-transport.page (last visited Jan. 14, 2024). Part of the intent in creating the Florida Strategic Intermodal System is to address the increased demands placed on the entire statewide transportation system by economic and population growth and projected increases in freight movement, international trade, and tourism designing and operating a strategic intermodal system to meet the mobility needs of the state. *See* s. 339.61(2), F.S.
[15] S. 163.3177(6)(b)1., F.S.
[16] Dept. of Commerce, "Transportation Planning," available at https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/transportation-planning (last visited Jan. 14, 2024), herein Commerce Transportation Planning.
[17] S. 163.1380(2), F.S. The only such services for which concurrency is mandatory are sanitary sewer, solid waste, drainage, and potable water supplies.
[18] S. 163.3180(1), F.S.
[19] Ss. 163.3180(1)(a) and 163.3180(5)(a), F.S. *See* Commerce Transportation Planning, *supra* n. 16.
[20] S. 163.3180(1)(b), F.S.
[21] S. 163.3180(5)(b)-(c), F.S.
[22] S. 163.3180(5)(e), F.S.
[23] S. 163.3180(f), F.S.

requirements, and allowing a developer to contribute a proportionate share to mitigate transportation impacts for a specific development.[24]

An applicant for a development-of-regional-impact development order, development agreement, rezoning, or other land use development permit satisfies the requirements for transportation concurrency if the applicant in good faith offers to enter into a binding agreement to pay for or construct its proportionate share of transportation improvements required to mitigate the impact of the proposed development and the proffered proportionate share contribution or construction is sufficient to accomplish one or more mobility improvements benefitting a regionally significant transportation facility.[25] The plan for transportation concurrency must provide the basis on which landowners will be assessed a proportionate share,[26] which must include a compliant formula for calculating the proportionate share.[27] The proportionate share may not include additional costs to reduce or eliminate existing transportation deficiencies.[28]

Local governments electing to repeal transportation concurrency are encouraged to adopt an alternative mobility funding system. Such an alternative system may not be used to restrict or deny certain development approval applications provided the developer agrees to pay for the development's transportation impacts using the funding mechanism implemented by the local government. Local government mobility fee systems must comply with all requirements for adopting and implementing impact fees. An alternative funding system that is not mobility fee based may not impose on new development any responsibility for funding existing transportation deficiencies.[29]

Impact Fees

One method of funding local government transportation concurrency requirements is through the adoption and imposition of impact fees on new development. Local governments impose impact fees to fund infrastructure[30] needed to expand local services to meet the demands of population growth caused by new growth.[31] Impact fees must meet the following minimum criteria when adopted:

- The fee must be calculated using the most recent and localized data.[32]
- The local government adopting the impact fee must account for and report impact fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.[33]
- Charges imposed for the collection of impact fees must be limited to the actual costs.[34]
- All local governments must give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect, but need not wait 90 days before decreasing, suspending, or eliminating an impact fee. Unless the result reduces total mitigation costs or impact fees on an applicant, new or increased impact fees may not apply to current or pending applications

[24] S. 163.3180(5)(h), F.S. *See* Commerce Transportation Planning, *supra* n. 16.
[25] S. 163.3180(5)(h)1.c., F.S.
[26] S. 163.3180(5)(h)1.d., F.S.
[27] S. 163.3180(5(h)2.a.-d., F.S.
[28] S. 163.3180(5)(h)2., F.S. For purposes of s. 163.3180(5), F.S., "transportation deficiency" means a facility or facilities on which the level of service standard adopted in the comprehensive plan is exceeded by the number of existing, projected, or vested trips together with additional trips originating from any source other than the development project under review, and trips forecast by established traffic standards. S. 163.3180(5)(h)4., F.S. Local governments may resolve existing transportation deficiencies within an identified transportation deficiency area by creating a transportation development authority with specific powers to implement a transportation sufficiency plan funded through a formula of tax increment funding. Adopting a transportation sufficiency plan is deemed as meeting transportation level of service standards, and proportionate fair-share mitigation is limited to ensure developments within the transportation deficiency area are not responsible for additional costs to eliminate deficiencies. S. 163.3182, F.S.
[29] S. 163.3180(5)(i), F.S.
[30] "Infrastructure" means the fixed capital expenditure or outlay for the construction, reconstruction, or improvement of public facilities with a life expectancy of five or more years, together with specific other costs required to bring the public facility into service but excluding the costs of repairs or maintenance. The term also includes specific equipment. S. 163.31801(3), F.S.
[31] S. 163.31801(2), F.S. Water and sewer connection fees are not impact fees. S. 163.31801(12), F.S.
[32] S. 163.31801(4)(a), F.S.
[33] S. 163.31801(4)(b), F.S.
[34] S. 163.31801(4)(c), F.S.

submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.[35]

- A local government may not require payment of the impact fee before the date of issuing a building permit for the property that is subject to the fee.[36]
- The impact fee must be reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.[37]
- The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction.[38]
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.[39]
- The local government may not use revenues generated by the impact fee to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.[40]

The types of impact fees charged and the timing of their collection after issuing a building permit are within the discretion of the local government or special district authorities choosing to impose the fees.[41] In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.[42] A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[43] Local governments providing an exception or waiver of impact fees for the development or construction of affordable housing are not required to use any revenues to offset the impact of such development.[44]

Local governments must credit against impact fee collections any contribution related to public facilities or infrastructure on a dollar-for-dollar basis at fair market value for the general category or class of public facilities or infrastructure for which the contribution was made. If no impact fee is collected for that category of public facility or infrastructure for which the contribution is made, no credit may be applied.[45] Credits for impact fees may be assigned or transferred at any time once established, from one development or parcel to another within the same impact fee zone or district or within an adjoining impact fee zone or district within the same local government jurisdiction.[46]

Local governments may increase impact fees only under limited circumstances. A fee may be increased no more than once every four years, may not be increased retroactively, the increase may not exceed 50 percent of the current impact fee amount, and any increase must be consistent with a statutorily-compliant plan for the imposition, collection, and use of the fees. An increase not exceeding 25 percent of the current fee amount must be implemented in two equal annual increments, while an increase greater than 25 percent but not exceeding 50 percent of the current amount must be implemented in four equal annual installments. However, a local government may increase a fee more than once in four years or for more than 50 percent of a current impact fee amount if it has:

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[35] S. 163.31801(4)(d), F.S.
[36] S. 163.31801(4)(e), F.S.
[37] S. 163.31801(4)(f), F.S.
[38] S. 163.31801(4)(g), F.S.
[39] S. 163.31801(4)(h), F.S.
[40] S. 163.31801(4)(i), F.S.
[41] *See* s. 163.31801(2), F.S.
[42] S. 553.79, F.S.
[43] S. 163.3164(16), F.S.
[44] S. 163.31801(11), F.S.
[45] S. 163.31801(5), F.S.
[46] S. 163.31801(10), F.S. In an action challenging an impact fee or a failure to provide proper credits, the local government has the burden of proof to establish the imposition of the fee or the credit complies with the statute, and the court may not defer to the decision or expertise of the government. S. 163.31801(9), F.S.

- Prepared a demonstrated-need study within 12 months before adopting the increase showing extraordinary circumstances necessitating the need for the increase.
- Conducted at least two publicly noticed workshops on the extraordinary circumstances justifying the increase.
- Approved the increase by at least a two-thirds vote of the governing body.[47]

A local government that increases an impact fee must still provide the holder of any impact fee credit the full benefit of the density and intensity prepaid by the credit balance.[48]

With each annual financial report or audit filed[49] a local government must report specific information on impact fees imposed, including the specific purpose of the fee, the impact fee schedule describing the method of calculating the fee, the amount assessed for each purpose and for each type of dwelling, the total amount of fees charged by type of dwelling, and each exception or waiver to the imposition of impact fees provided for construction of affordable housing.[50] Additionally, the chief financial officer or executive officer (if there is no chief financial officer) must submit with the annual financial report an affidavit attesting that all impact fees were collected and expended by the local government, or on its behalf, in full compliance with the spending period provisions in the local ordinance and that funds expended from each impact fee account were used to acquire, construct, or improve those specific infrastructure needs.[51]

Mobility Plans and Fees

In the Community Renewal Act[52] of 2009 (Act), the Legislature found that the concept and application of transportation concurrency was "complex, inequitable, lack(ed) uniformity among jurisdictions, (was) too focused on roadways to the detriment of desired land use patterns and transportation alternatives, and frequently prevent(ed) the attainment of important growth management goals."[53] The Act required completion and submission of a mobility fee methodology study[54] and stated the Legislature's intent that a mobility fee "should be designed to provide for mobility needs, ensure that development provides mitigation for its impacts on the transportation system in approximate proportionality to those impacts, fairly distribute the fee among the governmental entities responsible for maintaining the impacted roadways, and promote compact, mixed-use, and energy-efficient development."[55] In 2013, the concept of a mobility fee-based funding system was added to the comprehensive planning statutes as an encouraged alternative to transportation concurrency.[56]

Alternative mobility funding systems using a mobility fee are encouraged to incorporate one or more of the statutory tools and techniques, including:

- Adoption of long-term strategies to facilitate development patterns that support multimodal solutions, including urban design, appropriate land use mixes, intensity and density.
- Adoption of an area wide level of service not dependent on any single road segment function.
- Exempting or discounting impacts of locally desired development.
- Assigning secondary priority to vehicle mobility and primary priority to ensuring a safe, comfortable, and attractive pedestrian environment with convenient interconnection to transit;

[47] S. 163.31801(6), F.S.
[48] S. 163.31801(7), F.S.
[49] *See* ss. 218.32 and 218.39, F.S.
[50] S. 163.31801(13), F.S.
[51] S. 163.31801(8), F.S.
[52] Ch. 2009-96, s. 1, Laws of Fla.
[53] Ch. 2009-96, s. 13(1)(a), Laws of Fla.
[54] Center for Urban Transportation Research, *Evaluation of the Mobility Fee Concept Final Report*, University of South Florida (Nov. 2009), available at https://cutr.usf.edu/wp-content/uploads/2012/08/Evaluation-of-the-Mobility-Fee-Concept-CUTR-Webcast-04.21.11.pdf (last visited Jan. 14, 2024).
[55] Ch. 2009-96, s. 13(1)(b), Laws of Fla.
[56] Ch. 2013-78, s. 1, Laws of Fla.

- Establishing multimodal level of service standards that rely primarily on non-vehicular modes of transportation where existing or planned community design will provide adequate a level of mobility.
- Reducing impact fees or local access fees to promote development within urban areas, multimodal transportation districts, and a balance of mixed-use development in certain areas or districts, or for affordable or workforce housing.[57]

Some local governments have adopted mobility plans and mobility fees.[58]

Effect of the Bill

The bill revises provisions concerning impact fees and concurrency while providing additional guidance concerning mobility fees. For purposes of the Community Planning Act,[59] the bill defines:

- "Mobility fee" to mean a local government fee schedule established by ordinance and based on the projects included in the local government's adopted mobility plan.
- "Mobility plan" to mean an alternative transportation system mobility study developed by using a plan-based methodology and adopted into a local government comprehensive plan that promotes a compact, mixed use, and interconnected development served by a multimodal transportation system in an area that is urban in character, or designated to be urban in character.

The bill requires agreements between local governments that implement a transportation concurrency system and applicants for a development-of-regional-impact development order, development agreement, rezoning, or other land use development permit concerning the applicants offer to pay for or construct its proportionate share of required improvements to provide that, after the applicant makes its contribution or constructs its proportionate share, the project must be considered to have mitigated its transportation impacts and must be allowed to proceed if the applicant has satisfied all other local government development requirements for the project. The bill provides that local governments may not prevent a single applicant from proceeding after the applicant has satisfied its proportionate-share contribution and all other local government development requirements for the project.

If a county and municipality both charge the developer of a new development or redevelopment a fee for transportation capacity impacts, the bill requires the county and municipality to create and execute an interlocal agreement to coordinate the mitigation of their respective transportation impacts. The interlocal agreement must:

- Ensure any new development or redevelopment is not charged twice for the same transportation capacity impact.
- Establish a plan-based methodology for determining the legally permissible fee to be charged to a new development or redevelopment.
- Require the county or municipality issuing the building permit to collect the fee, unless otherwise agreed to by the parties.
- Provide a method for the proportionate distribution of the revenue collected by the county or municipality to address transportation capacity impacts or assigning responsibility for the mitigation of transportation capacity impacts.

If a county and municipality fail to execute an interlocal agreement by October 1, 2025, the bill provides that:

- The fee charged to a new development or redevelopment must be based on the transportation capacity impacts apportioned to the county and municipality as identified in the developer's

[57] S. 163.3180(5)(f), F.S.
[58] *See* Hillsborough County Code of County Ordinances, ch. 40, art. III, div. 2, *Mobility Fees*; Pasco County Code of Ordinances, Land Development Code, ch. 1300, s. 1302.2; City of Port St. Lucie Code of Ordinances, Title XV, ch. 159, s. 159.101, *Port St. Lucie Mobility Fee Ordinance*.
[59] The Community Planning Act is part II of ch. 163, F.S.

traffic impact study or the mobility plan adopted by the county or municipality, subject to a 10 percent reduction in the total owed by the developer.
- The county or municipality issuing the building permit must collect the fee and distribute the proceeds of the fee to the county and municipality within 60 days after the developer's payment.

The bill provides that the interlocal agreement requirement does not apply to a county as defined in s. 125.011(1), F.S., or a county or municipality that has entered into or has otherwise updated an existing interlocal agreement to coordinate the mitigation of transportation impacts for the duration of such agreement.

Impact Fees

The bill provides that local governments adopting and collecting impact fees must base impact fee calculations on a study using the most recent and localized data available within four years of the current impact fee update, unless the impact fee is increased, in which case the new study must be adopted by the local government within 12 months of the initiation. The bill provides that a local government must credit against the collection of the impact fee any contribution identified in the development order or any form of exaction, including monetary contributions.

The bill provides that holders of transportation or road impact fee credits granted under s. 163.3180 or s. 380.06, F.S., along with other provisions, which existed before the adoption of the alternative transportation system, is entitled to the full benefit of the intensity and density prepaid by the credit balance as of the date it was first establish.

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:

None.

D. FISCAL COMMENTS:

None.