

**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 1738

INTRODUCER: Senator Ingoglia

SUBJECT: Transportation Concurrency

DATE: March 14, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Fleming	CA	<b>Favorable</b>
2.	_____	_____	TR	_____
3.	_____	_____	RC	_____

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**I. Summary:**

SB 1738 permits a local government to identify facilities necessary to maintain current levels of service in the capital improvements element of the comprehensive plan as an alternative to those necessary to meet an adopted level of service.

The bill takes effect July 1, 2025.

**II. Present Situation:**

**Transportation Impact Fees**

The Community Planning Act requires counties and municipalities to produce and maintain a comprehensive plan for future development and growth.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

In furtherance of comprehensive planning, local governments charge impact fees, generally as a condition for the issuance of a project's building permit, to maintain various civic services amid growth. The principle behind the imposition of impact fees is to transfer to new users of a government-owned system a fair share of the costs the new use of the system involves.<sup>4</sup> Impact

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<sup>1</sup> Part II, chapter 163, F.S.

<sup>2</sup> Section 163.3177(6)(b), F.S.

<sup>3</sup> Section 163.3177(6)(b)1., F.S.

<sup>4</sup> *Contractors & Builders Ass'n of Pinellas County v. City of Dunedin*, 329 So. 2d 314, 317-318 (Fla. 1976).

fees have become an accepted method of paying for public improvements that must be constructed to serve new growth.<sup>5</sup> In order for an impact fee to be a constitutional user fee and not an unconstitutional tax, the fee must meet a dual rational nexus test, through which the local government must demonstrate the impact fee is proportional and reasonably connected to, or has a rational nexus with:

- The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
- The expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.<sup>6</sup>

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 or only part of the cost of the infrastructure improvement through utilization of the impact fee.

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.<sup>7</sup> 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.<sup>8</sup>

### **Concurrency and Proportionate Share**

“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.

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>9</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>10</sup> Certain services are subject to concurrency statewide (sanitary sewer, solid waste, drainage, and potable

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<sup>5</sup> *St. Johns County v. Ne. Florida Builders Ass'n, Inc.*, 583 So. 2d 635, 638 (Fla. 1991); section 163.31801(2), F.S.

<sup>6</sup> *See St. Johns County* at 637. Codified as s. 163.31801(3)(f) and (g), F.S.

<sup>7</sup> Section 163.31801(5), F.S.

<sup>8</sup> Section 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.

<sup>9</sup> Section 163.3180(2), F.S.

<sup>10</sup> *Id.*

water) while other services, such as public transportation or schools, may optionally be subjected to concurrency by a local government.<sup>11</sup>

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>12</sup> Proportionate share generally requires developers to contribute to costs, or build facilities, necessary to offset a new development's impacts.<sup>13</sup>

### ***Transportation Concurrency***

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.<sup>14</sup> 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<sup>15</sup> and adopting long-term multimodal strategies,<sup>16</sup> 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 requirements, and allowing a developer to contribute a proportionate share to mitigate transportation impacts for a specific development.<sup>17</sup>

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

The bill amends s. 163.3180 (5)(d), F.S., to permit a local government to identify facilities necessary to maintain current levels of service, as opposed to facilities necessary to meet newly adopted levels of service, in the capital improvements element of the comprehensive plan. This amendment allows a local government to elaborate on capital improvements in its comprehensive plan, but does not replace the adoption of a level of service for the purpose of applying concurrency to future development as required by subsection (5)(a).

The bill takes effect July 1, 2025.

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

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

None.

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<sup>11</sup> Section 163.3180(1), F.S.

<sup>12</sup> Florida Department of Community Affairs (now Department of Economic Opportunity), *Transportation Concurrency: Best Practices Guide*, pg. 64 (2007), retrieved from [https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1041&context=cutr\\_tpppfr](https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1041&context=cutr_tpppfr) (last visited Mar. 11, 2025).

<sup>13</sup> *Id.*

<sup>14</sup> Section 163.3180(5)(b)-(c), F.S.

<sup>15</sup> Section 163.3180(5)(e), F.S.

<sup>16</sup> Section 163.3180(f), F.S.

<sup>17</sup> Section 163.3180(5)(h), F.S.

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

None.

**C. Trust Funds Restrictions:**

None.

**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:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 163.3180 of the 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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