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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 972
INTRODUCER:	Community Affairs Committee, Transportation Committee, and Senator Hukill
SUBJECT:	Transportation Development
DATE:	April 5, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	**Fav/CS**
2.	Price	Eichin	TR	**Fav/CS**
3.	Anderson	Phelps	RC	**Favorable**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 972 makes a number of changes to the transportation concurrency requirements. The bill provides that a local government may accept contributions from multiple applicants for a planned improvement if it maintains such contributions in a separate account designated for that purpose. The bill provides that an alternative mobility funding system may not be used to deny approvals if the developer agrees to pay for the development's identified transportation impacts using the funding mechanism implemented by the local government. The bill also requires a mobility-fee-based funding system to comply with the dual rational nexus test applicable to impact fees.

The bill allows a transportation development authority to undertake transportation projects within and outside of the designated deficiency area to relieve deficiencies identified by the transportation deficiency plan. The bill stipulates that mass transit improvements and services may extend outside a deficiency area to an existing or planned logical terminus of a selected improvement. Finally, the bill subjects transit-oriented developments exceeding 25 acres in area to certain election requirements.

This bill amends the following sections of the Florida Statutes: 163.3180, 163.3182, and 190.006.

II. Present Situation:

Transportation Concurrency

Transportation concurrency is a growth management strategy aimed at ensuring that transportation facilities and services are available concurrent with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate Level of Service (LOS) for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. If adequate capacity is not available, then the developer must provide the necessary improvements, provide monetary contribution toward the improvements, or wait until government provides the necessary improvements.[1]

Level of Service

Level of service is a technical measure of the quality of service provided by a roadway. LOS is graded on an A through F scale based on the average arterial speed of a roadway. An uncongested roadway with a high average arterial speed will receive an A, while a congested roadway with a low average arterial speed will receive an F.[2] Local governments, in conjunction with the Florida Department of Transportation (FDOT), are responsible for setting LOS standards for roadways.[3]

Proportionate Share

Proportionate share is the amount of money a developer must contribute to mitigate the transportation impacts of a new development. Proportionate share contributions are triggered when a new development will cause a decrease in the LOS grade below a set standard. When a proportionate share contribution is triggered, a developer must, at minimum, contribute money toward one or several mobility improvements. However, developers are only required to contribute toward deficiencies they create, and are not required to correct existing deficiencies.[4]

Transportation Concurrency in Florida

Florida adopted the concept of transportation concurrency with the passage of the 1985 Growth Management Act. Since adoption, the legislature has frequently revisited the concept of transportation concurrency, most recently making substantial changes to s. 163.3180, F.S., in 2005, 2007, 2009 and 2011.[5]

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[1] Fla. Dep't of Comty. Affairs, *Transportation Concurrency: Best Practices Guide*, pg. 5 (2007), retrieved from *www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (*last visited March 18, 2013).
[2] *Id.* at 53.
[3] Section 163.3180(5)(b), F.S.
[4] Section 163.3180(5)(h), F.S.
[5] *See* L.O.F. s. 5, ch. 2005-290 (Providing requirements for proportionate share mitigation), s. 11, ch. 2007-196 (Authorizing study on multimodal districts, providing for concurrency backlog and satisfaction of concurrency requirements), s. 3, ch. 2007-204 (provides exception from concurrency for airports and urban service area, revises transportation concurrency

Transportation concurrency in urban areas is often more costly and functionally difficult than in non-urban areas.[6] As a result, transportation concurrency can result in urban sprawl and the discouragement of development in urban areas, in direct conflict with the general goals and policies of part II, ch. 163, F.S. Also, transportation concurrency can prevent the implementation of viable forms of alternative transit.[7]

Additionally, the frequent changes to transportation concurrency requirements have affected local governments in different ways. In some cases, the changes have provided more flexibility, less state oversight and created more planning tools for local governments, but in other cases, the changes created solutions that were inflexible and unworkable for all but a few local governments, with many local governments having difficulty implementing a transportation concurrency system or local governments implementing highly inconsistent policies.[8] Recent legislative changes to transportation concurrency have sought to address these problems. In 2011, the Legislature passed the Community Planning Act, which made comprehensive changes to growth management regulation in Florida. As part of the act, the Legislature overhauled transportation concurrency and made it optional for local governments.[9] The act also gave local governments the option of adopting alternative mobility funding systems.[10]

Local governments choosing to implement transportation concurrency must still follow established guidelines related to LOS standards and proportionate share contributions.[11] Specifically, local governments that implement transportation concurrency must:

- consult with FDOT when proposed plan amendments affect facilities on the strategic intermodal system;
- exempt certain public transit facilities from concurrency;
- allow an applicant for a development-of-regional-impact development order, a 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:
    - the applicant enters into a binding agreement to pay for or construct its proportionate share of required improvements;

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exceptions for multiuse DRIs, revises proportionate share, provides requirements for proportionate share mitigation and fair-share), s. 5, ch. 2009-85 (provides definition for backlog, provides legislative findings and declarations on backlog, adds provisions on debt incurred from transportation concurrency backlog projects, requires funding of backlog trust funds), s. 4, ch. 2009-96 (revises concurrency requirements, deletes requirements for concurrency exception areas, requires OPPAGA to submit report to legislature concerning the effects of transportation exception areas, revises requirements for impact fees), s. 4, ch. 2011-14 (reenacts s. 163.3180(5), (10), (13)(b) and (e), relating to concurrency requirements for transportation facilities), s. 15, ch. 2011-139 (revises and provides provisions related to concurrency, revises application and findings, revises local government requirements, provides for urban infill, redevelopment, downtown revitalization, provides for DRIs, revises provisions relating to transportation deficiency plans).

[6] *Transportation Concurrency: Best Practices Guide* at 11.

[7] *Id.* at 10.

[8] *Id.* at *10-12.*

[9] L.O.F. s. 15, ch. 2011-139, "The 2011 Community Planning Act."

[10] *Id.*

[11] Section 163.3180(5)(h), F.S.

- the proportionate-share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility;
- the local government has provided a means by which the landowner will be assessed a proportionate share of the cost of providing the transportation facilities necessary to serve the proposed development.

However, local governments that implement alternative mobility funding systems similar to concurrency, but not under the auspices of s. 163.3180, F.S., are not required to follow the LOS and proportionate share guidelines established by s. 163.3180, F.S.

Dual Rational Nexus Test

The Florida Supreme Court recognized in 1976 that new development may be required to pay its "fair share" of additional regulatory costs created by the new development, but that new development charges could constitute illegal taxes if the charges "…bore no relationship to (and were greatly in excess of) the costs of the regulation which was supposed to justify their collection."[12] Subsequent to the court's opinion, a two-pronged test has emerged that all local governments in Florida must satisfy to lawfully impose an impact fee or new development fee.

Known as the dual rational nexus test, a local government must show a rational nexus between proposed development and the need for additional capital facilities for which the fee is imposed, and a rational nexus between the improvement or expenditure of funds collected and the benefits accruing to the subject property.[13] Florida case law, taken together, provides the following with respect to meeting the dual rational nexus text:

- "The local government must be able to justify the fees or exactions by showing that the new development will create more than a possible or incidental need for increased capacity of any public facilities that serve the new development.
- The local government must demonstrate that the new development will actually receive more than an incidental benefit from the expenditure of the impact fees or dedication of property.
- The developer cannot be required to pay impact fees or dedicate property that exceed a pro rata share of the burden imposed on those public facilities.
- In the case of impact fees, the fees must be earmarked to fund expansion of capital facilities that serve the area in which the new development is located.
- The impact fees must be used to provide only the additional capacity required by the new development and not any existing deficiencies.
- The impact fees must not be used to benefit other residents by financing capital growth that is bound to occur with or without the proposed development.
- The impact fees must be spent within a defined, reasonably short amount of time or returned to the payer of the fee.
- The local government's showing of a rational nexus between the proposed development and the community's need for increased capacity of public services, or between the expenditure

[12] *Contractors and Builders Association of Pinellas County, et al. v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976).
[13] The Florida Bar Journal, *An Analysis of Affordable/Work-force Housing Initiatives and Their Legality in the State of Florida, Part II*, Marshall, Michael J. and Rothenberg, Mark A, Volume 82, No. 7, July/August (citations omitted).

of the impact fees and the benefit accrued to the new development, may be refuted by the developer with additional evidence or an alternate study."[14]

Transportation Development Authorities

A county or municipality may create a transportation development authority (TDA)[15] if it has an identified transportation deficiency; *i.e.,* an identified need where the existing and projected extent of traffic volume exceeds the level of service standards adopted in a local government comprehensive plan for a transportation facility.[16] Each (TDA) shall adopt a transportation sufficiency plan as a part of the local government comprehensive plan within 6 months after the creation of the authority. The plan must identify all transportation facilities that have been designated as deficient and establish a schedule for financing and construction of transportation projects that will eliminate transportation deficiencies within the jurisdiction of the TDA within 10 years after the transportation sufficiency plan adoption. The plan must include a priority listing of all transportation facilities that have been designated as deficient and do not satisfy requirements pursuant to s. 163.3180, F.S., and the applicable local government comprehensive plan. Currently authorized TDA transportation projects, designed to relieve transportation deficiencies within a TDA's jurisdiction, may include transportation facilities that provide for alternative modes of travel including sidewalks, bikeways, and mass transit which are related to a deficient transportation facility.

Transit Oriented Development (TOD)

Transit-Oriented Developments are compact, moderate to high intensity and density, mixed use areas within one half mile of a transit stop or station that is designed to maximize bicycle and walking trips and access to transit.[17] They also are characterized by streetscapes and an urban form oriented to bicyclists and pedestrians to promote bicycling and walking trips to transit stations and varied other uses within station areas. One quarter-mile and one-half mile distances represent a 5 to 10 minute walk time, which is the amount of time most people are willing to walk to a destination. The most intense and dense development is typically located within the one quarter mile radius (transit core). Developments' intensities and densities gradually decrease out to the one-half mile radius (transit neighborhood) and the one mile radius (transit supportive area). FDOT has been developing transit oriented development design guidelines to provide general parameters and strategies to local governments and agencies to promote and implement transitready development patterns.[18]

[14] *Id.* (citations omitted).
[15] Creation of TDAs is authorized to address a "transportation deficiency area," the geographic area within the unincorporated portion of a county or within the municipal boundary of a municipality designated in a local government comprehsive plan.
[16] Section 163.3182(1)(d), F.S.
[17] Section 163.3164(46), F.S.
[18] Florida Dept of Transportation, *A Framework for Transit Oriented Development in Florida*, available at http://www.fltod.com/renaissance/docs/Products/FrameworkTOD_0715.pdf (March 2011).

Community Development Districts (CDDs)

Community Development Districts are independent, special-purpose units of government established to finance basic services within a development, including infrastructure construction, services, and maintenance. Common infrastructure improvements provided by CDDs include drainage, potable water, sewerage, roads, and parks.[19] Developers seek CDD approval to obtain low-cost financing by issuing tax-exempt bonds, with lower interest rates. CDDs also have the power to collect fees, levy lienable assessments, or ad valorem taxes against properties within the project for repayment. CDDs are required to have a five-member board of supervisors, elected by the landowners.[20]

If the board of supervisors proposes to exercise the ad valorem taxing power authorized by s. 190.021, F.S., the district board shall call an election at which the members of the board of supervisors will be elected by the qualified electors of the district.[21] Regardless of whether a district has proposed to levy ad valorem taxes, commencing 6 years after the initial appointment of members or, for a district exceeding 5,000 acres in area or for a compact, urban, mixed-use district, 10 years after the initial appointment of members, the position of each member whose term has expired shall be filled by a qualified elector of the district, elected by the qualified electors of the district.[22]

If, in the 6th year after the initial appointment of members, or 10 years after such initial appointment for districts exceeding 5,000 acres in area or for a compact, urban, mixed-use district, there are not at least 250 qualified electors in the district, or for a district exceeding 5,000 acres or for a compact, urban, mixed-use district, there are not at least 500 qualified electors, members of the board of supervisors shall continue to be elected by landowners.[23]

III. Effect of Proposed Changes:

Section 1 amends s. 163.3180, F.S., to revise the established guidelines related to LOS standards and proportionate share contributions that local governments choosing to implement transportation concurrency must follow. The bill provides that local governments continuing to implement a transportation concurrency system, *whether in the form adopted into the comprehensive plan before July 1, 2011, or as subsequently modified,* must allow an applicant for a development agreement (in addition to a DRI impact development order, a rezoning, or other land use development permit) to satisfy transportation concurrency requirements if the applicant *in good faith offers to enter,* rather than *enters,* into a binding agreement to pay for or construct its proportionate share of required improvements *in a manner consistent with subsection (5).*

Additionally, with respect to the requirement that the proportionate-share contribution or construction must be sufficient to accomplish one or more mobility improvements, the bill

[19] Sections 190.002 and 190.012, F.S.
[20] Section 190.006(1) and (2), F.S.
[21] Section 190.006(3)(a)1, F.S.
[22] Section 190.006(3)(a)2a, F.S.
[23] *Id.*

allows a local government to accept contributions from multiple applicants for a planned improvement if it maintains such contributions in a separate account designated for that purpose. Also, the local government must provide the basis upon which landowners will be assessed a proportionate share of the cost of addressing the transportation impacts resulting from a proposed development, rather than the means by which a landowner will be assessed a proportionate share of the cost of providing the transportation facilities necessary to serve the proposed development. The bill makes a technical change to current law to clarify that a local government is not required 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.

If a local government elects to repeal transportation concurrency, the bill encourages it to adopt an alternative mobility funding system that uses one or more of the tools and techniques identified in s. 163.3180(5)(f), F.S. An alternative mobility funding system may not be used to deny, time, or phase an application for site plan, plat approval, final subdivision approval, building permit, or the functional equivalent of such approvals if the developer agrees to pay for the development's identified transportation impacts using the funding mechanism implemented by the local government. The bill states that the revenue from the funding mechanism adopted in the alternative system must be used to implement the needs of the local government's plan which serve as the basis for the fee imposed. A mobility-fee-based funding system must comply with the dual rational nexus test applicable to impact fees. An alternative system that is not mobility-fee-based may not be applied in a manner that imposes upon new development any responsibility for funding existing transportation deficiencies as that term is defined in s. 163.3180(5)(h), F.S.

Section 2 amends s. 163.3182, F.S., relating to transportation deficiencies and the powers granted to transportation development authorities to address deficiencies within the authority's jurisdiction. Specifically, the bill allows a transportation development authority to undertake transportation projects within and outside of the designated deficiency area to relieve deficiencies identified by the transportation deficiency plan. The bill also stipulates that mass transit improvements and services may extend outside a deficiency area to an existing or planned logical terminus of a selected improvement.

Section 3 amends s. 190.006, F.S., relating to the board of supervisors for community development districts The bill amends this section to provide that transit-oriented developments (as defined in s. 163.3164, F.S.) exceeding 25 acres in area are subject to the specified election requirements.

Section 4 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may reduce required contributions from developers for new developments in certain local government jurisdictions and could reduce delays for developer projects. Pooling contributions from multiple developments by a local government may result in needed transportation improvements.

C. Government Sector Impact:

This bill may limit the flexibility of local governments to develop alternative means to transportation concurrency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Transportation on April 2, 2013:
The CS makes a technical change to current law to clarify that a local government is not required to approve a development that, for reasons other than transportation impacts, is not qualified for approval.

CS by Community Affairs on March 20, 2013:
The CS makes technical and clarifying changes to the language of the bill regarding alternative mobility funding systems. The CS provides requirements and limitations for a mobility-fee-based funding system.

B. Amendments:

None.