**STORAGE NAME:** h0753s1a.llc.doc
**DATE:** February 14, 2002

# HOUSE OF REPRESENTATIVES

## LIFELONG LEARNING COUNCIL ANALYSIS

**BILL #:** CS/HB 753

**RELATING TO:** District School Boards and Local Governments

**SPONSOR(S):** Committee on Local Government & Veterans Affairs; Representatives Murman; Fiorentino; Bennett; Alexander and others

**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

(1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 9 NAYS 0
(2) LIFELONG LEARNING COUNCIL YEAS 15 NAYS 0
(3) COUNCIL FOR SMARTER GOVERNMENT
(4)
(5)

---

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

I. SUMMARY:

This bill amends the Local Government Comprehensive Planning and Land Development Regulation Act of 1985 to require local governments and school boards to enter into an interlocal agreement that addresses school siting and coordination between the school board and local governments. The interlocal agreement must be entered by deadlines established by the Department of Community Affairs (DCA), beginning March 1, 2003, and concluding December 1, 2004. The Administration Commission is authorized to impose the withholding of at least 5% of state revenue available for infrastructure spending within the local government if the local government fails to comply with the interlocal agreement requirement and withhold from a district school board at least 5% of certain state education dollars.

The bill modifies statutory provisions governing the planning and siting of educational facilities. Parallel language requiring school boards to enter into interlocal agreements with local governments is included, that is identical to the language added to the Local Government Comprehensive Planning and Land Development Regulation Act of 1985, and district school boards are subject to the withholding of certain state education dollars if the school board fails to comply with the adoption schedule which begins March 1, 2003.

The Department of Community Affairs and the Department of Education will experience increased workload resulting from the requirement to review required interlocal agreements. Cities, counties and school boards will incur planning, administrative and legal expenses in complying with the new planning requirements associated with educational facility planning. As this bill imposes new planning requirements associated with the development of school planning interlocal agreements between local governments and school boards that will require cities and counties to spend money in order to implement, the bill constitutes a mandate as defined in Article VII, Section 18(a) of the Florida Constitution. It is unclear if the bill has an insignificant fiscal impact and is therefore exempt from the requirements of Article VIII, Section 18, of the Florida Constitution.

The Council for Lifelong Learning adopted one amendment, which is traveling with the bill.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

| | | | | |
|---|---|---|---|---|
| 1. | Less Government | Yes [] | No [X] | N/A [] |
| 2. | Lower Taxes | Yes [] | No [] | N/A [X] |
| 3. | Individual Freedom | Yes [] | No [] | N/A [X] |
| 4. | Personal Responsibility | Yes [] | No [] | N/A [X] |
| 5. | Family Empowerment | Yes [] | No [] | N/A [X] |

For any principle that received a “no” above, please explain:

As discussed in “Effects of Proposed Changes” section, although current law requires local governments and school districts to enter into interlocal agreements, this bill imposes new requirements.

B. PRESENT SITUATION:

**Background – Growth Management System**

Florida has a system of growth management that includes: Sections 163.3161-163.3244, F.S., the Local Government Comprehensive Planning and Land Development Regulation Act of 1985; ch. 380, F.S., Land and Water Management, which includes the Development of Regional Impact and Areas of Critical State Concern programs; ch. 186, F.S., establishing regional planning councils and requiring the development of state and regional plans; and ch. 187, F.S., the State Comprehensive Plan.

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ("Act") ss. 163.3161-163.3244, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, the Department of Community Affairs (DCA) was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria must require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan. The original minimum criteria rule for reviewing local comprehensive plans and plan amendments was adopted by DCA on March 6, 1986 as Rule 9J-5, Florida Administrative Code, (F.A.C.).

After a comprehensive plan has been adopted, subsequent changes are made through amendments to the plans. There are generally two types of amendments: 1) amendments to the future land use map that change the land use category designation of a particular parcel of property or area; and 2) text amendments that change the goals, objectives or policies of a particular

element of the plan. In addition, every seven years a local government must adopt an evaluation and appraisal report (EAR) assessing the progress of the local government in implementing its comprehensive plan. The local government is required, pursuant to s. 163.3191(10), F.S., to amend its comprehensive plan based on the recommendations in the report.

Comprehensive Plan Amendment Process

Under chapter 163, F.S., the process for the adoption of a comprehensive plan and comprehensive plan amendments is essentially the same. A local government or property owner initiates the process by proposing an amendment to the designated local planning agency (LPA). After holding at least one public hearing, the LPA makes recommendations to the governing body regarding the amendments. Next, the governing body holds a transmittal public hearing at which the proposed amendment must be voted on affirmatively by a majority of the members of the governing body of the local government. Following the public hearing, the local government must "transmit" the amendment to the department, the appropriate regional planning council and water management district, the Department of Environmental Protection, the Department of Transportation and any other local government or state agency that has requested a copy of the amendment.

Next, the decision is made whether to review the proposed amendment. If the local government does not request a review, the department requests that the appropriate water management districts, Department of Transportation, and Department of Environmental Protection advise the DCA as to whether the amendment should be reviewed, within 21 days after transmittal of the amendment by the local government. Based on this information, the department decides whether to review the amendment. The department must review the proposed amendment if the local government transmitting the amendment, a regional planning council or an "affected person" requests review within 30 days after transmittal of the amendment. Finally, even if a request by one of the above parties is not made, the department may elect to review the amendment by giving the local government notice of its intention to review the amendment within 30 days of receipt of the amendment.

If review is not requested by the local government, the regional planning council, or any affected person, and the department decides not to review it, the local government is notified that it may proceed immediately to adopt the amendment. If, however, review of the amendment is initiated, the department transmits, pursuant to Rule 9J-1.009, F.A.C., a copy of the amendment to: the Department of State; the Fish & Wildlife Conservation Commission; the Department of Agriculture and Consumer Affairs, Division of Forestry, for county amendments; and the appropriate local planning agency. In addition, the department may circulate a copy of the amendment to other government agencies, as appropriate. Commenting agencies have 30 days from receipt of the proposed amendment to provide written comments to the department and, in addition, written comments submitted by the public within 30 days after notice of transmittal by the local government are considered by the department as if they were submitted by governmental agencies.

Upon receipt of the comments described above, the department has 30 days to send its objections, recommendations and comments report to the local government body (commonly referred to as the "ORC Report"). In its review, the department considers whether the amendment is consistent with the requirements of the Act, Rule 9J-5, Florida Administrative Code, the State Comprehensive Plan and the appropriate regional policy plan.

After receiving the ORC report from the department, the local government has 60 days (120 days for amendments based on Evaluation and Appraisal "EAR" Reports or compliance agreements) to adopt the amendment, adopt the amendment with changes, or decide that it will not adopt the amendment. The decision must be made at a public hearing. Within 10 days after adoption, the

local government transmits the adopted plan amendment to the department, the commenting agencies, the regional planning council and anyone else who has requested notice of the adoption.

Upon receipt of a local government's adopted comprehensive plan amendment, the department has 45 days (30 days for amendments based on compliance agreements) to determine whether the plan or plan amendment is in compliance with the Local Government Comprehensive Planning and Land Development Regulation Act. This compliance determination is also required when the department has not reviewed the amendment under s. 163.3184(6), F.S. During this time period, the department issues a notice of intent to find the plan amendment in compliance or not in compliance with the requirements of the Act. The notice of intent is mailed to the local government and the department is required to publish such notice in a newspaper that has been designated by the local government.

If the department finds the comprehensive plan amendment in compliance with the Act, any affected person may file a petition for administrative hearing pursuant to ss. 120.569 and 120.57, F.S., within 21 days after publication of the notice of intent. The Division of Administrative Hearing conducts an administrative hearing where the legal standard of review is that the plan amendment will be determined to be in compliance if the local government's determination of compliance is fairly debatable. The hearing officer submits a recommended order to the department. If the department determines that the plan amendment is in compliance, it issues a final order. If the department determines that the amendment is not in compliance, it submits the recommended order to the Administration Commission (the Governor and Cabinet) for final agency action.

If the department issues a notice of intent to find the comprehensive plan amendment not in compliance, the notice of intent is forwarded directly to the Division of Administrative Hearing in order to hold a ss. 120.569 and 120.57, F.S., administrative proceeding. The parties to the administrative proceeding include: the department; the affected local government, and any affected person who intervenes. "Affected persons" are defined, by s. 163.3184(1), F.S., to include:

> …the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review, and the adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

The definition of "affected person" requires that the individual seeking to challenge the comprehensive plan or plan amendment has participated in some capacity during the public hearing process through the submission of oral or written comments. Persons residing outside of the jurisdiction of the local government offering the amendment, accordingly, lack standing under this definition.

In the administrative hearing, the decision of the local government that the comprehensive plan amendment is in compliance is presumed to be correct and must be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan amendment is not in compliance. The administrative law judge submits his decision directly to the Administration Commission for final agency action. If the Administration Commission determines that the plan amendment is not in compliance with the Act, it must specify remedial actions to bring the plan amendment into compliance.

Local governments are limited in the number of times per year they may adopt comprehensive plan amendments. Section 163.3187, F.S., provides that local government comprehensive plan amendments may only be made twice in a calendar year unless the amendment falls under specific statutory exceptions which include, for example: amendments directly related to developments of regional impact; small scale development amendments; the designation of an urban infill and redevelopment area; and changes to the schedule of the capital improvements element.

**Educational Facility Planning**

The Coordination of School Facility Planning and Local Government Comprehensive Planning

When the Local Government Comprehensive Planning Act was originally enacted in 1985, the provision of school facilities was identified as a type of infrastructure for which concurrency was required pursuant to s. 163.3180, F.S. However, over the years, amendments were made to the act to require a minimum level of coordination between school boards and local governments, particularly in the area of school facility siting. For example, local governments are required to identify on their future land use map, land use categories where public schools are an allowable use, including land proximate to residential development to meet the projected needs for schools. (s. 163.3177(6)(a), F.S.) In addition, the future land use element must include criteria that encourages the location of schools proximate to residential development as well as encouraging the collocation of public facilities, parks, libraries and community centers with schools.

In addition, the interlocal coordination element, required by s. 163.3177(6)(h), F.S., requires a local government to establish principles and guidelines to be used in the coordination of the adopted comprehensive plan with the plans of school boards. Finally, s. 163.3191, F.S., requiring local governments to prepare evaluation and appraisal reports, requires the coordination of the comprehensive plans and school facilities. Section 163.3191(2)(k), F.S., requires an evaluation of the coordination of the comprehensive plan with existing public schools and those identified in the 5-year school district facilities work program. The evaluation must address the success or failure of the coordination of the future land use map and associated planned residential development with public schools and joint decision making processes engaged in by the local government and the school board.

In 1998, the Legislature gave local governments the option to implement school concurrency. Section 163.3180(13), F.S., includes the minimum requirements for school concurrency. First, in order to implement concurrency on a district wide basis, all local governments within the county must adopt a public school facilities element and enter into an interlocal agreement. The public facilities element must include data including the 5-year school district facilities work plan; the educational plant survey; information on projected long-term development; and a discussion of how level-of-service standards will be established and maintained. Next, local governments implementing concurrency must adopt a financially feasible public school capital facilities program, in conjunction with the school board that shows that the adopted level of service standards will be maintained. Finally, a local government may not deny a development permit authorizing residential development for failure to achieve the level-of-service standard for school capacity where adequate school facilities will be in place or under construction within 3 years of permit issuance.

Only two counties have attempted to implement school concurrency, Broward and Palm Beach Counties. The Broward County concurrency plan was found to be out of compliance with chapter 163, F.S., in the case of Economic Development Council of Broward Inc. v. Department of Community Affairs, DOAH Case No. 96-6138GM. Palm Beach County has recently transmitted proposed comprehensive plan amendments to adopt school concurrency to the Department of Community Affairs for review. School concurrency has proven to be difficult to accomplish because of the requirement that a financially feasible capital improvements plan must basically ensure that

school construction will keep pace with development. In a fast growing county, the financial resources may not be available to fund such a plan.

As an alternative to school concurrency, Orange County adopted a policy, originally advanced by former County Commission Chairman Mel Martinez in a memorandum of March 29, 2000 to the Orange County Board of County Commissioners, whereby proposed developments which require rezonings or comprehensive plan amendments that increase the density or intensity of development are denied where inadequate school capacity is available to serve the new development. Applying the policy, the Orange County Commission has denied several rezoning or comprehensive plans amendment requests. Two of the applicants sued the commission and one of these cases resulted in a circuit court decision that is presently on appeal.

In the case of Betty Jean Mann, v. Board of County Commissioners of Orange County, Florida, and Orange County Public Schools, the petitioner challenged the commission's denial of her application for a change in zoning designation from agricultural to single family residential. The record for the public hearing where the commission considered the rezoning shows that the planning staff for the commission recommended denial of the application finding that the lack of adequate school capacity rendered the development plan inconsistent with two elements of Orange County's local government comprehensive plan, the Future Land Use Element and an objective of the Public Schools Facilities Element which provides that the commission may "Manage the timing of new development to coordinate with adequate school capacity." In addition, a member of the Orange County School Board testified that the attendant elementary school for the proposed development was over capacity and that the school board had no funds available to improve the facility or construct a new facility.

At trial, the petitioner argued that the Legislature's enactment of a statutory school concurrency program in s. 163.3180(13), F.S., preempts any other power the Board of County Commissioners has to deny a request based on school overcrowding. In contrast, Orange County argued that it did not deny the petitioner's zoning request based on lack of school concurrency, but based on the county's constitutional and statutory "home rule powers." In upholding the county's decision, the Court found that the county had the statutory authority to deny the zoning request based on the rezoning's inconsistencies with the elements of the county's local government comprehensive plan, rather than basing its decision on the county's home rule powers. The case is presently on appeal before the Fifth District Court of Appeal.

Chapter 235, F.S., Educational Facilities

Chapter 235, F.S., contains planning and design requirements for educational facilities. Administrative rules adopted under the authority of the chapter are currently undergoing review as part of the reorganization of educational governance for K-20. For example, under current law, s. 235.193, F.S., requires some degree of coordination between school boards and local governments. Section s. 235.193(1), F.S., requires the integration of the educational plant survey with the local comprehensive plan and land development regulations. School boards are required to share information regarding existing and planned facilities, and infrastructure required to support the educational facilities. The location of public educational facilities must be consistent with the comprehensive plan and the land development regulations of the local governing body.

Local governments are prohibited from denying site plan approval for an educational facility based on the adequacy of the site plan as it relates to the needs of the school. Further, existing schools are considered consistent with the applicable local government's comprehensive plan. If a school board submits an application to expand an existing school site, the local government "may impose reasonable development standards and conditions on the expansion only." (s. 235.193(8), F.S.)

Section 235.194, F.S., requires each school board to annually submit a school facilities report to each local government within the school board's jurisdiction. The report must include information detailing existing facilities, projected needs and the board's capital improvement plan, including planned facility funding over the next 3 years, as well as the district's unmet need. The district must also provide the local government with a copy of its educational plan survey.

<u>2001 Legislative Proposals</u>

During the 2001 legislative session, the public school facility planning recommendations of the Growth Management Study Commission were drafted into proposed legislation. These recommendations included the following:

> Each local government shall adopt a financially feasible public school facilities element to reflect the integration of school board facilities work programs, and the future land use element and capital improvement programs of the local government. Local governments shall ensure the availability of adequate public school facilities when considering the approval of plan amendments and rezoning that increase residential densities. Before a local government can deny a rezoning that increases density based on school capacity, the local school board must communicate to the local government that it has exhausted all reasonable options to provide adequate school facilities.

Legislative language was developed and incorporated into CS/CS/CS/SB 310 2nd Engrossed and CS/HBs 1617 & 1487 2nd Engrossed. Generally, the bills required local governments in counties with school capacity problems to adopt a public educational facilities element and to enter an interlocal agreement that provides a methodology for determining whether school capacity will be available to serve development. Upon adoption of the public educational facilities element and the interlocal agreement, the Senate Bill and early versions of the House Bill required local governments to deny rezonings and comprehensive plan amendments that increase the density or intensity of residential development.

In addition to the above, the Senate Bill provided that, before the mandate to local governments to deny rezonings and comprehensive plan amendments that increase residential density and intensity because of inadequate capacity takes effect, the local government must either levy the one-half-cent school capital outlay surtax, or an equivalent amount of new broad-based revenue from state or local sources, equivalent to the amount that would be raised from the school capital outlay surtax, is available and dedicated to the implementation work program adopted by the school board. However, these bills did not become law.

C. EFFECT OF PROPOSED CHANGES:

The bill requires local governments and school boards to enter into an interlocal agreement that addresses school siting and coordination between the school board and local governments. The interlocal agreement must be entered following a schedule to be established by DCA, beginning March 1, 2003, and ending December 1, 2004. The Administration Commission is authorized to impose the withholding of at least 5% of state revenue available for infrastructure spending within the local government if the local government fails to comply with the interlocal agreement requirement, and at least 5% from the district school board of state education facility dollars.

D. SECTION-BY-SECTION ANALYSIS:

**Section 1.** Section 163.3174, F.S., is amended to require that all local planning agencies include a district school board representative as a nonvoting or voting member. The bill provides, however,

that the governing body of the local government may grant voting status to the school board member.

**Section 2.** Section 163.31776, F.S., is created to require each local government within a school district to enter into an interlocal agreement with the district school board. The interlocal agreement must jointly establish the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated.

*Mandatory Public Schools Interlocal Agreement*

The section authorizes DCA to establish a compliance schedule beginning March 1, 2003 and ending December 1, 2004 with schools districts facing capacity problems to be scheduled first.

A waiver process is established for district school boards and local governments where the student population has been declining over the five-year period preceding the due date for the submittal of the interlocal agreement. In this situation, the local government and school district may petition DCA for a waiver which must be granted if the coordination procedures to be established in an interlocal agreement are unnecessary because of the school district's declining school age population, considering the school district's 5-year facilities work program. DCA may modify or revoke the waiver if the conditions justifying the waiver no longer exist. If the waiver is revoked, the local government and school board have 1 year to submit an interlocal agreement to DCA.

While local governments within the geographic area of a school district are encouraged to submit a single interlocal agreement, they may submit separate agreements. Municipalities are exempt from entering an interlocal agreement when the district has no public schools located within its boundaries, and where the school district's 5, 10 and 20-year work programs demonstrate that no new school is needed within the municipality.

Any local government that has implemented school concurrency pursuant to s. 163.3180, F.S., is not required to amend its public schools element or interlocal agreement to conform with the new requirements of this section if the public school element is adopted within 1 year after the effective date of the section and remains in effect. To date, Palm Beach County and the municipalities within Palm Beach County are the only local governments who have implemented school concurrency and are entitled to this exemption.

*Content of Interlocal Agreement*

The interlocal agreement between the local government and the school board must include:

- A process for developing consistent projections of the amount, type, and distribution of population growth and student enrollment.

- A process to coordinate and share information relating to existing and planned public school facilities, including school renovations and closures, and local government plans for development and redevelopment.

- Participation by affected local governments with the school board in the process to determine school closures, significant renovations to existing schools, and new school site selection prior to land acquisition.

- A process for determining the need for and timing of on-site and off-site improvements to support new, proposed expansion, or redevelopment of existing schools. The process must address identification of the party or parties responsible for the improvements.

- Participation of the local governments in the preparation of the annual update to the school board's 5-year district educational facilities work program and educational plant survey.

- A process for determining where and how joint use of either school board or local government facilities can be shared for mutual benefit and efficiency.

- A dispute resolution procedure that may include the dispute resolution processes contained in chs. 164 and 186, F.S.

- An oversight process, including opportunity for public participation, for the implementation of the interlocal agreement.

- A process for the school board to inform the local government regarding capacity. In addition, the interlocal agreement must identify how the district school board will meet public school demand and provide that school capacity reporting is consistent with state rules governing measurement of school capacity.

A local government and school board may opt out of the requirement that the interlocal agreement include a process for the school board to communicate with the local government regarding capacity. The decision to "opt out" of the requirement must occur after a public hearing on the election, which may include the public hearing in which a district school board or local government adopts the interlocal agreement.

*Approval and Challenge*

After a public school's interlocal agreement is executed, it must be submitted to DCA. Within 30 days of receipt of the agreement, the Office of Educational Facilities and SMART Schools Clearinghouse is required to provide DCA with comments regarding the agreement. Within 60 days of receipt of the agreement, DCA must determine whether the agreement is consistent with the list of required contents for the agreement and publish a notice of intent to find the interlocal agreement consistent or inconsistent with such requirements. An "affected persons" as defined in s. 163.3184(1)(a), F.S., has standing to challenge the interlocal agreement in a chapter 120 administrative proceeding in which both the school board and local government are necessary parties. In order to have standing, the petitioner must have submitted oral or written comments to the local government or school board prior to the execution of the agreement. If DCA finds that the interlocal agreement is consistent with the statutory criteria, the local government's and school board's determination of consistency is fairly debatable. If DCA finds that the interlocal agreement is inconsistent with the statutory criteria, the local government's and school board's determination of consistency must be upheld unless it is shown by a preponderance of the evidence that the agreement is inconsistent with the statutory criteria.

*Sanctions*

DCA is required to issue a Notice to Show Cause if the executed interlocal agreement is not timely submitted within 15 days of the deadline. DCA then forwards the notice and responses to the Administration Commission. The Administration Commission is authorized to enter a final order finding the failure to comply and ordering the appropriate agencies to withhold at least 5 percent of state revenue sharing dollars pursuant to s. 163.3184(11), F.S., and the Department of Education to

withhold at least 5 percent of state school construction funds available under s. 235.187, F.S. (Classrooms First Program); s. 235.216, F.S. (SIT program award eligibility); s. 235.2195, F.S. (1997 School Capital Outlay Program); and s. 235.42, F.S. (Public Education Capital Outlay and Debt Service Trust Fund).

**Section 3.** Subsections (1), (2) and (3) of s. 235.19, F.S., relating to school site planning and selection, are amended. Subsection (1) is amended to require school boards to encourage using elementary schools as focal points for neighborhoods and to replace references to “schools” with reference to “district educational facilities”.

Subsection (2) is amended to eliminate the authority of the Commissioner of Education to prescribe by rule site acreage requirements. The current requirement in subsection (3) that school sites must be well drained and suitable for outdoor educational purposes as appropriate for the educational program is amended to add “or collocated with facilities to serve such purpose.” Subsection (3) is further amended to require, to the extent practicable, sites to be chosen which will provide safe access from neighborhoods to schools.

**Section 4.** Section 235.193, F.S., relating to the coordination of planning with local governments, is amended. Subsection (1) is amended to require all parties to the planning process to consult with state and local road departments to assist in implementing the Safe Paths to Schools program administered by the Department of Transportation. New subsections (2)–(8) are added to require each district school board to enter into an interlocal agreement with local governments. Subsections (2)-(8) contain language that is identical to new s. 163.31776, F.S., (and which is discussed in Section 2) regarding the requirement for and procedure for adopting a public schools interlocal agreement. Failure of the school board to enter a required interlocal agreement by the deadline adopted by DCA, subjects the school board to sanctions to be imposed by the Administration Commission, including the withholding of not less than 5% of funds for school construction dollars available under s. 235.187, F.S. (Classrooms First Program); s. 235.216, F.S. (SIT program award eligibility); s. 235.2195, F.S. (1997 School Capital Outlay Program); and s. 235.42, F.S. (Public Education Capital Outlay and Debt Service Trust Fund).

Existing subsection (2) is renumbered subsection (9) and is amended to require school boards to use information produced by the demographic, revenue, and education estimating conferences when preparing the 5-year district facilities work program, as modified and agreed to by the local governments pursuant to the provisions of an executed interlocal agreement, and the Office of Educational Facilities and the SMART Schools Clearinghouse. New language is added requiring projections to be apportioned geographically with assistance from the local governments using local government trend data and the school district student enrollment data.

Existing subsection (3) is renumbered subsection (10) and amended to delete current language qualifying the requirement that the location of public educational facilities be consistent with the local comprehensive plan and land development regulations.

Existing subsection (4) is renumbered subsection (11) and amended to provide that written notice by the school board to the local government regarding the acquisition or lease of property for educational facilities must be consistent with the interlocal agreement required by subsections (2)-(8).

Existing subsection (5) is renumbered subsection (12) and amended to require that a school board must, consistent with the interlocal agreement required by subsections (2)-(8), but no later than 90 days prior to commencing construction, request, in writing, a determination of consistency with the local government’s comprehensive plan. The current requirement that the local government make such a determination within 90 days after receiving the necessary information and the school

board's request, is amended to reduce the time period to 45 days and to delete language qualifying the requirement that the location of public educational facilities be consistent with the local comprehensive plan and land development regulations.

Existing subsection (6) is renumbered subsection (13) and amended to refer to a comprehensive plan's land use policies and categories rather than a comprehensive plan's future land use policies and categories, and to provide that local governments may not impose development standards and conditions on a school board site application which conflict with those established in this chapter or the Florida Building Code, unless mutually agreed and consistent with the interlocal agreement required by subsections (2)-(8).

Existing subsection (7) is renumbered subsection (14), and amended to provide that alternative processes for reviewing a proposed educational facility and site plan are to be implemented through the interlocal agreement adopted in accordance with subsections (2)-(8).

Existing subsection (8) is renumbered subsection (15) and amended to delete language that addresses consistency of the collocation of new proposed public educational facilities with an existing public educational facility and expansion of existing public educational facilities with local government comprehensive plans. The subsection is further amended to revise language exempting certain school projects from local government review or approval. A reference to the State Uniform Building Code is replaced with reference to the Florida Building Code, and a reference to the interlocal agreement adopted in accordance with subsections (2)-(8) is added.

**Section 5.** This section declares that nothing in this Act is intended to affect the outcome of any litigation pending as of the effective date of the Act, including future appeals. The language states it is further the intent of the Legislature that this Act shall not serve as legal authority in support of any party to such litigation and appeals.

**Section 6.** This section provides a legislative finding that the integration of growth management and the planning of public educational facilities is a matter of great public importance.

**Section 7.** An effective date of upon becoming a law is provided.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

As discussed in the "Effects of Proposed Changes" section, the bill authorizes the Administration Commission to impose the withholding of at least 5% of state revenue available for infrastructure spending within the local government if the local government fails to comply with the interlocal agreement requirement, and at least 5% from the district school board of state educational facility dollars.

2. Expenditures:

Cities, counties and school boards may incur planning, administrative and legal expenses in complying with the new planning requirements associated with educational facility planning.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The Department of Community Affairs and the Department of Education may experience increased workload resulting from the requirements to review required interlocal agreements.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

As this bill imposes new planning requirements associated with the development of school planning interlocal agreements between local governments and school boards that will require cities and counties to spend money in order to implement, the bill constitutes a mandate as defined in Article VII, Section 18(a) of the Florida Constitution:

> No county or municipality shall be bound by any general law requiring such County or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills important state interest and unless; funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989 …the law requiring such expenditure is approved by two-thirds of the membership of each house of the Legislature…

Article VII, Section 18(d) of the Florida Constitution, exempts laws having insignificant fiscal impacts from the requirements of the section. For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Because the planning requirements associated with educational facility planning agreements are phased in over a period of time, the total fiscal impact of these changes is difficult to calculate. However, based on the 2000 census, a bill that would have a statewide fiscal impact on counties and municipalities in aggregate of in excess of $1,598,238 would be characterized as a mandate.

The bill does not provide an additional revenue source or an appropriation to fund compliance with its terms. To the extent total county and municipal expenditures to comply with the requirements of the bill exceed the threshold figure for significant impact, the bill must have a two-thirds vote of the membership of each house of the Legislature and must be found to fulfill an important state interest in order to require compliance of local governments.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties and municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 30, 2002, the Committee on Local Government & Veterans Affairs considered HB 753, adopted one strike-everything amendment, and passed the bill as a committee substitute. The committee substitute differs from the original filed House bill in the following ways:

- Includes a revision to s. 163.3174(1), F.S., not included in HB 753, which requires that all local planning agencies include a district school board representative as a nonvoting or voting member.

- Does not include a revision to s. 163.3177, F.S., included in HB 753, which deletes current language including district school boards among local government entities required to enter into interlocal agreements, and requires local governments within a school district and the school district to enter into an interlocal agreement consistent with s. 163.31776, F.S.

- Includes a provision in newly created s. 163.31776, F.S., not included in HB 753, that provides for the waiver of one or more of the requirements of the section for local governments with declining school age populations.

- Replaces the requirement contained in HB 753 (s. 163.31776(2)(e), F.S.) that the interlocal agreement address participation of the school district in the local government comprehensive plan amendment, rezoning, and development approval processes, with a requirement that the interlocal agreement include a process for the school board to inform the local government regarding school capacity. In addition, new language is added allowing a signatory to the interlocal agreement to elect not to include a provision meeting the requirements of the new subparagraph (2)(e), and providing that interlocal agreements must be consistent with the adopted local government comprehensive plan and land development regulations.

- Includes a provision --- s. 31776(2)(i), F.S. -- not included in HB 753, requiring the interlocal agreement to include an oversight process for the implementation of the interlocal agreement.

- Includes language in s. 163.31776(3)(b), F.S., not included in HB 753, limiting standing to challenge DCA's notice of intent to persons who have submitted oral or written comments, recommendations, or objections to the local government or the school board before the adoption of the interlocal agreement. The amendment also includes language providing that in proceedings to challenge DCA's notice, that when DCA finds an interlocal agreement consistent with the criteria in subsection (2) and this subsection, the interlocal agreement shall be determined consistent with such requirements if the local government's and school board's determination of consistency is fairly debatable. Language also is added providing that in such proceedings, if DCA finds the interlocal agreement to be inconsistent with such requirements, the local government's and school board's determination of consistency shall be sustained unless it is shown by a preponderance of the evidence that the interlocal agreement is inconsistent.

- Includes language in s. 163.31776(5), F.S., which clarifies that any local government that has implemented school concurrency pursuant to s. 163.3180, F.S., is not required to amend its public schools element or interlocal agreement to conform with the new requirements of this section if the public school element is adopted prior to or 1 year after the effective date of the section and remains in effect.

- Includes revisions to s. 235.19(1), F.S., not included in HB 753, requiring school boards to encourage using elementary schools as focal points for neighborhoods.

- Includes revisions to s. 235.193(1), F.S., not included in HB 753, requiring all parties to the planning process to consult with state and local road departments to assist in implementing the Safe Paths to Schools program administered by the Department of Transportation.

- Revises provisions amending s. 235.193, F.S., which require each district school board to enter into an interlocal agreement with local governments, to make the same changes as are made to newly created s. 163.31776, F.S.

- Deletes language in s. 235.193(8), F.S., which is not deleted in HB 753, which addresses consistency of the collocation of new proposed public educational facilities with an existing public educational facility and expansion of existing public educational facilities with local government comprehensive plans.

- Includes language, not included in HB 753, declaring that nothing in this Act is intended to affect the outcome of any litigation pending as of the effective date of the Act, including future appeals. The language states it is further the intent of the Legislature that this Act shall not serve as legal authority in support of any party to such litigation and appeals.

- Includes language, not included in HB 753, providing a legislative finding that the integration of growth management and the planning of public educational facilities is a matter of great public importance.

On February 14, 2002, the Council for Lifelong Learning adopted one amendment, which clarifies that the interlocal agreements must address participation by affected local governments with school boards in the process of *evaluating potential*, rather than determining, school closures, significant renovations to existing schools, and new school site selection before land acquisition.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

| Prepared by: | Staff Director: |
| --- | --- |
| Thomas L. Hamby, Jr. | Joan Highsmith-Smith |

AS REVISED BY THE LIFELONG LEARNING COUNCIL:

| Prepared by: | Staff Director: |
| --- | --- |
| Anitere Flores | Patricia Levesque |