

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill allows local government to be more development restrictive in implementing transportation facilities concurrency. If local government chooses to be more restrictive than the state standard, then such action could be considered to either limit government by decentralizing the implementation standard or increase government by further restricting when development may occur.

Safeguard individual liberty – The bill allows local government to be more development restrictive in implementing transportation facilities concurrency. Thus, if local government chooses a more restrictive implementation, then such action could be considered to decrease or prohibit a private organization (developer) in the conduct of its affairs.

B. EFFECT OF PROPOSED CHANGES:

Background

Transportation Concurrency - CS/CS/CS SB 360 (2005)

The 2005 Legislature enacted CS/CS/CS SB 360 relating to infrastructure funding and planning (ch. 2005-290, L.O.F., the “2005 Act”). Among other revisions to existing law, the act provides for stricter facilities concurrency than existed in prior law. Concurrency is a growth management concept intended to ensure that the necessary public facilities and services are available concurrent with the impacts of development. One of the types of facilities to which concurrency applies under the 2005 Act is transportation facilities. Specifically, the 2005 Act provided that *transportation facilities must be in place or under actual construction within 3 years from the local government’s approval of a building permit or its functional equivalent that results in traffic generation*. To carry out transportation concurrency, local governments must define what constitutes an adequate level of service and measure whether the service needs of a new development exceed existing capacity and any scheduled improvements in the capital improvements element of the local government’s comprehensive plan.

Transportation Concurrency Exception Areas

The law provides that under limited circumstances, the requirement for transportation facilities concurrency conflicts with other public policy goals and leads to the discouragement of urban infill development and redevelopment. In such instances, existing law allows a local government to designate a transportation concurrency exception area (TCEA) to provide for an exception to the concurrency requirements. This results in an increase in the number of people and goods that need to move around within the TCEA and means that their mobility must be addressed in ways other than the traditional provision of roads. When a local government chooses to designate a TCEA, they must follow certain requirements in the law. Among those requirements is the adoption of a comprehensive plan amendment that supports the designated area in the ways outlined below.

- Implements strategies to support and fund mobility within the TCEA, including alternative modes of transportation.
- Demonstrates how strategies will support the purpose of the exception area and how mobility within the exception area will be provided.
- Addresses urban design; appropriate land use mixes, including intensity and density; and network connectivity plans needed to promote urban infill, redevelopment, or downtown revitalization.
- Be accompanied by data and analysis justifying the size of the area.

Proportionate Fair-Share Mitigation

The 2005 Act established a single method by which development could proceed ahead of supporting transportation facilities. The method is referred to as “proportionate fair-share mitigation.” The intent of proportionate fair-share mitigation is to provide applicants for development an opportunity to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their share of the cost of improving the impacted transportation facility.

A developer may choose to satisfy transportation concurrency requirements by contributing or paying “proportionate fair-share mitigation” for those facilities or segments that are identified in the 5-year schedule of capital improvements. If the funds in an adopted 5-year schedule are insufficient to fully fund construction of the transportation improvements required by the local government’s transportation concurrency management system, the local government may still enter into a binding proportionate share agreement with the developer. This agreement would allow a developer to construct the amount of development on which the proportionate fair share is calculated if the amount in the agreement is sufficient to pay for an improvement that will, in the opinion of a governmental entity, significantly benefit the impacted transportation system.

Effect of Proposed Changes

Stricter concurrency requirements: HB 905 expressly allows local government to adopt a stricter concurrency requirement, including real-time concurrency, than that provided in existing law. Existing law, which does not expressly provide authority to establish stricter concurrency standards, does provide that transportation facilities needed to serve new development must be in place or under construction within 3 years after local government approves either a building permit, or its functional equivalent, that results in traffic generation. Thus, under the bill, a local government may choose to require that such facilities need to be in place, or under construction, within any time period shorter than 3 years, after issuance of the building permit. Additionally, the bill expressly allows local government to establish “real-time concurrency” which would mean that no development would be allowed to proceed until “adequate transportation facilities are in place.”

Transportation concurrency exception areas: Existing law requires that a local government that has designated a transportation concurrency exception area must also adopt a comprehensive plan amendment to support the exception area. The bill changes the effective date of the requirement to adopt such a comprehensive plan amendment. The bill only requires such a comprehensive plan amendment for those exception areas granted after July 1, 2006.

Proportionate Fair-Share Mitigation: The bill changes existing law to allow for alternative means, rather than a single method, to mitigate the impacts of development on transportation facilities. Existing law provides that “proportionate fair-share mitigation” is the sole method for mitigating such impacts. Thus, the bill allows a local government to adopt some alternative manner for mitigating such impacts, rather than being restricted to only using the “proportionate fair-share mitigation” method.

C. SECTION DIRECTORY:

Section 1 – Amends as. 163.3180(2)(c), (5)(e), and (16), F.S., relating to transportation concurrency.

Section 2 – Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state revenues.

2. Expenditures:

The bill does not appear to have an impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local revenues.

2. Expenditures:

The bill may increase the demand for local expenditures to ensure that transportation facilities are funded and in place in tandem with development demand.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an impact on the private sector by limiting when development may proceed in relation to the availability of adequate transportation facilities.

D. FISCAL COMMENTS:

Not applicable.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

The bill does not appear to contain any other constitutional issues.

B. RULE-MAKING AUTHORITY:

The bill does not contain any rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 28 – 34 of the bill may lead to confusion over the intended scope of its application. The new language added to s. 163.3180(2)(c), F.S., specifically states:

Nothing in *this section* prohibits a local government from adopting stricter concurrency requirements, including real-time concurrency, under which a local government a local government need not issue a building permit or its functional equivalent for a new development under any circumstances that result in traffic generation until adequate transportation facilities are in place. [emphasis provided]

Reference to “this section” may be interpreted to mean the entire s. 163.3180, F.S. It is unclear whether the new provision allows a local government to adopt stricter concurrency requirements solely for transportation facilities by its inclusion into the paragraph relating solely to transportation facilities, or

more broadly for any of other facilities addressed in the "section" (i.e., sanitary sewer, solid waste, drainage, potable water, parks and recreation, or schools).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.