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 Community Affairs Committee

BILL:	CS/SB 2148
INTRODUCER:	Community Affairs Committee and Senator Bennett
SUBJECT:	Growth Management
DATE:	March 24, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Fav/CS**
2.			TR	
3.			ED	
4.			WPSC	
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:

This committee substitute (CS):

- prohibits members of the governing body of a local government from also serving on the local planning agency with the exception of municipalities having a population of 10,000 or fewer;
- requires that the housing element of a local government's comprehensive plan address senior affordable housing with supporting infrastructure and public facilities;
- allows the state land planning agency to establish different minimum planning criteria;
- creates provisions for "rural agricultural industrial centers";
- states that certain specified projects are committed facilities for the purposes of transportation concurrency;
- specifies that improvements to regionally significant transportation facilities will be credits against proportionate-share;
- states that relocatables are to be considered in determining school capacity and the average cost of a student station for transportation concurrency purposes;

- states that the creation of charter schools can satisfy mitigation requirements for school concurrency purposes and, if created for proportionate-share mitigation, shall be a credit against impact fees;
- establishes an Urban Placemaking Initiative pilot program to assist in the conversion of primarily single-use suburban areas that surround strategic areas to mixed-use, multimodal communities;
- provides procedures for a community or neighborhood meeting before filing an application for a future land use map amendment and another such meeting before an adoption hearing;
- revises certain timeframes for a regional planning council to comment on a proposed plan amendment and request DCA to review the amendment;
- provides that a comprehensive plan or plan amendment is deemed abandoned if a local government fails to adopt the comprehensive plan or plan amendment within 120 days after receiving written comments from DCA, but allows an extension under certain circumstances;
- requires a plan or amendment that will be considered by a local government to be filed with the local government and made available to the public at least 5 business days before the hearing and certain types of changes may not be made during the 5-day period or at the hearing without continuing the hearing to the next meeting of the local governing body;
- revises the exceptions to the twice-per-year limitation on comprehensive plan amendments;
- creates incentives for regional centers for clean technology;
- provides that the costs of mitigation for concurrency impacts be distributed among jurisdictions in a manner proportionate to the percentage of costs incurred by an affected jurisdiction;
- makes jurisdictions that get fees from DRIs share those fees with other local governments that bear the cost of the DRI;
- adds undeveloped areas that used to be military facilities to the definition of "blighted area," and maintains the existing density of certain residential properties or RV parks; and
- provides that land use categories must be defined in terms of uses included rather than numerical caps and that the future land use plan shall be based in part on data regarding factors that limit development such as environmental protections and local building restrictions.

This CS substantially amends the following sections of the Florida Statutes: 163.3174, 163.3177, 163.3180, 163.3184, 163.3187, 163.3202, 163.3217, 163.340, 171.203, 380.06, and 403.973.

II. Present Situation:

Growth Management

Adopted by the 1985 Legislature, the Local Government Comprehensive Planning and Land Development Regulation Act[1] - also known as Florida's Growth Management Act - requires all of Florida's 67 counties and 410 municipalities to adopt Local Government Comprehensive

[1] *See* Chapter 163, Part II, F.S.

Plans that guide future growth and development. Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Community Affairs (DCA).

Local Planning Agencies

Currently, the governing body of a local government may designate itself as the local planning agency with the addition of a nonvoting school board representative. A local planning agency prepares a comprehensive plan or amendment after the required hearings and makes recommendations to the local governing body regarding the adoption or amendment of the local plan.

Plan Amendments

A local government may amend its comprehensive plan provided certain conditions are met including two advertised public hearings on a proposed amendment before its adoption and mandatory review by the DCA. A local government may amend its comprehensive plan only twice per year with certain exceptions. Small-scale plan amendments are treated differently. These amendments may not change goals, policies, or objectives of the local government's comprehensive plan. Instead, these amendments propose changes to the future land use map for site-specific small scale development activity. The DCA does not issue a notice of intent for small scale development amendments.

Transportation Concurrency

The Growth Management Act of 1985 requires local governments to use a systematic process to ensure new development does not occur unless adequate infrastructure is in place to support the growth. The requirement for public facilities and infrastructure to be available concurrent with new development is known as concurrency. Transportation concurrency uses a graded scale of roadway level of service (LOS) standards assigned to all public roads. The LOS standards are a proxy for the allowable level of congestion on a given road in a given area. Stringent standards (i.e., fewer vehicles allowed) are applied in rural areas and easier standards (i.e., more vehicles) are allowed in urban areas to help promote compact urban development.

Over the years it became apparent that irrespective of the easier standards in urban areas, new developments are often located in rural areas due to an abundance of highway capacity on rural roads. In 1992, Transportation Concurrency Management Areas were authorized, allowing an areawide LOS standard (rather than facility-specific) to promote urban infill and redevelopment and provide greater mobility in those areas through alternatives such as public transit systems. Subsequently, two additional relaxations of concurrency were authorized: Transportation Concurrency Exception Areas (TCEA) and Long-term Transportation Concurrency Management Systems. Specifically, the TCEA is intended to "reduce the adverse impact transportation concurrency may have on urban infill and redevelopment" by exempting certain areas from the concurrency requirement. Long-term Transportation Concurrency Management Systems are intended to address significant backlogs.

In 2005, SB 360 revised transportation concurrency requirements. Specifically, it requires transportation facilities to 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. Each local government was required to adopt a methodology for assessing proportionate fair-share mitigation options by December 1, 2006.

Proportionate Fair-Share Mitigation

Proportionate fair-share mitigation is a method for mitigating the impacts of development on transportation facilities through the cooperative efforts of the public and private sectors. This method can be used by a local government to determine a developer's fair-share of costs to meet concurrency. The developer's fair-share may be combined with public funds to construct future improvements; however, the improvements must be part of a plan or program adopted by the local government or FDOT. If an improvement is not part of the local government's plan or program, the developer may still enter into a binding agreement at the local government's option provided the improvement satisfies part II of ch. 163, F.S., and:

- the proposed improvement satisfies the significant benefit test; or
- the local government plans for additional contributions or payments from developers to fully mitigate transportation impacts in the area within 10 years.

Proportionate Share Mitigation

Section 380.06, F.S., governs the development-of-regional-impact (DRI) program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.[2] Multi-use developments contain a mix of land uses and multi-use DRIs meeting certain criteria are eligible to satisfy transportation concurrency requirements under s. 163.3180(12), F.S. The proportionate share option under subsection (12) has been used to allow the mitigation collected from certain multiuse DRIs to be "pipelined" or used to make a single improvement that mitigates the impact of the development because this may be the best option where there are insufficient funds to improve all of the impacted roadways.

School Concurrency

In 2005, the Legislature enacted statewide concurrency requirements. Adequate school facilities must be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval. Each local government must adopt a public school facilities element and the required update to the interlocal agreement by December 1, 2008. A local government's comprehensive plan must also include proportionate fair-share mitigation options for schools.

Rural Areas of Critical Economic Concern

Florida's Rural Areas of Critical Economic Concern (RACEC) are regions comprised of rural communities that have been adversely affected by extraordinary economic events or natural disasters. The designation of the three RACECs in Florida allows these regions certain provisions for economic development initiatives such as waived criteria and requirements for

[2] Section 380.06(1), F.S.

economic development programs. Additionally, funding is provided to the regions to help perform economic research, site selection, and marketing to produce a catalytic economic opportunity. A site is designated in each RACEC for targeted economic development. There are three designated RACECs that cover: 28 counties, 3 municipalities within non-rural counties, one municipality within a rural county which is not a RACEC, and one unincorporated community.

Office of Tourism, Trade, and Economic Development Job Creation Programs

The Governor through his Office of Tourism, Trade, and Economic Development (OTTED) may waive certain criteria, requirements, or similar provisions for any RACEC project expected to provide more than 1,000 jobs over a 5-year period.[3] OTTED administers an expedited permitting process for "those types of economic development projects which offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment."[4]

Community Redevelopment Agencies

Part III of chapter 163, F.S., the Community Redevelopment Act of 1969, authorizes a county or municipality to create Community Redevelopment Areas (CRA) as a means of redeveloping a slum or blighted area. CRAs are not permitted to levy or collect taxes; however, the local governing body is permitted to establish a community redevelopment trust fund utilizing revenues derived from tax increment financing (TIF). TIF uses the incremental increase in ad valorem tax revenue within a designated redevelopment area to finance redevelopment projects within that area.

As property tax values in the redevelopment area rise above an established base, tax increment revenues are generated by applying the current millage rate to that increase in value and depositing that calculated amount into a trust fund. This occurs annually as the taxing authority must annually appropriate an amount representing the calculated increment revenues and deposit it in the redevelopment trust fund. These revenues are used to back bonds issued to finance redevelopment projects.

Disposal of Military Real Property

The U. S. Department of Defense (DoD) provides for the disposal of real property "for which there is no foreseeable military requirement, either in peacetime or for mobilization."[5] Disposal of such property is subject to a number of statutory and department regulations which consider factors such as the:

- Presence of any hazardous material contamination;
- Valuation of property assets;
- McKinney-Vento Homeless Assistance Act;
- National Historic Preservation Act;
- Real property mineral rights; and
- Presence of floodplains and wetlands.[6]

[3] Section 288.0656(7), F.S.
[4] Section 403.973, F.S.
[5] Department of Defense Instruction 4165.72
[6] *Id.*

DoD real property held for mobilization purposes may be made available for interim use but may be subject to immediate return without cost if it is determined that the property is required for mobilization.[7]

III. Effect of Proposed Changes:

Section 1 amends s. 163.3174, F.S., to prohibit members of the governing body of a local government from also serving on the local planning agency with the exception of municipalities having a population of 10,000 or fewer.

Section 2 amends s. 163.3177, F.S., to require the housing element of a local government's comprehensive plan to address senior affordable housing with supporting infrastructure and public facilities.

DCA is authorized to amend ch. 9J-5, Florida Administrative Code, to establish different minimum planning criteria for local governments based on current and projected population, size of the local jurisdiction, the amount and nature of undeveloped land, and the scale of public services provided by the local government.

Subsection (15) of s. 163.3177, F.S. is amended to address agricultural industrial facilities and report legislative findings including the state's compelling interest in preserving the viability of agriculture and protecting rural agricultural communities without promoting urban sprawl in surrounding agricultural and rural areas. A "rural agricultural industrial center" is defined as a developed parcel of land in an unincorporated area that:

- employs at least 200 full-time employees;
- processes, and prepares for transport farm products or biomass material that could be used for the production of fuel, renewable energy, bioenergy, or alternative fuel;
- may include contiguous lands associated with the operation of such a facility; and
- is located within or in reasonable proximity to a rural area of critical economic concern.

Landowners within a rural agricultural industrial center may apply for a comprehensive plan amendment to designate or expand existing centers to include compatible industrial uses and facilities. The application:

- may not increase the physical size of the original center by more than 50 percent or 320 acres, whichever is greater;
- must propose a project ultimately creating at least 50 full-time jobs;
- must demonstrate infrastructure exists or will be provided by the landowner adequate to comply with level-of-service standards adopted in the comprehensive plan;
- must contain measures to prevent urban sprawl; and
- must contain measures to ensure the mitigation of any adverse environmental impacts.

Within 6 months after receipt of an application the local government must amend the applicable sections of its comprehensive plan to include the goals, objectives, and policies to provide for the

[7] *Id.*

expansion of rural agricultural industrial centers and to discourage urban sprawl in the surrounding areas. An amendment meeting these requirements is presumed to be consistent with rule 9J-5.006(5), F.A.C., and may only be rebutted by a preponderance of the evidence.

The CS provides that land use categories must be defined in terms of uses included rather than numerical caps and that the future land use plan shall be based in part on data regarding factors that limit development such as environmental protections and local building restrictions.

Section 3 amends s. 163.3180, F.S., to include the following as committed facilities for purposes of transportation concurrency:

- A project that is included in the first 3 years of a local government's adopted capital improvements plan;
- A project that is included in the Department of Transportation's adopted work program; or
- A high-performance transit system that serves multiple municipalities, connects to an existing rail system, and is included in a county's or the Department of Transportation's long-range transportation plan.

The CS makes jurisdictions that get fees from DRIs share those fees with other local governments that bear the cost of the DRI.

The CS provides that the cost of any improvements made to a regionally significant transportation facility that is constructed by the owner or developer of the development of regional impact, including the costs associated with accommodating a transit facility within the development of regional impact, which is in a county's or the Department of Transportation's long-range transportation plan, shall be credited against a development of regional impact's proportionate-share contribution.

School concurrency provisions in s. 163.3180(13), F.S., are amended to require school districts that include relocatables in their inventory of student stations to also include relocatables in their calculation of school capacity when determining whether levels of service have been achieved. For proportionate-share calculations, the percentage of relocatables that are used by a school district shall be considered in determining the average cost of a student station.

The availability requirement for school concurrency is revised to state that public school facilities that are needed to serve new residential development shall be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. The CS specifies that any mitigation that is required of a developer must be limited to ensure that a development mitigates its own impact on public school facilities, but the developer is not responsible for the additional cost of reducing or eliminating backlogs or addressing class size reduction.

The CS provides that appropriate mitigation options for school concurrency include the construction of a charter school that complies with the life safety requirements in s. 1002.33(18)(f), F.S. The CS specifies that the construction of a charter school as proportionate-share mitigation shall be a credit against impact fees.

The CS creates a pilot program that allows the state land planning agency to designate up to five local governments to participate in an Urban Placemaking Initiative pilot program. The purpose of the program is to assist in the conversion of primarily single-use suburban areas that surround strategic areas to mixed use, multimodal communities. The pilot program provides an alternative regulatory framework to encourage the creation of a multimodal concurrency district and directs the Department of Transportation and the Department of Community Affairs to provide technical support to local governments participating in the program.

The CS creates a new subsection to specify that the costs of mitigation for concurrency impacts shall be distributed to all affected jurisdictions by the local government having jurisdiction over project approval. Distribution shall be proportionate to the percentage of the total concurrency mitigation costs incurred by an affected jurisdiction.

Section 4 amends s. 163.3184, F.S., to require an applicant for a future land use map amendment affecting 11 acres or more to hold a neighborhood meeting at least 30 but not more than 60 days before filing the application with the local government. The CS prescribes procedures for notifying surrounding property owners of the proposed map amendment. It also requires that an applicant that affects 50 or more acres hold a second noticed community or neighborhood meeting to present and discuss a map amendment at least 15 but not more than 45 days before the local government's scheduled adoption hearing. This meeting requirement does not apply to small scale amendments unless prescribed by local government ordinance, and then only one meeting may be required for a small scale amendment. An applicant for a future land use map amendment affecting 11 or more acres but less than 50 acres is encouraged, but not required, to conduct a neighborhood meeting at least 15 but no more than 45 days before the local government hearing. These provisions apply to all applications for map amendments filed after January 1, 2011.

Subsections (4) and (6) of s. 163.3184, F.S., are amended to revise certain timeframes for a regional planning council to comment on a proposed plan amendment and request DCA to review the amendment.

Subsection (7) of s. 163.3184, F.S., is amended to provide that if a local government fails to adopt a comprehensive plan or plan amendment within 120 days after receiving written comments from DCA, the plan or plan amendment is deemed abandoned and may not be considered until the next amendment cycle. However, DCA may grant one or more extensions not to exceed 360 days from issuance of the agency report or comments if a local government certifies in writing to DCA, before the 120-day period expires, that the applicant is proceeding in good faith to address specific items raised by the agency. During any extension granted by DCA, the applicant must file a status report with the local government and DCA every 60 days which identifies those items continuing to be addressed and the manner in which they are being addressed.

Subsection (15) of s. 163.3184, F.S., is amended to require a proposed plan or amendment that will be considered by a local government to be filed with the local government and made available to the public at least 5 business days before the adoption hearing, including through the local government's website if one is maintained. The proposed plan amendment may not be altered during the 5 days preceding the hearing or at the hearing if the alteration increases the

permissible density, intensity, or height or decreases the minimum buffers, setbacks, or open space without continuing the hearing to the next meeting of the local governing body. As part of the adoption package, the local government must certify to DCA that it has complied with these provisions. The sign in sheet for the hearings will contain a space for attendees to write their electronic addresses.

Section 5 amends s. 163.3187, F.S., to delete redundant language that states that exceptions to the twice a year limitation on plan amendments are exempt from the twice a year limitation.

The CS revises the exceptions to the limitation on the frequency of plan amendments. The new list of exceptions from the twice-per-year limitation include amendments:

- in the case of emergency;
- directly related to a proposed DRI or Florida Quality Development;
- for certain small scale development;
- required by a compliance agreement;
- changing the schedule in the capital improvements element and those related directly to the schedule;
- for port transportation facilities;
- establishing public school concurrency;
- adopted pursuant to a final order issued by the Administration Commission or the Florida Land and Water Adjudicatory Commission;
- in an area designated as a rural area of critical economic concern for OTTED approved regional target industries;
- related to affordable housing that qualify for expedited review under s. 163.32461, F.S.; and
- establishing a rural lands stewardship program or a sector plan.

The CS provides that a small-scale amendment is not effective until it has been rendered to the state land planning agency and the state land planning agency has certified to the local government in writing that the amendment qualifies as a small-scale amendment.

Section 6 amends s. 163.3202, F.S., to require land development regulations to maintain the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use and are located in unincorporated areas that have sufficient infrastructure, as determined by the local governing authority.

Section 7 amends s. 163.3217, F.S., to delete the language that exempts counties from the twice a year limitation on amendments for municipal overlays.

Section 8 amends s. 163.340, F.S., to expand the current definition of the term "blighted area" provided for in s. 163.340(8), F.S., to include land previously used as a military facility that is undeveloped and has been declared surplus by the Federal Government within the preceding 20 years.

Section 9 amends s. 171.203, F.S., to delete the language that exempts municipalities from the twice a year limitation on map amendments for annexations under s. 171.203(11), F.S.

Section 10 amends s. 380.06, F.S. to require that the level-of-service standards required in the transportation methodology be the same as the level-of-service standards used to evaluate transportation concurrency.

Section 11 adds a new subsection (19) to s. 403.973, F.S., to provide the benefits of the existing expedited permitting program for regional centers for clean technology. To qualify for the benefits, projects must:

- create new jobs in the clean technology industry (at least one job for every household in the project and produce no fewer than 10,000 jobs);
- provide at least 25 percent of site-wide demand for electricity by new renewable energy sources;
- use design and construction techniques that reduce project-wide energy demand;
- use conservation and construction techniques and materials to reduce potable water consumption;
- reduce carbon emissions;
- contain at least 25,000 acres, at least 50 percent of which will be dedicated to conservation or open space;
- contain a mix of land uses, including, at minimum, 5 million square feet of combined research development, industrial uses, and commercial land uses, and a balanced mix of housing to meet the demands for jobs and wages created within the project; and
- be designed to reduce the need for automobile usage.

The Office of Tourism, Trade, and Economic Development (OTTED) and the governing body of the local body in which the project is located must approve the project. OTTED may decertify a project that has failed to meet the requirements under the subsection. Applications for comprehensive plan amendments received before June 1, 2009, which are associated with a regional center for clean technology shall be processed using the process for small scale developments. An approved regional center for clean technology would not be subject to an analysis regarding whether the requirements for land use allocation are needed based on population projections, etc. If the center is a development of regional impact under chapter 380, the state land planning agency may not appeal a local government development order unless the agency having regulatory authority over the subject area of the appeal has recommended the appeal.

Section 12 provides an effective date of July 1, 2009.

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:

The CS requires certain applicants for a future land use map amendment to hold a neighborhood meeting before filing the application with the local government and then again before the local government's scheduled adoption hearing.

Owners of property located in a Community Redevelopment Area may benefit by improvements funded through tax increment financing. The addition of land previously used as a military area to the definition of "blighted area" eligible for such designation may increase opportunities to create Community Redevelopment Areas.

C. Government Sector Impact:

The DCA is given a number of responsibilities to organize, implement, and report back to the Legislature on the Urban Placemaking Initiative Pilot Program, which would require a commitment of Department resources for that purpose. The DCA also has to create administrative rules to: establish different minimum planning criteria for local governments based on current and projected population, size of the local jurisdiction, the amount and nature of undeveloped land, and the scale of public services provided by the local government.

Community Redevelopment Agencies, working with local governments, would be able to develop community redevelopment plans utilizing the expanded definition of "blighted area" to include land previously used as a military facility. As a result these areas could receive TIF revenues under the Community Redevelopment Act, and property values in the area may increase as a result of any improvements using TIF. Redevelopment of these areas can contribute to increased economic interest in a region and an overall improved economic condition. Tax increment financing diverts additional tax revenue from other taxing authorities in which the CRA is located, however, to the extent that property values in the area would have increased absent the designation of the CRA.

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 by Community Affairs on March 24, 2009:
The CS:

- does not delete the community visioning and urban service boundary processes;
- creates incentives for regional centers for clean technology;
- provides that the costs of mitigation for concurrency impacts be distributed among jurisdictions in a manner proportionate to the percentage of costs incurred by an affected jurisdiction;
- makes jurisdictions that get fees from DRIs share those fees with other local governments that bear the cost of the DRI;
- adds undeveloped areas that used to be military facilities to the definition of "blighted area," and maintains the existing density of certain residential properties or RV parks; and
- provides that land use categories must be defined in terms of uses included rather than numerical caps and that the future land use plan shall be based in part on data regarding factors that limit development such as environmental protections and local building restrictions.

B. Amendments:

None.