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 Policy and Steering Committee on Ways and Means

BILL:	CS/CS/SB 360
INTRODUCER:	Policy and Steering Committee on Ways and Means; Community Affairs Committee; Senator Bennett and others
SUBJECT:	Growth Management - Community Renewal Act
DATE:	March 19, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Fav/CS**
2.	Eichin	Meyer	TR	**Favorable**
3.	McVaney	Kelly	WPSC	**Fav/CS**
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:

This bill creates the Community Renewal Act. The bill makes a number of revisions to the Growth Management Act and the Environmental Land and Water Management Act, including changes to the comprehensive plan amendment process, allowing additional growth in densely populated areas, and revising the consequences arising when local governments have not met certain reporting requirements.

Specifically, the bill:

- Extends the compliance deadline for local governments to submit financially feasible capital improvement elements (CIE) from December 1, 2008 to December 1, 2011, and eliminates one of the penalties for failing to adopt a public schools facility element.
- Creates Transportation Concurrency Exception Areas (TCEAs) in a municipality that qualifies as a dense urban land area; a urban service area which has been adopted into a local comprehensive plan and is located in a county that qualifies as a dense urban land area; and a county, including the cities within the county, which has a population of at least 900,000 and

qualifies as a dense urban land area but does not have an urban service area designated within the local comprehensive plan.
- TCEAs are not created for designated transportation concurrency districts within a county that has a population of at least 1.5 million that uses its transportation concurrency system to support alternative modes of transportation and does not levy transportation impact fees.
- Creates a waiver from transportation concurrency requirements on the state's strategic intermodal system for certain Office of Tourism, Trade, and Economic Development (OTTED) job creation projects.
- Applies the alternative state review process to comprehensive plan map amendments in certain jurisdictions. This reduces the statutorily prescribed timeframe from 136 days to 65 days.
- Decreases the allowable submissions of text amendments to comprehensive plans from twice a year to once a year, unless the text amendment is directly related to a future land use map amendment.
- Exempts developments from the development-of-regional-impact process in the following areas:
  - municipalities that qualifies as a dense urban land area;
  - an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
  - a county, such as Pinellas and Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.
- Clarifies that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees.
- Requires municipalities that change their boundaries to submit their boundary changes and a statement specifying the population census effect and the affected land area to the Office of Economic and Demographic Research.
- Requires parties that fail to resolve their dispute through voluntary meetings to use mandatory, rather than voluntary, mediation or a similar process.
- Provides a statement that the Legislature finds that this act fulfills an important state interest.

The bill will have an insignificant fiscal impact on the Department of Community Affairs relating to the department's workload. The bill will have a negative fiscal impact on local governments that are designated TCEAs by requiring updated comprehensive plans.

This bill substantially amends sections 163.3164, 163.3177, 163.3180, 163.31801, 163.3184, 163.3187, 163.3246, 163.32465, 171.091, 186.509, and 380.06 of the Florida Statutes.

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 plans that guide future growth and development. Comprehensive plans contain chapters or "elements"

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

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).

Capital Improvements Element

In 2005, the Legislature required municipalities to annually adopt a financially feasible Capital Improvements Element (CIE) schedule beginning on December 1, 2007. (House Bill 7203, passed in May 2007, postponed the submittal to December 1, 2008). The purpose of the annual update is to maintain a financially feasible 5-year schedule of capital improvements. The adopted update amendment must be received by DCA by December 1 of each year. Failure to update the CIE can result in penalties such as a *prohibition on Future Land Use Map amendments*; ineligibility for grant programs such as Community Development Block Grants (CDBG), and Florida Recreation Development Assistance Program (FRDAP); or ineligibility for revenue-sharing funds such as gas tax, cigarette tax, or half-cent sales tax. The majority of jurisdictions failed to meet the December 1, 2008 deadline to submit their financial feasibility reports for their capital improvements element.

School Concurrency

In 2005, the Legislature enacted statewide school 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.

Although the majority of jurisdictions did adopt a school facilities element into their comprehensive plans by the December 1, 2008 deadline, a significant number of jurisdictions did not meet the deadline. One of the penalties for failure to comply with the December 1, 2008 deadline is that the local government cannot adopt comprehensive plan amendments that increase residential density.

Transportation Concurrency

The Growth Management Act of 1985 also requires local governments to use a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place to support the growth. 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. The Florida Department of Transportation (FDOT) is responsible for establishing level-of-service standards on the highway component of the strategic intermodal system (SIS) and for developing guidelines to be used by local governments on other roads. The SIS consists of statewide and interregionally significant transportation facilities and services and plays a critical role in moving people and goods to and from other states and nations, as well as between major economic regions in Florida.

In 1992, Transportation Concurrency Management Areas (TCMA) were authorized, allowing an area-wide 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 2008, the Legislature provided for the creation of Transportation Concurrency Backlog Authorities (TCBA) to adopt and implement plans for the elimination of all identified transportation concurrency backlogs within each authority's jurisdiction. To fund the plan's implementation, a TCBA must collect and earmark, in a trust fund, tax increment funds equal to 25 percent of the difference between the ad valorem taxes collected in a given year and the ad valorem taxes which would have been collected using the same rate in effect when the authority is created. Upon adoption of the transportation concurrency backlog plan, all backlogs within the jurisdiction are deemed financed and fully financially feasible for purposes of calculating transportation concurrency and a landowner may proceed with development (if all other requirements are met) and no proportionate share or impact fees for backlogs may be assessed.

Broward County's Approach to Transportation Concurrency

Broward County uses an alternative approach to concurrency called transit-oriented concurrency. This approach has been accepted by DCA and has merit for application by other urbanized areas. Broward County applied two types of concurrency districts—transit-oriented concurrency districts and standard concurrency districts. These districts are defined in the Broward County Code both geographically and conceptually. A Standard Concurrency District is defined as an area where roadway improvements are anticipated to be the dominant form of transportation enhancement. A Transit Oriented Concurrency District is a compact geographic area with an existing network of roads where multiple, viable alternative travel paths or modes are available for common trips (a TCMA, under Florida Statutes).

The distinction is important, because each type of concurrency district carries with it a different set of standards for adequacy determination. The LOS standards for roadways are conventional, whereas, the relevant LOS standards for transit-oriented concurrency districts address transit headways and the establishment of neighborhood transit centers and additional bus route coverage, and are broken down on the individual district level.

The county charges an assessment, the Transit Concurrency Assessment, as a vehicle for meeting concurrency requirements in Transit Oriented Concurrency Districts. The Transit Concurrency Assessment is calculated as the total peak-hour trip generation of the proposed development, multiplied by a constant annual dollar figure for each District, that represents the cost per trip of all the enhancements in that District listed in the County Transit Program. Revenues from the assessments are used to fund enhancements to the County Transit Program (established by the County Commission) located in the district where the proposed development

will occur. The County also uses revenues to fund up to three years of operating costs for these enhancements.

Under certain circumstances, a developer may opt not to pay some or all of the Transit Concurrency Assessment and may instead implement or participate in implementing an alternative transit improvement. This alternative improvement must be intended to enhance transit ridership and cannot focus predominantly on the occupants or users of the applicant's property. The alternative improvement must be determined to be beneficial to the regional transportation system within the relevant district.

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. Proportionate fair-share mitigation 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 a 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 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.

Comprehensive 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.[3] By rule, the DCA reviews a submitted comprehensive plan amendment to insure it has a complete application package within 5 days of receiving the comprehensive plan amendment.[4] A local government may amend its comprehensive plan only twice per year with certain exceptions. At present, the statutorily prescribed timeline for a

[2] Section 380.06(1), F.S.
[3] Section 163.3189, F. S.
[4] F.A.C. 9J-11.008.

comprehensive plan amendment days to be processed is 136 days. 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 stating whether a small scale development amendment is in compliance with the comprehensive plan.

Alternative State Review Process

In 2007, the Legislature created a pilot program to provide an alternate, expedited process for plan amendments with limited state agency review. Pilot communities transmit plan amendments, along with supporting data and analyses to specified state agencies and local governmental entities after the first public hearing on the plan amendment. Comments from state agencies may include technical guidance on issues of agency jurisdiction as it relates to ch. 163, part II, F.S., the Growth Management Act. Comments are due back to the local government proposing the plan amendment within 30 days of receipt of the amendment.

Following a second public hearing that shall be an adoption hearing on the plan amendment, the local government transmits the amendment with supporting data and analyses to DCA and any other state agency or local government that provided timely comments. An affected person, as defined in s. 163.3184(1)(a), F.S., or DCA may challenge a plan amendment adopted by a pilot community within 30 days after adoption of the amendment. DCA's challenge is limited to those issues raised in the comments by the reviewing agencies, but the statute encourages the DCA to focus its challenges on issues of regional or statewide importance. DCA does not issue a report detailing its objections, recommendations, and comments. The alternative state review process shortens statutorily prescribed timeline for comprehensive plan amendments process from 136 days to 65 days.

Rural Areas of Critical Economic Concern

Florida's Rural Areas of Critical Economic Concern (RACEC) are regions comprised of rural communities 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 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 covering: 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.[5] OTTED administers an expedited permitting process for "those types of economic development projects which offer job creation and high

[5] Section 288.0656(7), F.S.

wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment."[6]

The Development of Regional Impact (DRI) Process

Section 380.06, F.S., provides for 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.[7] Regional planning councils assist the developer by coordinating multi-agency DRI review. The council's job is to assess the DRI project, incorporate input from various agencies, gather additional information and make recommendations on how the project should proceed. The DCA reviews developments of regional impact for compliance with state law and to identify the regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving, suggesting mitigation conditions, or not approving proposed developments.

Impact Fees

Impact fees are a total or partial payment to counties, municipalities, special districts, and school districts for the cost of providing additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources and the local government's determination to charge the full cost of the fee's earmarked purposes.

Section 163.31801(3)(d), F.S., requires local governments to provide notice of a new or amended impact fee at least 90 days before the effective date.

The Definition of "In Compliance"

Section 163.3184(1)(b), F.S., defines the term "in compliance" in the context of adopting comprehensive plan and plan amendments. In 2006, in a revisor's bill, a reference to s. 163.31776 was struck because the section on school concurrency planning requirements was relocated in the statutes and s. 163.31776 was deleted. Unfortunately, the phrase that served to modify s. 163.31776 was mistakenly retained.

III. Effect of Proposed Changes:

Section 1 creates a title for the bill: The Community Renewal Act.

Section 2 amends s. 163.3164, F.S., to change "existing urban service area" to "urban service area" to redefine the term to include built-up areas where public facilities and services, including, but not limited to, central water and sewer, roads, schools, and recreation areas, are already in place. The definition also grandfathers-in existing urban service areas and urban growth boundaries within counties that qualify as dense urban land areas.

A definition of a "dense urban land area" is created. The definition includes:

[6] Section 403.973, F.S.
[7] Section 380.06(1), F.S.

- a municipality that has an average population of at least 1,000 people per square mile and at least 5,000 people total;
- a county, including the municipalities located therein, which has an average population of at least 1,000 people per square mile; and
- a county, including the municipalities located therein, which has a population of at least 1 million.

Those jurisdictions that qualify as dense urban land areas will be ascertained by the Office of Economic and Demographic Research, and the designation will become effective upon publication on the state land planning agency's website.

Section 3 amends s. 163.3177, F.S., to clarify that updates to the capital improvements element of the comprehensive plan need not comply with the financial feasibility requirement until December 1, 2011. Each local government's intergovernmental coordination element of its comprehensive plan must provide for a dispute resolution process.

The bill changes the penalties triggered when a local government or a school board fails to enter into an approved interlocal agreement or fails to implement school concurrency. The local government will be subject to the penalties set forth in s. 163.3184(11)(a) and (b), F.S., and the school board will be subject to penalties set forth in s. 1008.32(4), F.S.

Section 4 amends s. 163.3180, F.S., to designate the following areas as transportation concurrency exception areas (TCEAs):

- a municipality that qualifies as a dense urban land area;
- an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
- a county, such as Pinellas and Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.

A municipality that does not qualify as a dense urban land area may designate the following areas in its comprehensive plan as transportation concurrency exception areas:

- urban infill as defined in s. 163.3164(27), F.S.;
- community redevelopment as defined in s. 163.340(10), F.S.;
- downtown revitalization as defined in s. 163.3164(25), F.S.;
- urban infill and redevelopment as defined in s. 163.2517, F.S.; or
- urban service areas as defined in s. 163.3164(29), F.S.

A county that does not qualify as a dense urban land area may designate in its comprehensive plan as transportation concurrency exception areas:

- urban infill as defined in s. 163.3164(27), F.S.;
- urban infill and redevelopment as defined in s. 163.2517, F.S.; or
- urban service areas as defined in s. 163.3164(29), F.S., or urban service areas under s. 163.3177(14), F.S.

Any local government that has a transportation concurrency exception area under one of these provisions must, within 2 years, adopt into its comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. If the local government fails to adopt such a plan it may be subject to the sanctions set forth in s. 163.3184(11)(a) and (b), F.S.

If a local government uses 163.3180(5)(b)6., F.S., the existing method of creating TCEAs, it must first consult the state land planning agency and the Department of Transportation regarding the impact on the adopted level-of-service standards established for regional transportation facilities as well as the Strategic Intermodal System (SIS).

Subsection (10) of s. 163.3180, F.S., is amended to provide an exemption from transportation concurrency on the SIS for projects that the local government and the Office of Tourism, Trade, and Economic Development (OTTED) agree are job creation programs as described in s. 288.0656 (for REDI projects) or s. 403.973 (expedited permitting), F.S.

The bill clarifies that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. The bill further clarifies that the creation of a TCEA does not affect any contract or agreement entered into or development order rendered before the creation of the transportation concurrency exception area except for developments of regional impact that chose to rescind under s. 380.06(29)(e), F.S.

The Office of Program Policy Analysis and Government Accountability must study the implementation of TCEAs and corresponding local government mobility plans and report back to the Legislature by February 1, 2015.

Section 5 amends s. 163.3184, F.S. to change conforming cross references.

Section 6 amends s. 163.3187, F.S., to limit the frequency of comprehensive plan text amendments changing the goals, objectives, and policies to once per year rather than twice per year, unless the text amendment is directly related to, and applies only to, a future land use map amendment.

The bill deletes redundant language, language that repeats the statement that those parts are not subject to the limitation on the frequency of plan amendment, and it allows an exemption from the twice a year limitation on plan amendments when local governments designate in their comprehensive plan existing urban service areas as urban service areas under the revised definition and as TCEAs, areas subject to alternative state review, and areas that are exempt from the DRI process.

Section 7 amends s. 163.3246, F.S. to change conforming cross references.

Section 8 amends s. 163.32465, F.S., to eliminate the pilot status of the alternative state review program. The amendment changes the locations that are subject to alternative state review to include:

- a municipality that qualifies as a dense urban land area;

- an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
- a county, such as Pinellas and Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.

Alternative state review applies to areas that a municipality designates in its comprehensive plan as:

- urban infill as defined in s. 163.3164(27), F.S.;
- community redevelopment as defined in s. 163.340(10), F.S.;
- downtown revitalization as defined in s. 163.3164(25), F.S.;
- urban infill and redevelopment as defined in s. 163.2517, F.S.; or
- urban service areas as defined in s. 163.3164(29), F.S., or urban service areas under s. 163.3177(14).

Alternative state review applies to areas that a county designates in the comprehensive plan as:

- urban infill as defined in s. 163.3164(27), F.S.;
- urban infill and redevelopment as defined in s. 163.2517, F.S.; or
- urban service areas as defined in s. 163.3164(29), F.S.

Alternative state review also applies to areas designated by the Governor as a rural area of critical economic concern if the amendment supports an Office of Tourism, Trade, and Economic Development (OTTED) approved regional target industry.

Local governments are permitted to use the alternative state review process to designate in their comprehensive plan existing urban service areas as urban service areas under the revised definition, as TCEAs, areas subject to alternative state review, and areas that are exempt from the DRI process.

Any text amendment that directly relates to, and applies only to, a future land use map amendment also qualifies for the alternative state review process.

Language regarding the agency comment period under alternative state review is revised to start the 30-day period for comments on the date the DCA notifies the local government that its plan amendment package is complete. Comments from state agencies and local governments must be transmitted to the DCA. Local governments subject to the alternative state review process may request the DCA to prepare an objections, recommendations, and comments report when the local government submits its comprehensive plan amendment. If the local government makes such a request, the DCA has 15 days from the date it receives the other state agency comments to issue its objections, recommendations, and comments report. When an objections, recommendations, and comments report is requested and issued, the state land planning agency may only challenge the amendment on those issues raised in the objections, recommendations, and comments report. The plan amendment must be adopted by the local government within 120 days after receipt of agency comments or the amendment is deemed abandoned and cannot be considered until the next available amendment cycle. The DCA is authorized to adopt procedural rules to administer the alternative state review program.

The following plan amendments will continue to go through the normal plan amendment review process: rural land stewardship areas, optional sector plans, coastal high-hazard areas, areas of critical state concern, recently annexed areas within a municipality, updates based on an evaluation and appraisal report, new statutory requirements not previously related to a comprehensive plan, changes the boundary of an urban service area, and plans for newly incorporated municipalities. The bill deletes the requirement for The Office of Program Policy Analysis and Government Accountability to do a study of the pilot program.

Section 9 amends s. 380.06, F.S., to exempt developments from the development-of-regional-impact process in the following areas:

- municipalities that qualifies as a dense urban land area;
- an urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area; and
- a county, such as Pinellas and Broward, that has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in its comprehensive plan.

Alternative state review applies to areas that a municipality designates in the comprehensive plan as:

- urban infill as defined in s. 163.3164(27), F.S.
- community redevelopment as defined in s. 163.340(10), F.S.;
- downtown revitalization as defined in s. 163.3164(25), F.S.;
- urban infill and redevelopment as defined in s. 163.2517, F.S.; or
- urban service areas as defined in s. 163.3164(29), F.S.;

Alternative state review applies to areas that a county designates in the comprehensive plan as:

- urban infill as defined in s. 163.3164(27), F.S.;
- urban infill and redevelopment as defined in s. 163.2517, F.S.; or
- urban service areas as defined in s. 163.3164(29), F.S.

Developments that meet the DRI thresholds and are located partially within a jurisdiction that is not exempt still require DRI review. DRIs that had been approved or that have an application for development approval pending when the exemption takes effect may continue the DRI process or rescind the DRI development order. Developments that choose to rescind are exempt from the twice a year limitation on plan amendments for the year following the exemption. In exempt jurisdictions, the local government would still need to submit the development order to the state land planning agency for any project that would be larger than 120 percent of any applicable DRI threshold and would require DRI review but for the exemption. The state land planning agency would still have the right to challenge such development orders for consistency with the comprehensive plan.

If a local government that qualifies as a dense urban land area for DRI exemption purposes is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area which has a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the

application process in good faith or the development is approved. The amendment adds language clarifying that the section does not limit or modify the rights of any person to complete any development that has been authorized as a DRI. The amendment states that an exemption from the DRI process does not apply within the boundary of any area of critical state concern, within the boundary of the Wekiva Study Area, or within 2 miles of the boundary of the Everglades Protection Area.

Section 10 amends s. 163.31801(3)(d), F.S., to allow a local government to decrease, suspend, or eliminate an impact fee without waiting 90 days.

Section 11 amends s. 171.091, F.S. to require municipalities that change their boundaries to submit their boundary changes and a statement specifying the population census effect and the affected land area to the Office of Economic and Demographic Research.

Section 12 amends s. 186.509, F.S., to modify the interlocal dispute resolution process to say that if the parties fail to resolve their dispute through voluntary meetings, then there will be mandatory, rather than voluntary, mediation or a similar process.

Section 13 states that the Legislature finds that this act fulfills an important state interest.

Section 14 states that this act shall take effect upon becoming a law.

Other Potential Implications:

Relieving regulatory restraints on development within dense urban land areas should: (1) encourage economic development within these areas and (2) discourage urban sprawl. However, development in areas proximate to the designated areas may become more difficult. TCEAs within dense urban land areas should eventually lead to a shift in the mobility paradigm within those areas from focusing on road building and expansion toward alternative modes of transportation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires cities and counties to expend funds to update the comprehensive plans for the transportation concurrency exception areas, the provisions of Section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the legislature must find that the law fulfills an important state interest and one of the following relevant exceptions:

a. Appropriate funds estimated at the time of enactment to be sufficient to fund such expenditures;
b. Authorize a county or municipality to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures; or

c. Approve the law by two-thirds of the membership of each house of the legislature.

Because this bill is not intended to limit a local government's home rule power to adopt ordinances or impose fees, it appears that the bill does not reduce the revenue raising authority of cities and counties as that authority existed on February 1, 1989. Thus, the provisions of Section 18(b) of Article VII of the State Constitution may not apply.

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 development process is streamlined in dense urban land areas and in rural areas of critical economic concern for OTTED job creation projects. Within jurisdictions designated as dense urban land areas: (1) developers will no longer have to pay the costs associated with the DRI process; (2) because these areas will be TCEAs, for new development the developers will be limited to paying impact fees for their transportation impacts; and (3) alternative state review should expedite the comprehensive plan amendment process for those developments that require a comprehensive plan amendment.

C. Government Sector Impact:

DCA will have a greater workload due to the increase in the number of local governments qualifying for the expedited comprehensive plan review process. This workload issue should be somewhat offset by the limitation of text amendments to the comprehensive plan to once per year and the elimination of DCA's role in reviewing comprehensive plan amendments for transportation impacts for local governments qualifying as a dense urban land area.

Local governments that qualify as dense urban land areas and FDOT will lose the ability to collect proportionate fair share (other transportation concurrency costs)[8] contributions and may lose the ability to collect proportionate share (DRI transportation costs)[9] contributions from new development within dense urban land areas. However, the bill

[8] Section 163.3180(16), F.S.
[9] Section 163.3180(12), F.S.

clarifies that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. This clarification suggests that the local government's power to raise revenues is not negatively impacted.

Regional planning councils will also see a reduction in their workload due to the elimination of the DRI program in local governments qualifying as a dense urban land area.

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 Policy and Steering Committee on Ways and Means on March 19, 2009:

The CS/CS:

- Modifies the definitions of "urban service area" and "dense urban land area" in s. 163.3164, F.S.
- Requires each local government's intergovernmental coordination element of its comprehensive plan to provide for a dispute resolution process.
- Changes the penalties triggered when a local government or a school board fails to enter into an approved interlocal agreement or fails to implement school concurrency.
- Specifies the areas to which transportation concurrency exception areas, areas subject to alternative state review, and areas exempt from developments of regional impact apply automatically.
- Allows a municipality or a county that does not qualify as a dense urban land area to designate certain area in its comprehensive plan as transportation concurrency exception areas (these areas are also subject to alternative state review and exemptions from the development of regional impact review process).
- Provides a penalty for those jurisdictions that do not create a mobility plan for their transportation concurrency exception areas within 2 years.
- Clarifies that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. The amendment further clarifies that the creation of a TCEA does not affect any contract or agreement entered into or development order rendered before the creation of the transportation concurrency exception area except for developments of regional impact that choose to rescind under s. 380.06(29)(e), F.S.

- Requires the Office of Program Policy Analysis and Government Accountability to study the implementation of TCEAs and corresponding local government mobility plans and report back to the Legislature by February 1, 2015.
- Allows an exemption from the twice a year limitation on plan amendments when local governments designate in their comprehensive plan existing urban service areas as urban service areas under the revised definition and as TCEAs, areas subject to alternative state review, and areas that are exempt from the DRI process.
- Allows local governments to use the alternative state review process to designate in their comprehensive plan existing urban service areas as urban service areas under the revised definition, as TCEAs, areas subject to alternative state review, and areas that are exempt from the DRI process.
- Allows developments that choose to rescind their development of regional impact because they are in an exempt jurisdiction to be exempt from the twice a year limitation on plan amendments for the year following the exemption. The CS changes the state land planning agency's review of development orders for developments that would be developments of regional impact but for the exemption to an administrative challenge rather than a challenge in court.
- Provides that if a local government that qualifies as a dense urban land area for DRI exemption purposes is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area which has a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the application process in good faith or the development is approved. The CS adds language clarifying that the section does not limit or modify the rights of any person to complete any development that has been authorized as a DRI. The amendment states that an exemption from the DRI process does not apply within the boundary of any area of critical state concern, within the boundary of the Wekiva Study Area, or within 2 miles of the boundary of the Everglades Protection Area.
- Requires municipalities that change their boundaries to submit their boundary changes and a statement specifying the population census effect and the affected land area to the Office of Economic and Demographic Research.
- Requires parties that fail to resolve their dispute through voluntary meetings to use mandatory, rather than voluntary, mediation or a similar process.
- Adds a statement that the Legislature finds that this act fulfills an important state interest.

CS by Community Affairs on February 17, 2009:

The CS:
- Extends the compliance deadline for local governments to submit financially feasible capital improvement elements (CIE) from December 1, 2008 to December 1, 2011, and eliminates one of the penalties for failing to adopt a public schools facility element.
- Provides local governments having an average of at least 1,000 people per square mile or a county, including the municipalities located therein, having a population of at least 1 million are Transportation Concurrency Exception Areas (TCEAs). TCEAs are not created for designated transportation concurrency districts within a county that has a population of at least 1.5 million that uses its transportation concurrency system to support alternative modes of transportation and does not levy transportation impact fees.

- Creates a waiver from transportation concurrency requirements on the state's strategic intermodal system for certain Office of Tourism, Trade, and Economic Development (OTTED) job creation projects.
- Applies the alternative state review process to comprehensive plan map amendments in jurisdictions where the local government has 1,000 or more persons per square mile or a county, including the municipalities located therein, which has a population of at least 1 million, and map amendments in Rural Areas of Critical Economic Concern (RACEC) communities if certified by the OTTED as supporting a RACEC target industry. This reduces statutorily prescribed timeframe from 136 days to 65 days.
- Decreases text amendments to comprehensive plans from twice a year to once a year, unless the text amendment is directly related to a future land use map amendment. Gives local governments with an average of at least 1,000 people per square mile or a county, including the municipalities located therein, which has a population of at least 1 million an exemption from the Development of Regional Impact (DRI) program.

B. Amendments:

None.