

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 851 School Concurrency

SPONSOR(S): State Affairs Committee; Education & Employment Committee; Local Administration & Veterans Affairs Subcommittee; McClain

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 706

FINAL HOUSE FLOOR ACTION: 113 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 851 passed the House on March 7, 2022, as CS/CS/CS/SB 706.

Under the Community Planning Act, local governments have the responsibility and authority to create comprehensive plans preparing and providing guidance for future development and growth. Comprehensive plans provide guidelines for the use and development of land, principles for capital improvements, and an intergovernmental coordination element, in the form of interlocal agreements, aimed at coordinating the development, improvement, and concurrency requirements of public schools with district school boards. Where local governments have elected to apply school concurrency, specific elements must be included in the interlocal agreements, including level of service standards and methodology for determining proportionate-share mitigation.

Local governments that elect to apply school concurrency are encouraged, but not required, to do so on a districtwide basis. However, developers may bypass the requirements of school concurrency if they execute a legally binding commitment to provide proportionate-share mitigation which will be directed by the school board to a school capacity improvement included in the five-year school board educational facilities plan.

The bill provides that school concurrency is deemed satisfied when a developer tenders, rather than executes, a written, legally binding commitment to provide proportionate-share mitigation. The bill requires the district school board to notify the local government that capacity is available for the development within 30 days after receipt of the developer's legally binding commitment. Additionally, the bill requires a school board to set aside and not spend any proportionate-share mitigation if there is no school capacity improvement identified in the five-year school board educational facilities plan until such time as such an improvement has been identified.

The bill does not appear to have a fiscal impact on state or local government.

The bill was approved by the Governor on May 18, 2022, ch. 2022-122, L.O.F., and will become effective on July 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Community Planning Act

Local governments¹ have the power and responsibility to plan for future development and growth. In order to prepare and provide guidance for future development and growth local governments are required to maintain comprehensive plans and implement these plans through adoption of appropriate land development regulations or other elements.²

Comprehensive Plans

Comprehensive plans adopted by local governments provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area. A key purpose of the plan is to establish meaningful and predictable standards for the use and development of land.³

Comprehensive plans must contain a capital improvements element. This element is designed to consider the need for and the location of public facilities.⁴ The capital improvements element should include:

- Principles for construction, extension, or increase in capacity of public facilities;
- Principles for correcting existing public facility deficiencies;⁵
- Estimated public facility costs, including when the facilities will be needed, where they should be located, and possible revenue sources;⁶ and
- Standards to ensure that the availability and adequacy of the facilities meet acceptable levels of service.⁷

Local government comprehensive plans must also include an intergovernmental coordination element showing relationships and stating principals and guidelines to be used in coordinating the adopted comprehensive plan with the plans of school boards.⁸ This element must also include joint processes for collaborative planning and decisionmaking on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance.⁹

¹ Any county or municipality. S. 163.3164(29), F.S.

² S. 163.3167(1)(a-c) and (2), F.S.

³ S. 163.3177(1), F.S.

⁴ S. 163.3177(3)(a), F.S.

⁵ S. 163.3177(3)(a)1., F.S. These principles should address at least a five-year period.

⁶ S. 163.3177(3)(a)2., F.S.

⁷ S. 163.3177(3)(a)3., F.S.

⁸ S. 163.3177(6)(h)1., F.S.

⁹ S. 163.3177(6)(h)2., F.S.

Interlocal Agreements

Interlocal agreements establish how the plans and processes of the district school board and the local governments located within the school district are to be coordinated.¹⁰ Interlocal agreements pertaining to school districts should include:

- Provisions detailing the process the local government and school board will employ to agree and base their plans on consistent projections of the amount, type, and distribution of population growth and student enrollment;¹¹
- 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. Local governments should inform the school board if these plans are consistent with the comprehensive plan and identify when it may be appropriate for the school board to request an amendment to the comprehensive plan for school siting;¹²
- A process for determining the need for and timing of onsite and offsite improvements to support new, proposed expansion, or redevelopment of existing schools;¹³ and
- A process for the school board to inform the local government regarding the effect of comprehensive plan amendments on school capacity.¹⁴

Additionally, where local governments have elected to apply school concurrency,¹⁵ the following must be included:

- Establish the mechanisms for coordinating the development, adoption, and amendment of each local government's school concurrency related provisions of the comprehensive plan with each other and with the plans of the school board to ensure a uniform districtwide school concurrency system;
- Specify uniform, districtwide level-of-service¹⁶ standards for public schools of the same type and the process for modifying the adopted level-of-service standards;
- Define the geographic application of school concurrency. If school concurrency is applied on a less than districtwide basis the agreement must include the criteria and standards for the establishment and modification of school concurrency service areas;
- Establish a uniform districtwide procedure for implementing school concurrency which provides for the evaluation of development applications for compliance with school concurrency requirements, the opportunity for the school board to comment on the impact of comprehensive plan amendments and rezonings on the public school facilities plan, and the monitoring and evaluation of the school concurrency system; and
- A process and uniform methodology for determining proportionate-share mitigation.¹⁷

¹⁰ S. 163.31777(1), F.S.

¹¹ S. 163.31777(2)(a), F.S.

¹² S. 163.31777(2)(b)-(c), F.S.

¹³ S. 163.31777(2)(d), F.S.

¹⁴ S. 163.31777(2)(e), F.S.

¹⁵ "Concurrency is a land use regulation which controls the timing of new real estate development so adequate public facilities will be available to accommodate the impacts of that new development." *City of Jacksonville v. Coffield*, 18 So. 3d 589, 598 (Fla. 1st DCA 2009) (quoting David L. Powell & Michele Gazica, *And Now ... School Concurrency*, 79 Fla. B.J., Nov. 2005, at 44); See also s. 163.3180(6)(g), F.S. (the premise of concurrency is that the public facilities will be provided in order to achieve and maintain the adopted level-of-service standard).

¹⁶ Based on the capacity per unit of demand (in this case meaning number of students served) in each public school. See s. 163.3164(28), F.S.; See also David L. Powell & Michele Gazica, *And Now ... School Concurrency*, 79 Fla. B.J., Nov. 2005, at 44.

¹⁷ S. 163.3180(6)(i), F.S.; See also s. 163.31777, F.S.

School Board Educational Facilities Plan

Each district school board annually must prepare a tentative district educational facilities plan that includes long-range planning for facilities needs over five-year, 10-year, and 20-year periods.¹⁸

School Concurrency

Local governments that elect to apply school concurrency must provide principles, guidelines, standards, and strategies, including adopted levels of service, in their comprehensive plans and interlocal agreements with district school boards.¹⁹ Local governments and school boards work together to establish adequate level-of-service standards for elementary, middle, and high schools, and special purpose facilities, such as magnet schools.²⁰ Tiered level-of-service standards may be utilized to allow time to achieve an adequate and desirable level of service as circumstances warrant.²¹

Local governments are encouraged to apply school concurrency districtwide, so that a concurrency determination for a specific development will be based upon the availability of school capacity districtwide.²² When not applied districtwide, local governments may apply school concurrency based on school attendance zones or concurrency service areas.²³ Where an alternative to districtwide concurrency is utilized, local governments and school boards have the burden to demonstrate that school capacity is maximized to the greatest extent possible in the comprehensive plan.

When utilizing concurrency service areas, development applications may not be denied if the adopted level-of-service standard cannot be met in a particular service area, as applied to the development application, if the needed capacity is available in one or more contiguous service areas.²⁴ Additionally, local governments may not deny applications for failure to achieve and maintain the level-of-service standard for public school capacity if adequate school facilities will be in place or are under actual construction within three years after the issuance of the approval.²⁵ Furthermore, a local government may allow a landowner to proceed with development despite failure to satisfy school concurrency requirements if all of the following factors exist:

- The proposed development would be consistent with the future land use designation for the specific property and with pertinent portions of the adopted local plan, as determined by the local government;
- The local government's capital improvements element and the school board's educational facilities plan provide for school facilities adequate to serve the proposed development or the project includes a plan demonstrating that the capital facilities needed as a result of the project can be reasonably provided; and
- The local government and school board have provided a means by which the landowner will be assessed a proportionate share of the cost of providing the school facilities necessary to serve the proposed development.²⁶

¹⁸ S. 1013.35(2)(a), F.S. These plans must be consistent with local government comprehensive plans.

¹⁹ S. 163.3180(6)(a), F.S.

²⁰ S. 163.3180(6)(b)-(c), F.S.; These standards should be included in the capital improvement element of the local government's comprehensive plan and will apply districtwide to all schools of the same type. S. 163.3180(6)(c), F.S.

²¹ S. 163.3180(6)(d), F.S.

²² S. 163.3180(6)(f)1., F.S.

²³ S. 163.3180(6)(f)2., F.S.; These service area boundaries together with the standards for establishing these boundaries must be included in the comprehensive plan. S. 163.3180(6)(f)2.a., F.S.; Based on a review of the websites of all 67 school districts in Florida, of the 27 that readily present information regarding school concurrency, 23 school districts (Alachua, Brevard, Broward, Charlotte, Clay, Collier, Duval, Flagler, Hillsborough, Lake, Manatee, Marion, Miami-Dade, Orange, Osceola, Pasco, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, Volusia, and Washington) are employing concurrency service areas, none appear to be applying school concurrency districtwide at this time.

²⁴ S. 163.3180(6)(f)2.b., F.S.

²⁵ S. 163.3180(6)(h)2., F.S.

²⁶ S. 163.3180(6)(h)1., F.S.

School concurrency is satisfied if the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities created by the actual development of the property.²⁷ Developers may provide proportionate-share mitigation in the following ways:²⁸

- Contribution of land;
- The construction, expansion, or payment for land acquisition or construction of a public school facility;
- Construction of a charter school;²⁹ or
- Creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits.³⁰

All proportionate-share mitigation must be directed by the school board toward a school capacity improvement identified in the five-year school board educational facilities plan that satisfies the demands created by the development.³¹

Effect of Proposed Changes

The bill provides that school concurrency is deemed satisfied when a developer tenders, rather than executes, a written, legally binding commitment to provide proportionate-share mitigation. The bill requires the district school board to notify the local government that capacity is available for the development within 30 days after receipt of the developer's legally binding commitment. Additionally, the bill requires the school board to set aside and not spend any proportionate-share mitigation if there is no school capacity improvement identified in the five-year school board educational facilities plan until such time as such an improvement has been identified.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

²⁷ S. 163.3180(6)(h)2., F.S.

²⁸ The comprehensive plan and the interlocal agreement must include options for proportionate-share mitigation. S. 163.3180(6)(h)2., F.S.

²⁹ Must comply with the requirements of s. 1002.33(18), F.S. S. 163.3180(6)(h)2.a., F.S.

³⁰ Local governments must credit any proportionate-share mitigation toward any other impact fee or exaction imposed by local ordinance for public educational facilities, on a dollar-for-dollar basis at fair market value. S. 163.3180(6)(h)2.b., F.S.

³¹ S. 163.3180(6)(h)2.c., F.S.

The bill is projected to make the process for developer application approval easier to finalize, which in turn may increase the number of new developments authorized to proceed.

D. FISCAL COMMENTS:

None.