By the Committee on Rules; and Senator Martin

595-03787-24 2024688c1

A bill to be entitled

An act relating to alternative mobility funding systems and impact fees; amending s. 163.3164, F.S.; defining terms; amending s. 163.3180, F.S.; requiring a local government to allow an applicant for a certain development permit to satisfy transportation concurrency requirements if the applicant offers to enter into a good faith binding agreement that the project is considered to have mitigated its transportation impacts if the applicant meets certain conditions and requirements; prohibiting a local government from preventing an applicant from proceeding if the applicant has satisfied specified requirements; authorizing certain local governments to adopt an alternative transportation system meeting specified requirements under certain circumstances; prohibiting an alternative transportation system from imposing upon new development the responsibility for funding an existing transportation deficiency; requiring counties and municipalities who charge a developer a fee for transportation capacity impacts to create and execute interlocal agreements to coordinate the mitigation of their respective impacts; providing requirements for the interlocal agreements; providing requirements for when such interlocal agreements are not executed by a specified date; providing applicability; amending s. 163.31801, F.S.; requiring certain local governments and special districts that adopt and collect impact fees to ensure that the

calculation of the impact fee is based on certain data in an impact fee study; requiring a local government that increases the impact fee to adopt the new impact fee study within a specified timeframe after the initiation of the study; requiring a local government or special district that requires any improvement or contribution to credit against the collection of the impact fee any contribution received, whether identified in a development order or any form of exaction; requiring local governments transitioning to alternative transportation systems to grant holders of impact fee credits in existence before the adoption of the alternative transportation system the full benefit of certain prepaid credit balances as of a specified date; amending s. 212.055, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (32) through (52) of section 163.3164, Florida Statutes, are redesignated as subsections (34) through (54), respectively, and new subsections (32) and (33) are added to that section, to read:

163.3164 Community Planning Act; definitions.—As used in this act:

(32) "Mobility fee" means a local government fee schedule established by ordinance and based on the projects included in the local government's adopted mobility plan.

(33) "Mobility plan" means an alternative transportation

system mobility study developed by using a plan-based methodology and adopted into a local government comprehensive plan that promotes a compact, mixed use, and interconnected development served by a multimodal transportation system in an area that is urban in character, or designated to be urban in character, as defined in s. 171.031.

Section 2. Paragraphs (h) and (i) of subsection (5) of section 163.3180, Florida Statutes, are amended, and paragraph (j) is added to that subsection, to read:

163.3180 Concurrency.—

(5)

(h)1. Local governments that continue to implement a transportation concurrency system, whether in the form adopted into the comprehensive plan before the effective date of the Community Planning Act, chapter 2011-139, Laws of Florida, or as subsequently modified, must:

a. Consult with the Department of Transportation when proposed plan amendments affect facilities on the strategic intermodal system.

b. Exempt public transit facilities from concurrency. For the purposes of this sub-subparagraph, public transit facilities include transit stations and terminals; transit station parking; park-and-ride lots; intermodal public transit connection or transfer facilities; fixed bus, guideway, and rail stations; and airport passenger terminals and concourses, air cargo facilities, and hangars for the assembly, manufacture, maintenance, or storage of aircraft. As used in this sub-subparagraph, the terms "terminals" and "transit facilities" do not include seaports or commercial or residential development

constructed in conjunction with a public transit facility.

c. Allow an applicant for a development-of-regional-impact development order, development agreement, rezoning, or other land use development permit to satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06, when applicable, if:

(I) The applicant in good faith offers to enter into a binding agreement to pay for or construct its proportionate share of required improvements in a manner consistent with this subsection. The agreement must provide that after an applicant makes its contribution or constructs its proportionate share pursuant to this sub-sub-subparagraph, the project shall be considered to have mitigated its transportation impacts and be allowed to proceed if the applicant has satisfied all other local government development requirements for the project.

(II) The proportionate-share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility. A local government may accept contributions from multiple applicants for a planned improvement if it maintains contributions in a separate account designated for that purpose. A local government may not prevent a single applicant from proceeding after the applicant has satisfied its proportionate-share requirement if the applicant has satisfied all other local government development requirements for the project.

d. Provide the basis upon which the landowners will be assessed a proportionate share of the cost addressing the transportation impacts resulting from a proposed development.

2. An applicant shall not be held responsible for the additional cost of reducing or eliminating deficiencies. When an applicant contributes or constructs its proportionate share pursuant to this paragraph, a local government may not require payment or construction of transportation facilities whose costs would be greater than a development's proportionate share of the improvements necessary to mitigate the development's impacts.

a. The proportionate-share contribution shall be calculated based upon the number of trips from the proposed development expected to reach roadways during the peak hour from the stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain or achieve the adopted level of service, multiplied by the construction cost, at the time of development payment, of the improvement necessary to maintain or achieve the adopted level of service.

b. In using the proportionate-share formula provided in this subparagraph, the applicant, in its traffic analysis, shall identify those roads or facilities that have a transportation deficiency in accordance with the transportation deficiency as defined in subparagraph 4. The proportionate-share formula provided in this subparagraph shall be applied only to those facilities that are determined to be significantly impacted by the project traffic under review. If any road is determined to be transportation deficient without the project traffic under review, the costs of correcting that deficiency shall be removed from the project's proportionate-share calculation and the necessary transportation improvements to correct that deficiency shall be considered to be in place for purposes of the

proportionate-share calculation. The improvement necessary to correct the transportation deficiency is the funding responsibility of the entity that has maintenance responsibility for the facility. The development's proportionate share shall be calculated only for the needed transportation improvements that are greater than the identified deficiency.

c. When the provisions of subparagraph 1. and this subparagraph have been satisfied for a particular stage or phase of development, all transportation impacts from that stage or phase for which mitigation was required and provided shall be deemed fully mitigated in any transportation analysis for a subsequent stage or phase of development. Trips from a previous stage or phase that did not result in impacts for which mitigation was required or provided may be cumulatively analyzed with trips from a subsequent stage or phase to determine whether an impact requires mitigation for the subsequent stage or phase.

d. In projecting the number of trips to be generated by the development under review, any trips assigned to a toll-financed facility shall be eliminated from the analysis.

e. The applicant shall receive a credit on a dollar-for-dollar basis for impact fees, mobility fees, and other transportation concurrency mitigation requirements paid or payable in the future for the project. The credit shall be reduced up to 20 percent by the percentage share that the project's traffic represents of the added capacity of the selected improvement, or by the amount specified by local ordinance, whichever yields the greater credit.

3. This subsection does not require a local government to approve a development that, for reasons other than

transportation impacts, is not qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

4. As used in this subsection, the term "transportation deficiency" means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing, committed, and vested trips, plus additional projected background trips from any source other than the development project under review, and trips that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida's Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.

(i) If a local government elects to repeal transportation concurrency, the local government may ~~it is encouraged to~~ adopt an alternative transportation system that is mobility-plan based and fee-based or an alternative transportation system that is not mobility-plan and fee-based. The local government ~~mobility funding system that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted~~ may not use an alternative transportation system ~~be used~~ to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism used in the alternative transportation system

must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. An alternative transportation ~~A mobility fee-based funding~~ system must comply with s. 163.31801 governing impact fees. An alternative transportation system may not impose ~~that is not mobility fee-based shall not be applied in a manner that imposes~~ upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).

(j)1. If a county and municipality charge the developer of a new development or redevelopment a fee for transportation capacity impacts, the county and municipality must create and execute an interlocal agreement to coordinate the mitigation of their respective transportation capacity impacts.

2. The interlocal agreement must, at a minimum:

a. Ensure that any new development or redevelopment is not charged twice for the same transportation capacity impacts.

b. Establish a plan-based methodology for determining the legally permissible fee to be charged to a new development or redevelopment.

c. Require the county or municipality issuing the building permit to collect the fee, unless agreed to otherwise.

d. Provide a method for the proportionate distribution of the revenue collected by the county or municipality to address the transportation capacity impacts of a new development or redevelopment, or provide a method of assigning responsibility for the mitigation of the transportation capacity impacts belonging to the county and the municipality.

3. By October 1, 2025, if an interlocal agreement is not executed pursuant to this paragraph:

a. The fee charged to a new development or redevelopment shall be based on the transportation capacity impacts apportioned to the county and municipality as identified in the developer's traffic impact study or the mobility plan adopted by the county or municipality.

b. The developer shall receive a 10 percent reduction in the total fee calculated pursuant to sub-subparagraph a.

c. The county or municipality issuing the building permit must collect the fee charged pursuant to sub-subparagraphs a. and b. and distribute the proceeds of such fee to the county and municipality within 60 days after the developer's payment.

4. This paragraph does not apply to:

a. A county as defined in s. 125.011(1).

b. A county or municipality that has entered into, or otherwise updated, an existing interlocal agreement, as of October 1, 2024, to coordinate the mitigation of transportation impacts. However, if such existing interlocal agreement is terminated, the affected county and municipality that have entered into the agreement shall be subject to the requirements of this paragraph unless the county and municipality mutually agree to extend the existing interlocal agreement before the expiration of the agreement.

Section 3. Paragraph (a) of subsection (4), paragraph (a) of subsection (5), and subsection (7) of section 163.31801, Florida Statutes, are amended to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—

(4) At a minimum, each local government that adopts and collects an impact fee by ordinance and each special district

that adopts, collects, and administers an impact fee by resolution must:

(a) Ensure that the calculation of the impact fee is based on the most recent and localized data available such that the impact fee study is based on data generated within 4 years after adoption of a revised impact fee. The new impact fee study must be adopted by the local government within 12 months after the initiation of the new impact fee study if the local government increases the impact fee.

(5)(a) Notwithstanding any charter provision, comprehensive plan policy, ordinance, development order, development permit, or resolution, the local government or special district that requires any improvement or contribution must credit against the collection of the impact fee any contribution, whether identified in a development order, proportionate share agreement, or any ~~other~~ form of exaction~~,~~ related to public facilities or infrastructure, including monetary contributions, land dedication, site planning and design, or construction. Any contribution must be applied on a dollar-for-dollar basis at fair market value to reduce any impact fee collected for the general category or class of public facilities or infrastructure for which the contribution was made.

(7) If an impact fee is increased, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, s. 380.06, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established. If a local government adopts an alternative transportation system pursuant to s. 163.3180(5)(i), the holder

of any transportation or road impact fee credits granted under s. 163.3180 or s. 380.06 or otherwise that were in existence before the adoption of the alternative transportation system is entitled to the full benefit of the intensity and density prepaid by the credit balance as of the date the alternative transportation system was first established.

Section 4. Paragraph (d) of subsection (2) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(d) The proceeds of the surtax authorized by this subsection and any accrued interest shall be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure; to acquire any interest in land for public recreation, conservation, or protection of natural resources or

to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern; to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection. Any use of the proceeds or interest for purposes of landfill closure before July 1, 1993, is ratified. The proceeds and any interest may not be used for the operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011, and charter counties may, in addition, use the proceeds or interest to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of the proceeds or interest for purposes of retiring or servicing indebtedness incurred for refunding bonds before July 1, 1999, is ratified.

1. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, any related land acquisition, land improvement, design,

and engineering costs, and all other professional and related costs required to bring the public facilities into service. For purposes of this sub-subparagraph, the term "public facilities" means facilities as defined in s. 163.3164(41) ~~s. 163.3164(39)~~, s. 163.3221(13), or s. 189.012(5), and includes facilities that are necessary to carry out governmental purposes, including, but not limited to, fire stations, general governmental office buildings, and animal shelters, regardless of whether the facilities are owned by the local taxing authority or another governmental entity.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008.

d. Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38. Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the

private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

e. Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

f. Instructional technology used solely in a school district's classrooms. As used in this sub-subparagraph, the term "instructional technology" means an interactive device that assists a teacher in instructing a class or a group of students and includes the necessary hardware and software to operate the interactive device. The term also includes support systems in which an interactive device may mount and is not required to be affixed to the facilities.

2. For the purposes of this paragraph, the term "energy efficiency improvement" means any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural

gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; installation of solar panels; building modifications to increase the use of daylight or shade; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; installation of systems for natural gas fuel as defined in s. 206.9951; and installation of efficient lighting equipment.

3. Notwithstanding any other provision of this subsection, a local government infrastructure surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the surtax proceeds for deposit into a trust fund within the county's accounts created for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development. The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

Section 5. This act shall take effect October 1, 2024.