HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB MLA 09-01 Growth Management
SPONSOR(S): Military & Local Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Military & Local Affairs Policy Committee		Rojas	Hoagland
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill abolishes the Department of Community Affairs as a separate state agency. The Division of Community Planning and Division of Housing and Community Development and all associated resources, rules, and existing laws are transferred to the Department of State (DOS). The Office of Emergency Management is created within the Executive Office of the Governor, which will assume the role and duties of the Division of Emergency Management. The oversight of the Florida Housing Finance Corporation will be assigned to DOS for administrative purposes. This will necessitate no change in policy or operations.

The bill authorizes the creation of transportation concurrency exception areas (TCEAs) at the discretion of local governments. The bill facilitates creation of TCEAs in municipalities and dense urban areas of county by specifying that such designations are not subject to state challenge. However, coordination with the state land planning agency, the Department of Transportation, and regional planning councils is required and such amendments are still subject to third party challenges. Counties are also able to propose the creation of TCEAs in any other area, subject to qualifying criteria. This, however, is subject to state review and challenge.

Transportation concurrency may be waived for job creation projects certified by the Office of Tourism, Trade and Economic Development as meeting criteria from the expedited permitting process in s. 403.973(3), F.S. The bill provides an exemption from certain financial feasibility requirements in TCEAs created by local governments relating to achieving and maintaining adopted levels of service.

The bill modifies the proportionate share and proportionate fair-share formulas that calculate developer contributions.

The bill establishes two alternative review processes for local comprehensive plan amendment adoptions, allows for the state land planning agency to establish procedural rules to administer the processes and report to the legislature regarding implementation and use. State review exemptions are created for qualifying local jurisdictions and the streamlined review process, formerly the alternative state review process pilot program, is available for use by all jurisdictions, at their option.

The bill removes a current law prohibition on comprehensive plan amendments related to public school facilities and capital improvement elements. The small county waiver for school concurrency is expanded and charter schools are added as an appropriate form of public school facilities mitigation.

The bill establishes mobility fee study oversight and directs the state land planning agency and FDOT to report to the Legislature next session. The bill directs FDOT to report on community internal transportation capture.

The bill provides a statewide extension of permits for a period of two years and places limits on a local government's ability to adopt or enforce certain ordinances.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PART I – GOVERNMENTAL REORGANIZATION

Current Situation

Constitutional Requirements for State Agencies
Article IV of the Florida Constitution provides the executive structure of state government. Section 6 of Art. IV, provides a cap on the number of executive departments at 25, exclusive of those specifically provided for or authorized by the constitution.

DEPARTMENT OF COMMUNITY AFFAIRS

Departmental Structure and Responsibilities:
The Department of Community Affairs (DCA), created in s. 20.18, F.S., is composed of three divisions: Emergency Management, Housing and Community Development, and Community Planning. In FY 2008-09, DCA had 351 FTE positions and a total appropriation of $1,319 million ($6 million in general revenue and $1,313 million in trust funds). This includes $280 million, all in trust funds for Florida Housing Finance Corporation. DCA also houses the Florida Communities Trust which provides grants to communities for parks, greenways and natural resource protection. The Trust is funded by the Florida Forever Program with a FY 2008-09 appropriation of $63 million, which is included in the DCA appropriation figures cited above.

The Department of Community Affairs is charged with the responsibility for:
- Growth management;
- Emergency management mitigation and recovery; and
- Housing and community development.

Division of Emergency Management (DEM) is responsible for the coordination of disaster preparedness, response, recovery, and mitigation programs for the state. The Division maintains the State Emergency Operations Center and State Warning Point facilities.

Division of Community Planning administers Florida's growth management programs and related initiatives. Some of the programs the division administers are authorized under Chapter 163, Part II, and Chapter 380, F.S. Programs include:

- Comprehensive Plan Review
- Areas of Critical State Concern
- Developments of Regional Impact
- Technical Assistance
- Other Planning Initiatives, including:
    - hazard mitigation/post disaster redevelopment,
    - military base encroachment,
    - springs protection,
    - Waterfronts Florida initiative,
    - Wekiva Parkway and Protection,
    - transportation planning,
    - school facilities planning
- State Clearinghouse and Federal Consistency Review
- Homeowners' Covenant Revival

Division of Housing and Community Development provides assistance and grant funding, much of which is federal dollars, to local governments in identifying programs and services available to residents and local governments for individual and neighborhood improvements. The Florida Communities Trust administers two state land acquisition grant programs that provide funding to local governments and eligible non-profit organizations to acquire parks, open space, greenways and projects supporting Florida's seafood harvesting and aquaculture industries. Programs include:

- Small Cities Community Development Block Grants
- Community Services Block Grant
- Low-Income Home Energy Assistance
- Weatherization Assistance
- Low-Income Emergency Home Repair
- Florida Access to Civil Legal Assistance
- Front Porch Florida – Office of Urban Opportunity
- Florida Building Codes and Standards
- Special District Information Program
- Florida Communities Trust

Additionally, DCA has numerous statutory boards, commissions and councils under its purview, such as the Affordable Housing Study Commission, Community Development Block Grant Advisory Council, Florida Building Codes Commission, Florida Communities Trust Governing Board, Florida Housing Finance Corporation Board, The Century Commission and Handicapped Accessibility Advisory Council.

DEPARTMENT OF STATE

Departmental Structure and Responsibilities*:*
The Department of State (DOS), created in s. 20.10, F.S., is composed of six divisions: Administrative Services, Elections, Historical Resources, Corporations, Library and Information Services, and Cultural Affairs. In FY 2008-09, DOS had 457 positions and a budget of $93 million ($61 million in general revenue and $32 million in trust funds).

The Department of State is charged with the responsibility for:
<u>Administrative and Records Duties</u>

- Serving as the official custodian of records;
- Filing acts and papers of the Legislature and county ordinances;
- Filing all rules and regulations contained in the Florida Administrative Code and publishing and distributing proposed rules and regulations in the Florida Administrative Weekly for state agencies;
- Issuing commissions to all elected and appointed officials;

- Serving as the ministerial filing agency that serves as the statewide repository for business entity filings and uniform business reports/annual reports, the statewide central filing office for judgment lien filings, and the statewide central registration office for fictitious names, trademarks and service marks;

Elections Duties

- Administering and enforcing the state election laws;
- Maintaining financial disclosures for all constitutional and state officers and specified employees;
- Qualifying all federal and state candidates;

Community Based Duties

- Preserving and promoting the state's cultural heritage and programs through cultural grant programs and promotional programs and implementing programs to gain international recognition on behalf of Florida artists and arts programs;
- Protecting, preserving, and promoting Florida's historical resources through encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of and public access to information about Florida's historic sites, properties and objects related to
- Promoting Florida history and to archaeological and folk cultural heritage;
- Administering the statewide historic preservation plan and administering historic properties of the state, either directly or through management of contracts;
- Providing library, records management, and archival services at the state and local level; and,
- Enhancing and coordinating foreign affairs and diplomacy to foster global relationships for Florida.

Effect of the Bill

Effect of the Transfer of DCA to DOS

Two methods of executive branch reorganization are addressed in s. 20.06, F.S[1]. This bill provides for the reorganization of the DOS and the DCA by a Type Two Transfer pursuant to s. 20.06(1), F.S. In a type two transfer, agencies or parts thereof are merged. All the statutory powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those specifically transferred elsewhere or abolished, transfer to the receiving agency. Additionally, funds must be segregated in such a manner that the relation between program and revenue source as provided by law is retained. Finally, unless otherwise provided by law, the administrative rules of the agency in existence prior to the transfer remain in effect until specifically changed in the manner provided by law.

[1] TYPE ONE TRANSFER.--A type one transfer is the transferring intact of an existing agency or department so that the agency or department becomes a unit of another agency or a department. Any agency or department transferred to another agency or department by a type one transfer will exercise its powers, duties, and functions as prescribed by law, subject to review and approval by, and under the direct supervision of, the head of the agency or department to which the transfer is made, unless otherwise provided by law. Any agency or department transferred by a type one transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds transferred to the agency or department to which it is transferred. The transfer of segregated funds must be made in such manner that the relation between program and revenue source as provided by law is retained. Unless otherwise provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

TYPE TWO TRANSFER.--A type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed there from or abolished.

Transfer Division of Emergency Management to the Governor's Office
The Office of Emergency Management is created within the Executive Office of the Governor. The director of the Office of Emergency Management shall continue to be appointed by and serve at the pleasure of the Governor. From a practical standpoint, DEM currently operates as separate entity and shares only minimal administrative resources with DCA.

Transfer Division of Community Planning and Division of Housing and Community Development to Department of State

The relocation of these divisions via Type Two transfer pursuant to s. 20.06(1), F.S., ensures that all resources, rules, existing procedure will be transferred in total to DOS. Administrative positions from DCA will also be transferred to DOS to ensure sufficient resources to carry out established responsibilities without interruption.

Both DCA and DOS have similar missions to provide guidance, technical assistance and financial assistance to local governments and communities. This coincides with principles of a smaller, more efficient government while maintaining critical and essential government functions, and eliminating the duplication and overlap of functions and services within and across agencies. An evaluation of all state agencies show both DOS and DCA are among the ten smallest agencies in terms of FTE and general revenue funding. With the transfer in the bill, the combined agency will remain as one of the ten smallest agencies for both FTE and general revenue.

Florida Housing Finance Corporation
Florida Housing Finance Corporation (FHFC) will be assigned to DOS for administrative purposes. FHFC operates as a standalone entity and is connected to DCA solely for matters regarding funding and budgetary authority. There will be no change in policy or operations.

PART II - GROWTH MANAGEMENT

Comprehensive Plan and Plan Amendments
Current Situation

The Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, Florida Statutes), requires all local governments to adopt comprehensive land use plans and implement those plans through land development regulations and development orders. DCA is designated as the lead oversight agency, responsible for reviewing comprehensive plans and amendments to determine consistency with state law.

Section 163.3177, F.S., provides the requirements for elements of local comprehensive plans. A listing of required elements includes elements for capital improvement, future land use, intergovernmental coordination, housing, transportation, and public schools facilities. The statute also provides for scheduled updates to various elements and imposes penalties for failure to adopt or update elements.

Section 163.3184, F.S., sets forth the criteria for the adoption of comprehensive plans and amendments to those plans. 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 state land planning agency. By rule, the state land planning agency reviews a submitted comprehensive plan amendment to ensure it has a complete application package within 5 days of receiving the comprehensive plan amendment. At present, the statutorily prescribed processing timeline for a comprehensive plan amendment requires at a minimum 136 days.[2]

The burden of proof regarding plans is established in s. 163.3184, F.S. If the adoption is challenged and the state land planning agency's review included a determination of "In Compliance", the local plan or plan amendment shall be determined to be in compliance if the local government's determination of

[2] OPPAGA Report No. 08-62

compliance is fairly debatable. If the adoption is challenged and the state land planning agency's review included a determination of "Not In Compliance", the local government's determination that the comprehensive plan or plan amendment is in compliance is presumed to be correct and the local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan or plan amendment is not in compliance.

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 state land planning agency does not issue a notice of intent stating whether a small scale development amendment is in compliance with the comprehensive plan.

In 2007, the Legislature created a pilot program to provide an alternate, expedited process for plan amendments with streamlined state agency review. The selected pilot communities transmit plan amendments, along with supporting data and analyses directly 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 Chapter 163, Part II, F.S. 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 for the purpose of adopting the plan amendment, the local government transmits the amendment with supporting data and analyses to the state land planning agency 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 the state land planning agency may challenge a plan amendment adopted by a pilot community within 30 days after adoption of the amendment. The state land planning agency's challenge is limited to those issues raised in the comments by the reviewing agencies, but the statute encourages the state land planning agency to focus its challenges on issues of regional or statewide importance. The state land planning agency does not issue a report detailing its objections, recommendations, and comments (ORC Report) on the proposed amendment or a notice of intent (NOI) on the adopted amendment. The alternative state review process shortens statutorily prescribed timeline for comprehensive plan amendments process from 136 days to 65 days.[3]

Effect of the Bill

The bill allows concurrent zoning changes that would be required to properly enact the provisions of any proposed plan amendment transmitted to the state land planning agency for review or comment. Zoning changes would be contingent upon the state land planning agency issuing a notice of intent to find that the comprehensive plan or plan amendment is in compliance.

The bill establishes two alternative review processes for local comprehensive plan amendment adoptions, allows for the state land planning agency to establish procedural rules to administer the processes and report to the legislature regarding implementation and use.

State Review Exemptions

Counties that have a population greater than 1 million and cities that have a population greater than 100,000 and the jurisdiction has an average of at least 1,000 people per square mile are deemed to be "self-certifiable" and are exempt from state review.

All comprehensive amendments must be adopted and reviewed in the manner applicable to small-scale amendments as provided for in ss. 163.3184(1), (2), (7), (14), (15), and (16) and 163.3187, F.S. The state land planning agency may not issue an ORC Report on proposed plan amendments or a notice of intent on adopted plan amendments.

However, affected persons may file a petition for administrative review pursuant to the current statutory provisions. The local government's determination that the amendment is "in compliance" is presumed to be correct and shall be sustained unless it is shown by a preponderance of the evidence that the

[3] OPPAGA Report No. 08-62

amendment is not "in compliance."

The population and density needed to identify local governments that qualify for state review exemption will be determined annually by the Office of Economic and Demographic Research (EDR) using the most recent land area data from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates determined pursuant to s. 186.901, F.S. For certain local government that has had an annexation, contraction, or new incorporation, EDR will determine the population density using the new jurisdictional boundaries as recorded. EDR will annually submit to the state land planning agency a list of jurisdictions that meet the total population and density criteria necessary to qualify for state review exemption, and the state land planning agency is required publish the list of jurisdictions on its website within 7 days.

Streamlined Review Process

The bill allows for all local governments to elect to use the streamlined review process, formerly the alternative state review process pilot program, in s. 163.32465,F.S., for any amendment or amendment package not expressly excluded by s. 163.32465 (4)F.S. The local government may elect to use the streamlined process on an amendment by amendment basis, but must establish in its transmittal hearing that it elects to undergo the streamlined review process. If the local government has not specifically approved the streamlined review process for the amendment or amendment package, the amendment or amendment package will be reviewed subject to the standard review process.

Comments from state agencies are required to clearly identify as objections, those issues that, if not resolved, may result in an agency request that the state land planning agency challenge the plan amendment, however they may also include technical guidance on issues of agency jurisdiction as it relates to the requirements of this part.

After receiving agency comments, the local government is required to hold second public hearing. The hearing must be conducted within 120 days after the agency comments are received and the amendment must be adopted, adopted with changes, or not adopted. If a local government fails to adopt the plan amendment within the timeframe set, the plan amendment is deemed abandoned and the plan amendment may not be considered until the next available amendment cycle. However, if the applicant or local government, prior to the expiration of the timeframe, notifies the state land planning agency that the applicant or local government is proceeding in good faith to adopt the plan amendment, the state land planning agency shall grant one or more extensions not to exceed a total of 360 days from the issuance of the agency report or comments. During the pendency of any such extension, the applicant or local government is required to provide to the state land planning agency a status report every 90 days identifying the items continuing to be addressed and the manners in which the items are being addressed.

In a challenge proceeding involving an "affected person" as defined in s. 163.3184(1)(a), F.S., the local government’s determination of compliance is held to the fairly debatable standard. However, in a proceeding where the state land planning agency issues challenge the local government's determination that the amendment is "in compliance" is presumed to be correct and will be sustained unless it is shown by a preponderance of the evidence that the amendment is not "in compliance."

Alternative Review Process Exceptions

The following plan amendments are not eligible for the alternative state review processes established by this bill and will continue to be reviewed subject to the applicable standard review and small-scale review processes established in ss. 163.3184 and 163.3187, F.S.:

1. designate a rural land stewardship area pursuant to s. 163.3177(11)(d),F.S.;
2. designate an optional sector plan;
3. relate to an area of critical state concern or a coastal high hazard area;
4. make the first change to a land use for lands that have been annexed into a municipality;
5. update a comprehensive plan based on an evaluation and appraisal report; or
6. implement new plans for newly incorporated municipalities.

Capital Improvements Element

Current Situation

In 2005, the Legislature strengthened the financial feasibility requirements of the Capital Improvements Element (CIE) and specified a completion date of 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 the state land planning agency 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; or sanctions from the Administrative Commission such as 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. DCA has indicated that the majority of jurisdictions failed to meet the December 1, 2008 deadline to submit their financial feasibility reports for their capital improvements element.

Effect of the Bill

The bill amends s. 163.3177(3)(b), F.S., to delete the statutorily referenced date for local governments to submit amendments to implement requirements added in 2005 for the capital improvement schedule and element to be financially feasible. The bill also deletes the penalty that prohibited non-compliant local governments from amending their future land use map. The bill establishes that the state land planning agency may issue notice to the local government to show cause why sanctions should not be enforced for failure to submit an annual update. Absent a specific date, new statutorily imposed requirements are due no later than at the Evaluation and Appraisal report (EAR) based amendment.

In addition, a local government that has designated a transportation concurrency exception area in its comprehensive plan pursuant to s. 163.3180(5),F.S., will be deemed to have met the requirement to achieve and maintain level-of-service standards if the CIE and, as suitable, the capital improvement schedule reflect a plan to promote mobility within the area.

School Concurrency

Current Situation

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 have adopted a school facilities element into their comprehensive plan by the December 1, 2008 deadline, DCA has indicated that a significant number of jurisdictions did not meet the deadline. Penalties for failure to comply with the December 1, 2008 deadline include that the local government cannot adopt comprehensive plan amendments that increase residential density and school boards could be subject to possible sanctions from the Administrative Commission.

Currently, a county and the municipalities within that county may seek a waiver from public school facilities concurrency if the capacity rate for all schools within the school district is no greater than 100 percent and the projected five year student growth rate is less than 10 percent.

Mitigation options for developers to address school concurrency requirements, include the contribution of land; the construction, expansion, or payment for land acquisition; or construction of a public school facility.

Effect of the Bill

The bill amends s. 163.3177(12), F.S., deleting one of the penalties for failure to adopt a public schools element or to implement school concurrency. Local governments will no longer be prohibited from adopting comprehensive plan amendments that increase residential density.

The bill also establishes that, similar to the provisions of s. 163.3177(3)(b), F.S., the local government, in addition to the school board, may be subject to sanctions by the Administration Commission pursuant to s. 163.3184(11), F.S.

The bill expands the public school facilities concurrency waiver to counties where the projected growth rate exceeds 10 percent, but the projected 10-year capital outlay full-time equivalent student enrollment is less than 2,000 students.

The bill adds the construction of a charter school that complies with the requirements of s. 1002.33(18)(f), F.S., as an appropriate mitigation option for developers to address school concurrency requirements. Section 1002.33(18)(f), F.S., provides that facilities are to be built to the State Requirements for Educational Facilities and are to be owned by a public or nonprofit entity. In addition, the local school district retains the right to monitor and inspect such facilities to ensure compliance with the State Requirements for Educational Facilities.

Transportation Concurrency

Current Situation

The Growth Management Act also requires local governments to employ 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 intended at ensuring that transportation facilities and services are available "concurrent" with the impacts of development. To implement 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 interregional significant transportation facilities and services and plays a critical role in moving people and goods between major economic regions in Florida, to and from other states, as well as to shipment centers for global distribution.

Strict application of concurrency has resulted in development seeking out capacity in undeveloped areas. Consequently, methods to allow for greater flexibility to meet public policy objectives were adopted. In 1992, Transportation Concurrency Management Areas (TCMA) were authorized, allowing an area-wide LOS standard, rather than facility-specific designations, 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.

The Governor through his Office of Tourism, Trade, and Economic Development (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." Section 403.973(3), F.S., provides for the criteria for projects qualifying for expedited permitting. This provision can be used for projects creating at least 100 jobs; creating at least 50 jobs if the project is located in an enterprise zone, or in a county having a population of less than 75,000 or in a county having a population of less than 100,000 which is contiguous to a county having a population of less than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county; or on a case-by-case basis and at the request of a county or municipal government.

Effect of the Bill

The bill modifies current intent language, expressing that the unintended result of the current concurrency requirement for transportation facilities is an impediment to the *promotion of vibrant, sustainable multi-use urban communities*. The bill expands areas where the creation of transportation concurrency exception areas (TCEAs) may be formed at the discretion of local governments. The TCEA must be adopted into the local government comprehensive plan using current planning requirements.

Municipalities may adopt a TCEA into their comprehensive plan as a matter of local authority. They are required to coordinate with the state land planning agency, FDOT and the appropriate regional planning council (RPC) to assess the impact that the proposed TCEA is expected to have on the adopted level-of-service standards established for Strategic Intermodal System (SIS) facilities. Municipalities are empowered to adopt these amendments similarly to the process provided for in small-scale amendments pursuant to ss.163.3184 and 163.3187, F.S. While there is no direct state challenge, state land planning agency, FDOT and the RPC may review and comment on the amendment establishing the TCEA. Citizen participation remains unchanged, as affected persons defined in ch. 163, F.S., still maintain their standing.

Counties are authorized to create TCEAs, in the same manner as municipalities, in "Dense urban areas" which is defined in the bill as census tracts with a 2000 census population of 1000 people per square mile. Counties are required to coordinate with the state land planning agency, FDOT and the RPC, but designation, as with municipalities, is not subject to state challenge. Counties are also able to propose the creation of TCEAs in any other area, subject to qualifying criteria. These designations, however, are subject to state review and challenge.

The bill also establishes in a new s. 163.,3180(5)(g)F.S., that certain developments due to their location or character should be subject to special consideration when applying concurrency for transportation. Current law provisions relating to part time impacts has been moved to this new subsection. This new subsection adds job creation projects certified by OTTED. Local governments may seek to have a development certified by OTTED as a qualified job creation project based on the criteria of s. 403.973(3), F.S. If certified, the development may be exempted from transportation concurrency by the local government after consulting with the Department of Transportation concerning any impacts on the Strategic Intermodal System.

The bill also clarifies in s. 163.3177(3), F.S., that in TCEAs the financial feasibility requirement of achieving and maintaining adopted Levels of Service (LOS) is not applied.

Proportionate Fair-Share Mitigation and Proportionate Share Mitigation

Current Situation

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.

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. 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 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.

The formula expressed in s. 163.3180(12), F.S., is used for proportionate share mitigation provided in subsection (16) for non-DRI developments to mitigate impacts.

Effect of the Bill

The bill establishes a change in the proportionate-share contribution calculation. The proportionate-share contribution is now calculated as the cost of the improvement necessary to maintain the adopted level of service (LOS) or existing conditions if the adopted level of service has been exceeded.

The determination of “significantly affected roadways” is now based on the cumulative number of trips from the previously approved stage or phase of development and the proposed new stage or phase of development expected to reach roadways during the peak hour at the complete buildout of a stage or phase being approved. The developer's proportionate share on these roadways is based exclusively on the number of trips from the proposed new stage or phase being approved which would exceed the peak hour maximum service volume of the roadway at the adopted LOS. The share will be based on existing volume, if the adopted LOS has been exceeded. Costs are established based on improvements necessary to maintain adopted LOS or, if existing conditions exceed the adopted level of service, to maintain existing conditions. The existing volume calculation is the peak hour maximum service volume of the roadway at the time of analysis of the phase or stage.

Furthermore, proportionate-share and proportionate fair-share mitigation is applied as a credit against any transportation impact fees or exactions assessed for the traffic impacts of a development.

Mitigation can be pipelined in that it can be directed toward one or more specific transportation improvements reasonably related to the mobility demands created by the development and such improvements may address one or more modes of transportation.

The bill establishes a definition for "backlog" or "backlogged transportation facility" as facilities on which the adopted LOS is exceeded by the existing trips, plus background trips. The bill also establishes that "background trips" are trips from sources other than the development project under review.

Impact Fees

Current Situation

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.

Effect of the Bill

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

Mobility Fee Study

The bill provides legislative findings that indicate dissatisfaction with the existing transportation concurrency system and directs the state land planning agency and FDOT, both of whom are currently performing independent mobility fee studies, to coordinate and use those studies in developing a methodology for a mobility fee system. It directs the agencies to provide two interim joint reports to the President of the Senate and the Speaker of the House of Representatives. The agencies will then develop and submit to the Legislature a final joint report on the mobility fee methodology study complete with recommended legislation and a plan to implement the mobility fee as a replacement for the existing transportation concurrency management systems adopted and implemented by local governments. The final joint report shall also contain, but is not limited to, an economic analysis of implementation of the mobility fee, activities necessary to implement and potential costs and benefits at the state and local levels and to the private sector.

Internal Capture

The bill directs FDOT to establish an approved transportation methodology that recognizes that a planned, sustainable, or self-sufficient development area will likely achieve a community internal capture rate in excess of 30 percent when fully developed. The methodology review must be completed and in use no later than October 1, 2009.

Statewide Permit Extension

The bill provides that any construction or operating permit, development order, building or environmental permit, or other land use application that has been approved by a state or local governmental agency or pursuant to a local ordinance or resolution, and that has an expiration date prior to December 31, 2010, is extended and renewed for a period of 3 years following its date of expiration.

The extension also applies to phase, commencement, and buildout dates for any development order including any buildout extension previously granted, local land use approval, or related permits, including a certificate of concurrency or developer agreement or the equivalent thereof that has an expiration date prior to December 31, 2010. The completion date for any required mitigation associated with any phase of construction is similarly extended so that it takes place within the phase originally intended.

Prohibited Standards for Security

Current Situation

Current law has established minimum security standards for certain businesses. In doing so, state law has preempted ordinances or regulations by local governments that differ from state requirements. For example, state law specifies standards for lighting, mirrors and landscaping for Automated Teller Machines (ATM).[4] Likewise, state law has preempted security standards for convenience businesses.[5][6] However, some local governments have sought to establish their own security standards for other businesses.[7]

[4] *See* s. 655.962, F.S.

[5] Section 812.1725, F.S., provides that a "political subdivision of this state may not adopt, for convenience businesses, security standards which differ from those contained in ss. 812.173 and 812.174, and all such differing standards, whether existing or proposed, are hereby preempted and superseded by general law."

[6] The Convenience Business Security Act requires: training in robbery deterrence and safety for each employee; drop safe or cash management device, including a written cash management policy; lighted parking lot; notice at the entrance that the cash register contains $50.00 or less; height markers at the entrance; unobstructed view of the sales transaction area; a security camera system; a silent alarm; and additional security measures, if required.

[7] *See* Fla. AGO 2003-09, in which the Attorney General opined that the "City of Sunny Isles Beach appears to have the authority pursuant to section 2(b), Article VIII, Florida Constitution, and section 166.021, Florida Statutes, to adopt an ordinance requiring condominium associations within the jurisdiction of the city to furnish security guard services upon their premises to curtail the incidence of crime."; Cutler Bay Ordinance No. 09-03, "Town of Cutler Bay Parking Lot Security Ordinance", requiring certain retail businesses with over 25 parking spaces to install security camera system.

Effect of the Bill

The proposed committee bill prohibits a county, municipality, or any other entity of local government from enacting or maintaining an ordinance that sets standards for security that requires a lawful business to expend funds to enhance the service of functions of local governments. Local governments will still be able to enact ordinances to establish standards for security when provided by general law.

B. SECTION DIRECTORY:

Section 1. Creates s.14.2017, F.S.: creating the Office of Emergency Management within the Executive Office of the Governor.

Section 2. Amends s. 20.10, F.S.: creating the Division of State and Community Planning and Division of Housing and Community Development containing the Office of Urban Development in Department of State.

Section 3. Amends s. 163.3162, F.S.: conforming cross references.

Section 4. Amends s. 163.3164, F.S.: conforming cross references, creates subsection (33), F.S.: creating a definition for "dense urban area" and amends the definition for state land planning agency.

Section 5. Amends s. 163.3177, F.S.: revising dates and penalties to the capital improvement element and public school facilities element of a comprehensive plan and expanding waivers for small counties

Section 6. Amends s. 163.3180, F.S.: allowing the creation of transportation concurrency exception areas at the discretion of local governments under specified circumstances. Revising the proportionate share and proportionate fair-share calculation. Including charter school construction as a mitigation option for school concurrency.

Section 7. Amends s. 163.31801, F.S.: local governments are not required to wait 90 days to decrease, suspend or eliminate an impact fee.

Section 8. Creates s. 163.31082, F.S.: prohibiting local governments from establishing standards for security which require private entities to expend funds.

Section 9. Amends s. 163.3184, F.S.: establishing a requirement to local governments to identify at the transmittal hearing if it intends to use the streamline state review process.

Section 10. Amends s. 163.32465, F.S.: deleting pilot program and creating alternative state review processes for the adoption of local comprehensive plans.

Section 11. Directs the state land planning agency and FDOT to conduct a mobility fee study and submit findings and reports to the Legislature

Section 12. Directs FDOT to establish an approved transportation methodology that recognizes that a planned, sustainable, or self-sufficient development area will likely achieve a community internal capture rate in excess of 30 percent when fully developed.

Section 13. Provides a two year extension to any construction or operating permit, development order, building or environmental permit, or other land use application

Section 14. Amends s.186.513, F.S.: conforming cross references.

Section 15. Amends s.186.515, F.S.: conforming cross references.

Section 16. Amends s.287.042, F.S.: conforming cross references.

Section 17. Amends s.288.975, F.S.: conforming cross references.

Section 18. Amends s.369.303, F.S.: conforming cross references.

Section 19. Amends s. 420.504, F.S.: authorizing Department of State oversight of the Florida Housing Finance Corporation

Section 20. Amends s. 420.506, F.S.: Department of State oversight of the Florida Housing Finance Corporation Board

Section 21. Amends s.420.5095, F.S.: conforming cross references.

Section 22. Amends s.420.9071, F.S.: conforming cross references.

Section 23. Amends s.420.9076, F.S.: conforming cross references.

Section 24. Provides for the transfer Division of Community Planning and Division of Housing and Community Development to Department of State by Type two transfer effective October 1, 2009.

Section 25. Provides for the transfer Division of Emergency Management to the Executive Office of the Governor by Type two transfer effective October 1, 2009.

Section 26. Provides legislative intent for conforming legislation.

Section 27. Directs the Secretary of State to evaluate transferred programs and submit recommendations to the Governor and the Legislature.

Section 28. Provides legislative intent that programs, functions and activities continue without significant change during the 2009-10 fiscal year.

Section 29. Repeals s. 20.18, F.S. relating to the Department of Community Affairs.

Section 30. Provides an effective date, except as otherwise expressly provide in this act, this act shall take effect July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

This bill may reduce workload on state agencies by reducing regulations and streamlining portions of the local comprehensive plan amendment adoption process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

This bill may reduce workload on local governments by reducing regulations and streamlining portions of the local comprehensive plan amendment adoption process.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The proposed changes would eliminate the prohibition on amendments to comprehensive plans for failure to comply with the Public School Facilities and Capital Improvement elements. Further the bill streamlines plan review and approvals and allows for a simultaneous zoning approval at the time of comprehensive plan amendment which may provide a savings to private property owners.

D. FISCAL COMMENTS:

The bill provides for the transfer of all programs, functions, activities, personnel and funding from the Department of Community Affairs to the Department of State and the Executive Office of the Governor.

Further the bill changes certain process and procedures for comprehensive plan reviews. This bill may reduce workload on local governments, state agencies, and property owners by reducing regulations and streamlining portions of the local comprehensive plan amendment adoption process.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill allows for the state land planning agency to establish procedural rules to administer the alternative state review processes for local comprehensive plan amendment adoptions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES