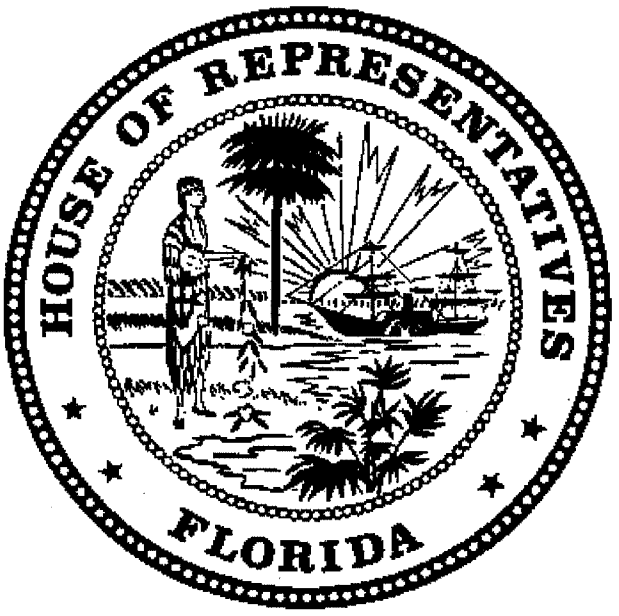

Community & Military Affairs Subcommittee

Wednesday, February 23, 2011
1:00 PM - 4:00 PM
116 Knott Building

Dean Cannon
Speaker

Ritch Workman
Chair

The Florida House of Representatives

Community & Military Affairs Subcommittee

AGENDA

February 23, 2011
1:00 PM - 4:00 PM
116 Knott Building

I. **Opening Remarks by Chair Workman**

II. **Consideration of the following bills:**

HB 233 City of Tampa, Hillsborough County by Rep. Young

HB 465 Florida Veterans' Hall of Fame by Rep. Harrell

III. **Consideration of the following proposed committee bill:**

PCB CMAS 11-03 Impact Fees

IV. **Workshop on Growth Management:**

Comprehensive Plan Review Process

Transportation Concurrency

School Concurrency

V. **Closing Remarks by Chair**

VI. **Adjournment**

402 South Monroe Street, 204 House Office Building, Tallahassee, Florida 32399-1300
(850) 410-4905

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 233 City of Tampa, Hillsborough County
SPONSOR(S): Young
TIED BILLS: **IDEN./SIM. BILLS:** SB 756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Tait MCT	Hoagland
2) Economic Affairs Committee			

SUMMARY ANALYSIS

This bill authorizes the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) to issue a special alcoholic beverage license to the City of Tampa (City), for use within the buildings and adjoining grounds of Curtis Hixon Waterfront Park and Kiley Garden Park.

The bill requires the City to pay the applicable license fee provided in s. 565.02, F.S.

The license authorized by this bill allows the City to sell alcoholic beverages for consumption within the buildings and adjoining grounds of Curtis Hixon Waterfront Park and Kiley Garden Park. In addition, it prohibits the sale of alcoholic beverages in sealed containers for consumption outside the buildings and adjoining grounds, but does permit the licensee from removing opened, partially consumed containers of alcoholic beverages from the premises. Further, the bill allows the City to transfer the license to qualified applicants authorized by or under contract with the City to provide food services on the premises.

According to the Economic Impact Statement, the bill may result in additional state revenues in the form of alcoholic beverage taxes from an increase in sales by the license holder. The City may also accrue additional revenue from increased use of the site and its facility.

The division has indicated that the provisions of this bill will result in annual revenues of $1,820 to the agency. The division has indicated that it can handle issuing a single license to the City within existing resources; however, it states that additional personnel may be necessary depending on the number of times the license is transferred to food service providers and then returned to the City.

This bill has an effective date of upon becoming law.

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 561.17, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages within the state. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, wholesaler and retailer. The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level and the state "sales tax" is collected at the retail level.

Chapters 561-568, F.S., comprise Florida's Beverage Law. Section 561.02, F.S., provides that the division is responsible for the enforcement of these statutes. The Beverage Law requires the division to conduct background investigations on potential licensees and requires that licensees meet prescribed standards of moral character. Further, the Beverage Law prohibits certain business practices and relationships. Alcoholic beverage licenses are subject to fines, suspensions and/or revocations for violations of the Beverage Law.

Section 561.17, F.S., requires a business entity or person to be licensed prior to engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in the commerce of alcoholic beverages.[1] The sale of alcoholic beverages is generally considered to be a privilege and, as such, licensees are held to a high standard of accountability.[2]

Unless sold by the package for consumption off the licensed premises, the sale and consumption of alcoholic beverages by the drink is limited to the "licensed premises" of a retail establishment over which the licensee has dominion or control. The Beverage Law does not allow a patron to leave an establishment with an open alcoholic beverage and/or enter another licensed premise with an alcoholic beverage.

Section 565.02(1)(b), F.S., provides that a vendor must pay an annual license fee of $1,820 if it operates a place of business where consumption on the premises is permitted in a county having a population of over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, F.S., for such county.[3]

No alcoholic beverage license is currently issued to the City of Tampa (City) for use within the buildings and adjoining grounds of Curtis Hixon Waterfront Park and Kiley Garden Park.

Chapter 73-635 did provide for the issuance of an alcoholic beverage licenses for use within the complex known as Curtis Hixon Hall, which was located on this site. Demolition of Curtis Hixon Hall began in 1993, rendering Chapter 73-635 obsolete.

Effect of Proposed Changes

Notwithstanding the limitations contained in the Beverage Law, this bill authorizes the division to issue a special alcoholic beverage license to the City for use within the buildings and adjoining grounds of Curtis Hixon Waterfront Park and Kiley Garden Park.

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[1] According to s. 561.01(4)(a), F.S., "alcoholic beverages" are defined as distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.

[2] According to s. 561.01(14), F.S., "licensee" is defined as a legal or business entity, person, or persons that hold a license issued by the division and meets the qualifications set forth in s. 561.15, F.S.

[3] Section 186.901, F.S., addresses "population census determination."

The bill requires the City to pay the applicable license fee provided in s. 565.02, F.S.

The license authorized by this bill allows the City to sell alcoholic beverages for consumption within the buildings and adjoining grounds of Curtis Hixon Waterfront Park and Kiley Garden Park, but not off the premises.

Further, the bill allows the City to transfer the license to qualified applicants authorized by contract with the City to provide food services on the premises. However, upon termination of a transferee's authorization or contract, the license automatically reverts to the City by operation of law.

According to the Bureau of Economic and Business Research at the University of Florida, the 2010 population estimate for Hillsborough County is 1,203,245. Therefore, the license fee of $1,820 listed in s. 565.02(1)(b), F.S., would apply to the City.

B. SECTION DIRECTORY:

Section 1. Authorizes the issuance of an alcoholic beverage license to the City of Tampa for specifically named properties, upon application and payment of the appropriate license fee.

Section 2. Authorizes the sale of alcoholic beverages to be consumed within Curtis Hixon Waterfront Park and Kiley Garden Park; prohibits the sale of alcoholic beverages in sealed containers for consumption outside the premises; and allows the licensee to remove opened, partially consumed containers of alcoholic beverages from the premises.

Section 3. Authorizes the transfer of the license and provides for subsequent reversion of the license under certain circumstances.

Section 4. Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? December 18, 2010.

WHERE? The Tampa Tribune, a daily newspaper of general circulation published in Brevard County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

According to the Economic Impact Statement, this bill may result in additional state revenues in the form of alcoholic beverage taxes from an increase in sales by the license holder. In addition, it states that the City may accrue additional revenue from increased use of the site and its facility, resulting in increased financial support for the City's community events and programs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

The division has indicated that the provisions of this bill will result in annual revenues of $1,820 to the agency. In addition, the division has indicated that it can handle issuing a single license to the City within existing resources; however, it stated that additional personnel may be necessary depending on the number of times the license is transferred to food service providers and then returned to the City.

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 561.17, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

NOTICE OF SPECIAL LEGISLATION

TO WHOM IT MAY CONCERN:

Notice is hereby provided pursuant to Section 11.02, Fla. Stat. and Section 10, Art. III, Fla. Const. that the undersigned has requested the Florida Legislature enact legislation at its regular session held in the year 2011, or at a subsequent special session, authorizing the issuance of an alcoholic beverage license to the City of Tampa. The title of the proposed legislation reads substantially as follows:

An act relating to the City of Tampa, Hillsborough County; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue an alcoholic beverage license to the City of Tampa for use within the buildings and adjoining grounds of Curtis Hixon Waterfront Park and Kiley Garden Park; providing for payment of the license fee; authorizing sale of alcoholic beverages for consumption within the buildings and their adjoining grounds; prohibiting sales for consumption off premises; providing for construction of the act.; authorizing transfer and providing for subsequent reversion of the license under certain circumstances; providing an effective date.

Dated at Tampa, Florida, the 18 day of December, 2010.

Rep. Seth McKeel/Senator Arthenia Joyner
Hillsborough County Legislative Delegation
4250 S. Florida Avenue, Suite 4
Lakeland, FL 33813-1670
2150 12/18/10

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4250 S. Florida Avenue, Suite 4
Lakeland, FL 33813-1670
2150 12/18/10

The Tampa Tribune

Published Daily

Tampa, Hillsborough County, Florida

State of Florida }
County of Hillsborough } SS.

Before the undersigned authority personally appeared C. Pugh, who on oath says that she is the Advertising Billing Analyst of The Tampa Tribune, a daily newspaper published at Tampa in Hillsborough County, Florida; that the attached copy of the

Legal Ads IN THE Tampa Tribune

In the matter of Legal Notices

was published in said newspaper in the issues of

12/18/2010

Affiant further says that the said The Tampa Tribune is a newspaper published at Tampa in said Hillsborough County, Florida, and that the said newspaper has heretofore been continuously published in said Hillsborough County, Florida, each day and has been entered as second class mail matter at the post office in Tampa, in said Hillsborough County, Florida for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, this advertisement for publication in the said newspaper.

Sworn to and subscribed by me, this 20 day of Dec, A.D. 2010

Personally Known ✓ or Produced Identification ___
Type of Identification Produced _____

Charlotte A. Offner

Notary Public State of Florida
Charlotte A Offner
My Commission DD895783
Expires 06/03/2013

Order # 0002990341

1104716 -- CITY OF TAMPA OFFICE OF INT

Print Form

HOUSE OF REPRESENTATIVES

2011 LOCAL BILL CERTIFICATION FORM

BILL #: HB 233

SPONSOR(S): Rep. Dana Young

RELATING TO: City of Tampa, Alcoholic Beverage license for Curtis Hixon Waterfront Park

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Hillsborough

CONTACT PERSON: Deborah Stevenson

PHONE NO.: (813) 274-7312 **E-Mail:** deborah.stevenson@tampagov.net

I. *House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Community and Military Affairs Subcommittee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES ☒ **NO** ☐

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES ☒ **NO** ☐

Date hearing held: December 14, 2010

Location: Tampa, Florida

(3) Was this bill formally approved by a majority of the delegation members?

YES ☒ **NO** ☐

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: **YES** ☒ **NO** ☐ **DATE** December 18, 2010

Where? Tampa **County** Hillsborough

Referendum in lieu of publication: **YES** ☐ **NO** ☐

Date of Referendum _____

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES ☐ NO ☐ NOT APPLICABLE ☒

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES ☐ NO ☐ NOT APPLICABLE ☒

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES ☐ NO ☐

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Community & Military Affairs Subcommittee.

Delegation Chair (Original Signature) — Date: 2/7/11

Seth McKeel
Printed Name of Delegation Chair

Revised 8/08

House Committee on Community Affairs

2011 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL#: _____

SPONSOR(S): Representative Seth McKeel/Senator Arthenia Joyner

RELATING TO: City of Tampa dba Curtis Hixon Waterfront Park

[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

FY 11-12 FY12-13

Expenditures: Passage of this Act will reduce the City's cost to obtain a state alcoholic beverage permit for Curtis Hixon Waterfront Park.

II. ANTICIPATED SOURCE(S) OF FUNDING:

FY 11-12 FY12-13

Federal: N/A

State: N/A

Local: N/A

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

FY 11-12 FY12-13

Revenues: Additional revenues should accrue to the state in the form of increased alcoholic beverage taxes resulting from increased sales by the license holder.

The City should accrue additional revenue from increased use of the site and its facility, thereby increasing its financial support for its community events and programs.

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: The applicant has the potential to increase the use of the site and its facility and, therefore, increase its revenues to support its community events and programs, which serve an average of 350,000 citizens and visitors annually. As a destination point and designated special event location, the park will increase visitation to other locations and businesses in the downtown area.

Disadvantages: None

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

None

VII. DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDING SOURCE[S] OF DATA):

None

PREPARED BY[3]: Karen Palus 11/22/10
Karen Palus Date

TITLE: Director of Parks and Recreation

REPRESENTING: City of Tampa

PHONE: 813-274-7730

[3] Original signature required

A bill to be entitled

An act relating to the City of Tampa, Hillsborough County; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue an alcoholic beverage license to the City of Tampa for use within the buildings and adjoining grounds of Curtis Hixon Waterfront Park and Kiley Garden Park; providing for payment of the license fee; authorizing sale of alcoholic beverages for consumption within the buildings and their adjoining grounds; prohibiting sales for consumption off premises; providing for construction of this act; authorizing transfer and providing for subsequent reversion of the license under certain circumstances; providing an effective date.

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

Section 1. Notwithstanding any other provision of law, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation is authorized, upon application, to issue an alcoholic beverage license in accordance with section 561.17, Florida Statutes, to the City of Tampa, a political subdivision of the state, 306 East Jackson Street, Tampa, for use within buildings located in Curtis Hixon Waterfront Park, 600 North Ashley Drive, and Kiley Garden Park, 500 North Ashley Drive, and on adjoining grounds. The city shall pay the applicable license fee provided in section 565.02, Florida Statutes.

Section 2. Alcoholic beverages may be sold by the licensee for consumption within Curtis Hixon Waterfront Park and Kiley Garden Park, including the associated buildings and adjoining grounds. The license issued pursuant to this act does not permit the sale of alcoholic beverages in sealed containers for consumption outside the buildings and adjoining grounds. Nothing in this act shall prevent the licensee from removing an opened, partially consumed container of alcoholic beverage from the premises.

Section 3. The City of Tampa may transfer the license from time to time to qualified applicants who are either authorized by or under contract with the city to provide food services at the buildings. Upon termination of a transferee's authorization or contract, the license automatically reverts by operation of law to the city.

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 465 Florida Veterans' Hall of Fame
SPONSOR(S): Harrell and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 520

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Tait	Hoagland
2) Health Care Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill creates the Florida Veterans Hall of Fame (Hall of Fame), which is to be administered by the Department of Veterans' Affairs (DVA). The bill directs the Department of Management Services (DMS) to set aside an area for the Hall of Fame inside the Capitol Building adjacent to the existing Medal of Honor Wall on the Plaza Level. DMS must consult with DVA regarding the design and theme of the area.

The Governor and the Cabinet will select the nominees to be inducted based on recommendations from DVA. Each veteran selected will have his or her name placed on a plaque in the Hall of Fame. The bill provides preferences for DVA to follow when recommending members to the Hall of Fame. Further, the bill authorizes DVA to establish selection criteria, time periods for acceptance of nominations, the process for selecting nominees, and a formal induction ceremony to coincide with the annual commemoration of Veterans' Day.

The bill states that the Hall of Fame will not require the appropriation of state funds.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Veterans in Florida

Florida has the third largest population of veterans in the nation with more than 1.6 million.[1] Only California and Texas have larger populations of veterans. Florida has more than 189,000 veterans from World War II, the largest number in the nation. In addition, more than 192,000 Operation Enduring Freedom, Operation Iraqi Freedom and Operation New Dawn service members and veterans claim Florida as their home of record.

Veterans Halls of Fame in Other States

Four other states have Veterans Hall of Fame: Ohio, Arizona, Connecticut, and New York. The primary goals for this type of Hall of Fame appear to be recognizing the post-military achievements of outstanding veterans and spotlighting the contributions of veterans to their communities, states and nation.

Ohio's Veterans Hall of Fame was established in 1992.[2] Since its inception, more than 400 veterans have been inducted.[3] A committee of veterans serves as advisors and selects approximately 20 inductees annually from nominations solicited from all citizens of Ohio throughout the year.

Arizona's Veterans Hall of Fame, created in 2001, is an extension of the Hall of Fame created by the Arizona Department of the Disabled American Veterans in 1978.[4] Since the inception in 2001, 223 veterans have been inducted. A committee of veterans serves as advisors and selects inductees annually from nominations solicited from all veterans' organizations and citizens of Arizona throughout the year.

Connecticut's Hall of Fame was created by an Executive Order by Governor M. Jodi Rell in 2005.[5] As of December 2010, 51 veterans had been inducted. An Executive Committee, comprised of the Commissioner of the state's Department of Veterans' Affairs, Adjutant General of the Connecticut National Guard, three appointees selected by the Governor, and two appointees from the legislative branch, reviews nominations and submits recommendations for induction to the Governor.[6]

New York's Hall of Fame was created in 2005.[7] The law provided for the creation of an 18 member New York State Veterans' Hall of Fame Council, whose purpose was to establish a permanent Veterans' Hall of Fame and a traveling exhibit, as well as promulgate the rules and regulations for the

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[1] Statistics in this paragraph are from the Florida Department of Veterans' Affairs Annual Report (July 1, 2009 – June 30,2010).

[2] Ohio Veterans' Hall of Fame – History, available at http://dvs.ohio.gov/veterans_hall_of_fame/history.aspx (last accessed February 16, 2011).

[3] Ohio Veterans' Hall of Fame – Inductees http://dvs.ohio.gov/veterans_hall_of_fame/inductees.aspx (last accessed February 16, 2011).

[4] Arizona Veterans Hall of Fame Society: History, available at http://www.avhof.org/content.aspx?page_id=22&club_id=501042&module_id=20188 (last accessed February 16, 2011).

[5] Connecticut Veterans Hall of Fame – History (Updated December 2010), available at http://www.ct.gov/ctva/lib/ctva/THE_CONNECTICUT_VETERANS_HALL_OF_FAME.pdf (last accessed February 16, 2011).

[6] Connecticut Veterans' Hall of Fame Nomination Packet (Class of 2011), available at http://www.ct.gov/ctva/lib/ctva/veterans_hall_of_fame_nomination_packet_2011.pdf (last accessed February 16, 2011).

[7] The provisions may be found in New York's Executive Laws, Article 17 § 365.See Laws of New York – search results for "Veterans Hall of Fame", available at http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=+&LIST=SEA+&BROWSER=EXPLORER+&TOKEN=49253296+&TARGET=VIEW (last accessed February 16, 2011).

operation of the Veterans' Hall of Fame, including the manner of choosing nominees for induction and inductees. The council was directed to complete its work within three years. It appears that New York is not utilizing the Hall of Fame format found in its laws; however, the New York State Senate does have a Hall of Fame program to recognize outstanding veterans.[8]

Halls of Fame in Florida

The Legislature has established Halls of Fame in Florida. Examples of Halls of Fame previously created include the Florida Civil Rights Hall of Fame,[9] Florida Women's Hall of Fame,[10] Florida Artists Hall of Fame,[11] Florida Educator Hall of Fame,[12] and Florida Sports Hall of Fame.[13]

Effect of Proposed Changes

The bill creates the Florida Veterans Hall of Fame (Hall of Fame). The Hall of Fame is to be administered by the Department of Veterans' Affairs (DVA). The bill directs the Department of Management Services (DMS) to set aside an area inside the Capitol Building adjacent to the existing Medal of Honor Wall on the Plaza Level for the Hall of Fame. DMS must consult with DVA regarding the design and theme of the area.

DVA must annually accept nominations for persons to be considered for the Hall of Fame and transmit its recommendations to the Governor and the Cabinet, who will select the nominees to be inducted. Each veteran selected will have his or her name placed on a plaque in the Hall of Fame.

DVA is to give preference to veterans who:

- Were born in Florida or adopted Florida as their home state or base of operation; and
- Have made a significant contribution to Florida in civic, business, public service, or other pursuits.

DVA may establish selection criteria, time periods for acceptance of nominations, the process for selecting nominees, and a formal induction ceremony to coincide with the annual commemoration of Veterans' Day.

The bill states that the Hall of Fame will not require the appropriation of state funds. The Florida Veterans Foundation, DVA's Direct Support Organization, has indicated it will be responsible for the initial and ongoing operation and maintenance costs of the Hall of Fame.

B. SECTION DIRECTORY:

Section 1: Creates s. 265.003, F.S., providing for the establishment of the Florida Veterans Hall of Fame.

Section 2: Providing an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[8] New York State – Senate Veterans' Hall of Fame, available at http://www.nysenate.gov/veterans-hall-of-fame (last accessed February 16, 2011).
[9] Section 760.065, F.S.
[10] Section 265.001, F.S.
[11] Section 265.2865, F.S.
[12] Chapter 98-281, s. 13, Laws of Florida; s. 231.63, F.S. (1998 Supp.).
[13] Section 15.051, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Florida Veterans Foundation, a 501(c)(3) organization and DVA's Direct Support Organization, has indicated it will be responsible for initial and ongoing operation and maintenance costs of the Hall of Fame. The Department of Management Services has stated there is no fiscal impact to their agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DVA may establish selection criteria, time periods for acceptance of nominations, the process for selecting nominees, and a formal induction ceremony to coincide with the annual commemoration of Veterans' Day.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the bill does not specify who will be responsible for the costs associated with the Hall of Fame, the Florida Veterans Foundation that they will be responsible for the costs associated with the Hall of Fame.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Florida Veterans' Hall of Fame; creating s. 265.003, F.S.; establishing the Florida Veterans' Hall of Fame; providing for administration by the Department of Veterans' Affairs; designating location; providing procedures for nomination, selection, and induction; providing an effective date.

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

Section 1. Section 265.003, Florida Statutes, is created to read:

265.003 Florida Veterans' Hall of Fame.—

(1) It is the intent of the Legislature to recognize and honor those military veterans who, through their works and lives during or after military service, have made a significant contribution to the State of Florida.

(2) There is established the Florida Veterans' Hall of Fame.

(a) The Florida Veterans' Hall of Fame is administered by the Florida Department of Veterans' Affairs without appropriation of state funds.

(b) The Department of Management Services shall set aside an area on the Plaza Level of the Capitol Building adjacent to the existing Medal of Honor Wall and shall consult with the Department of Veterans' Affairs regarding the design and theme of the area.

(c) Each person who is inducted into the Florida Veterans' Hall of Fame shall have his or her name placed on a plaque displayed in the designated area of the Capitol Building.

(3)(a) The Department of Veterans' Affairs shall annually accept nominations of persons to be considered for induction into the Florida Veterans' Hall of Fame and shall then transmit its recommendations to the Governor and the Cabinet who will select the nominees to be inducted.

(b) In making its recommendations to the Governor and the Cabinet, the Department of Veterans' Affairs shall give preference to veterans who were born in Florida or adopted Florida as their home state or base of operation and who have made a significant contribution to the state in civic, business, public service, or other pursuits.

(4) The Department of Veterans' Affairs may establish criteria and set specific time periods for acceptance of nominations and for the process of selection of nominees for membership and establish a formal induction ceremony to coincide with the annual commemoration of Veterans' Day.

Section 2. This act shall take effect July 1, 2011.

PCB CMAS 11-03

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CMAS 11-03 Impact Fees
SPONSOR(S): Community & Military Affairs Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Community & Military Affairs Subcommittee		Gibson	Hoagland

SUMMARY ANALYSIS

This bill reenacts existing law created by Chapter 2009-49, Laws of Florida, (Council Substitute for Committee Substitute for House Bill 227) passed by the Legislature in 2009 that codified the "preponderance of the evidence" standard of review for the government in a case involving an impact fee challenge.

Since that time, the law has been the subject of ongoing litigation regarding its constitutionality.[1] Specifically, allegations have been raised that the Legislature adopted an unfunded mandate and reduced the authority of counties and municipalities to raise revenues in violation of Article VII, section 18(a) and 18(b), enacted a court rule of practice and procedure in violation of Article V section 2, and violated the separation of powers provision in Article II, section 3 of the Florida Constitution.

This bill does not change current law, but simply reenacts the subsection of law created by CS/CS/HB 227, in an effort to address alleged constitutional defects with the law relating to Article VII, section 18(a) and 18(b).

This bill states that it fulfills an important state interest. To the extent that CS/CS/HB 227 is found by a court of last resort to be a mandate on counties and municipalities or to limit their ability to raise revenues, a two-thirds vote of the membership of each house of the Legislature would be necessary to have the legislation binding on counties and municipalities, in the absence of one of the other conditions provided for in Article VII, section 18, of the Florida Constitution.

See the "Current Situation" section for an analysis of the existing law reenacted by this bill.

This bill is to take effect upon becoming law and is retroactive to July 1, 2009. If a court of last resort finds retroactive application unconstitutional, this bill is to apply prospectively from the date it becomes law.

[1] *Alachua County et al., v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. 2010).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:
Current Situation

Legal Challenge to Chapter 2009-49, Laws of Florida, (CS/CS/HB 227)

Procedural Background
In 2009, the Legislature passed and the Governor signed into law CS/CS/HB 227. The Senate passed the final measure with a vote of 26-11, less than a two-thirds vote, and the House passed the final measure with a vote of 107-10.[2] The law was subsequently codified as Chapter 2009-49, Laws of Florida.

In February of 2010, a group of nine counties,[3] along with the Florida Association of Counties, the Florida League of Cities, and the Florida School Boards Association filed a lawsuit against the Speaker of the House and the Senate President in Leon County Circuit Court challenging the constitutionality of Chapter 2009-49, Laws of Florida based on four counts.[4]

- Count I alleged that the law is an unauthorized adoption of a court rule by the Legislature in violation of Article V, section 2.
- Count II alleged that the law violates the separation of powers provision in Article II, section 3.
- Counts III and IV alleged that the law is an unfunded mandate on counties and municipalities in violation of Article VII, section 18(a), and that the law restricts the ability of counties and municipalities to raise revenues in violation of Article VII, section 18(b).

By reenacting existing law, providing a finding of an important state interest, and providing an effective date that is retroactive to July 1, 2009, this bill is attempting to moot the constitutional infirmity arguments related to Article VII, section 18(a) and 18(b) that have been raised in the pending litigation.

Mandates- *Article VII, section 18(a), Florida Constitution*
The Florida Constitution provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and the law satisfies one of the following conditions:

- The Legislature appropriates funds or provides a funding source not available to the local government on February 1, 1989;
- The law requiring the expenditure is approved by a two-thirds vote of the membership of each house;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.[5]

The counties and organizations challenging Chapter 2009-49 allege that by codifying the "preponderance of the evidence" standard of review for the government in a case challenging an impact fee, the Legislature has required counties and municipalities that adopt impact fees or have impact fees in place to spend funds or take actions requiring the expenditure of funds in order to meet

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[2] *See* CS/CS/HB 227 *available at*: http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=40083&SessionId=61 (last visited February 16, 2011).
[3] The counties filing suit included: Alachua, Collier, Lake, Lee, Levy, Nassau, Pasco, St. Lucie, and Sarasota.
[4] Amended Complaint for Declaratory and Supplemental Relief, *Alachua County. et al., v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. February 19, 2010).
[5] Art. VII, s.18(a), Fla. Const.

"additional burdens" that did not exist prior to passage of the law.[6] Although the counties did not specify what additional burdens they were now forced to assume, they argued that the law was an unconstitutional mandate because the Legislature did not find that the law fulfilled an important state interest and did not meet any of the other conditions outlined in Article VII, section 18(a).

This bill provides a Legislative determination of an important state interest. To the extent that Chapter 2009-49, Laws of Florida, is found by a court of last resort to be a mandate on counties and municipalities, a two-thirds vote of the membership of each house of the Legislature would be necessary to have the legislation binding on counties and municipalities, in the absence of one of the other conditions provided for in Article VII, section 18, of the Florida Constitution.

Ability to Raise Revenues- *Article VII, section 18(b), Florida Constitution*
The Florida Constitution provides that except upon approval of a two-thirds vote of the membership of each house of the Legislature, "the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989."[7]

In 2009, House Bill 227 failed to pass by a two-thirds vote in one house of the Legislature.[8] The counties and organizations challenging the law allege that codifying a preponderance of the evidence standard of review for the government "substantially alters the ability of the local governments to impose or collect impact fees and places significant restrictions on the ability of cities and counties to raise revenue through impact fees in the aggregate."[9] Presumably, the argument is that local governments would have more impact fees struck down by the courts under this standard of review, and therefore their ability to raise revenues would be reduced.

To the extent that Chapter 2009-49, Laws of Florida, is found by a court of last resort to reduce the authority that counties and municipalities have to raise revenues, a two-thirds vote of the membership of each house of the Legislature would be necessary to have the legislation binding on counties and municipalities.

Adoption of Court Rules- *Article V, section 2, Florida Constitution*
Under the Florida Constitution, the Florida Supreme Court has exclusive authority to adopt rules of practice and procedure.[10] That is, rules that govern the administration of courts and the behavior of litigants within a court proceeding. The Legislature cannot adopt rules of practice and procedure but can repeal a court rule with a general law passed by a two-thirds vote of the membership of each house of the Legislature.[11] The Legislature has exclusive authority over the enactment of substantive law such as defining the authority of government and the rights of citizens relating to life, liberty, and property. However, because the courts have exclusive rulemaking authority, the validity of a legislative act often depends on whether it is one of substantive law, exclusive to the Legislature, or one of procedure, exclusive to the Supreme Court.

The counties and organizations are alleging that the Legislature sought to create a new court rule of practice and procedure by codifying the "preponderance of the evidence" standard of review for the government in impact fee challenge cases. They allege that Chapter 2009-49 caused the burden of proof in establishing the validity of impact fees to shift from the plaintiff to the local government,[12] and

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[6] Amended Complaint for Declaratory and Supplemental Relief, *Alachua County, et al., v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. February 19, 2010).
[7] Art. VII, s. 18(b), Fla. Const.
[8] The Senate passed the final measure with a vote of 26-11, and the House passed the final measure with a vote of 107-10. *See* http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=40083&SessionId=61 (last visited February 16, 2011).
[9] Amended Complaint for Declaratory and Supplemental Relief, *Alachua County. et al., v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. February 19, 2010).
[10] Art. V, s. 2(a), Fla. Const.
[11] *Id.*
[12] House Bill 227, in fact, simply codified existing case law providing that the government had the burden of proving whether an impact fee was valid. *See Volusia County v. Aberdeen at Ormond Beach,* 760 So. 2d 126 (Fla. 2000).

that the Legislature had no authority to change the standard of review and level of deference granted to impact fees adopted by local governments.

Separation of Powers- *Article II, section 3, Florida Constitution*
Florida's constitution explicitly provides for the separation of powers between the legislative, executive, and judicial branches, stating that "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided [in the Florida Constitution]."[13]

The counties and organizations are alleging that Chapter 2009-49, which directs courts not to apply a deferential standard in impact fee challenge cases, violates the separation of powers provision in the Florida Constitution. They argue that the deference afforded to the legislative acts of local governments by the courts is derived from the Florida Constitution and specifically the home rule authority granted to counties and municipalities, and therefore, the Legislature cannot by statute direct courts not to apply a deferential standard to the validity of impact fee ordinances since that deference is derived from the Constitution itself.

Local Governments' Use of Impact Fees

Impact fees are enacted by local home rule ordinance. They require total or partial payment to counties, municipalities, special districts, and school districts for the cost of 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.

2005 Impact Fee Review

In 2005, the Legislature created the Florida Impact Fee Review Task Force. The 15-member Task Force was charged with surveying the current use of impact fees, reviewing current impact fee case law and making recommendations as to whether statutory direction was necessary with respect to specific impact fee topics.[14] The Task Force concluded that:

- Impact fees are a growing source of revenue for infrastructure in Florida.
- Local governments in Florida do not have adequate revenue generating resources with which to meet the demand for infrastructure within their jurisdictions.
- Without impact fees, Florida's growth, vitality and levels of service would be seriously compromised.
- Impact fees are a revenue option for Florida's local governments to meet the infrastructure needs of their residents.
- Because Florida comprises a wide variety of local governments – small and large, urban and rural, high growth and stable, built out and vacant land – each with diverse infrastructure needs, a uniform impact fee statute would not serve the state.
- Impact fees must remain flexible to address the infrastructure needs of the specific jurisdictions.
- Statutory direction on impact fees is needed to address and clarify certain issues regarding impact fees.

The Task Force voted against recommending a statutory guidance to the legal burden of proof for impact fee ordinance challenges.

Current Law on Impact Fees

In 2006, the Legislature enacted s. 163.31801, F.S., to provide requirements and procedures to be followed by a county, municipality, or special district when it adopts an impact fee.[15] By statute, an

[13] Art. II, s. 3, Fla. Const.
[14] *See* THE FLORIDA IMPACT FEE REVIEW TASK FORCE, February 1, 2006 Final Report & Recommendations, *available at* http://www.floridalcir.gov/taskforce.cfm (last visited February 16, 2011).
[15] Impact fees are also addressed in other areas of the Florida Statutes including: s. 163.3180(13) and (16), s. 163.3202(3), s. 191.009(4), and s. 380.06.

impact fee ordinance adopted by a local government must, at a minimum, include the following elements:

- Require that the calculation of the impact fee be based on the most recent and localized data.
- Provide for accounting and reporting of impact fee collections and expenditures; if a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund.
- Limit administrative charges for the collection of impact fees to actual costs.
- Require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee, but a county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.

Case Law on Impact Fees

There have been a number of court decisions that address impact fees.[16] In *Hollywood, Inc. v. Broward County*,[17] the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if it offsets needs that are sufficiently attributable to the new development and the fees collected are adequately earmarked for the benefit of the residents of the new development.[18] In order to show the impact fee meets those requirements, the local government must demonstrate a rational nexus between the need for additional public facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.[19] Because the ordinance at issue satisfied these requirements, the court affirmed the circuit court's validation of the ordinance.[20]

The Florida Supreme Court addressed the issue of impact fees for school facilities in *St. Johns County v. Northeast Builders Association, Inc.*[21] The ordinance at issue conditioned the issuance of a new building permit on the payment of an impact fee. Those fees that were collected were placed in a trust fund for the school board to expend solely "to acquire, construct, expand and equip the educational sites and educational capital facilities necessitated by new development."[22] Also, the ordinance provided for a system of credits to fee-payers for land contributions or the construction of educational facilities. This ordinance required funds not expended within six years to be returned, along with interest on those funds, to the current landowner upon application.[23]

The court applied the dual rational nexus test and found that the county met the first prong of the test, but not the second. The builders in *Northeast Builders Association, Inc.* argued that many of the residences in the new development would have no impact on the public school system. The court found the county's determination that every 100 residential units would result in the addition of forty-four students in the public school system was sufficient and, therefore, concluded the first prong of the test was satisfied. However, the court found that the ordinance did not restrict the use of the funds to sufficiently ensure that such fees would be spent to the benefit of those who paid the fees.[24]

More recent decisions have further clarified the extent to which impact fees may be imposed. In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when residential

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[16] *See, e.g., Contractors & Builders Ass'n v. City of Dunedin*, 329 So.2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 1983).
[17] 431 So. 2d 606 (Fla. 4th DCA 1983).
[18] *See id.* at 611.
[19] *See id.* at 611-12.
[20] *See id.* at 614.
[21] 583 So. 2d 635 (Fla. 1991).
[22] *See id.* at 637, *citing*, St. Johns County, Fla., Ordinance 87-60, § 10(B) (Oct. 20, 1987).
[23] *See id.* at 637.
[24] *See id.* at 639. Because the St. Johns County ordinance was not effective within a municipality absent an interlocal agreement between the county and municipality, there was the possibility that impact fees could be used to build a school for development within a municipality that is not subject to the impact fee.

development has no potential to increase school enrollment, public school impact fees may not be imposed.[25] In the *City of Zephyrhills v. Wood*, the district court upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.[26] As developed under case law, a legally sufficient impact fee has the following characteristics:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportional share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions towards the cost of the increased capacity for public facilities.

Burden of Proof and Standard of Review

The obligation of a party in litigation to prove a material fact in issue is known as the burden of proof. Generally, in a legal action the burden of proof is on the party who asserts the proposition to be established and the burden can shift between parties as the case progresses. The level or degree of proof that is required as to a particular issue is referred to as the standard of proof or standard of review. In most civil actions, the party asserting a claim or affirmative defense must prove the claim or defense by a preponderance of the evidence.[27] The preponderance of the evidence (also known as the "greater weight of the evidence"[28]) standard of proof requires that the fact-finder determine whether a fact sought to be proved is more probable than not.

For impact fee cases the dual rational nexus test states that the government must prove:

> 1) A rational nexus between the need for additional capital facilities and the growth in population generated by the development; and
> 2) A rational nexus between the expenditures of the funds collected and the benefits accruing to the development.[29]

Although the challenger has to plead their case and allege a cause of action, beyond the pleading phase the court's language seems to place the burden of proof on the local government. Prior to 2009, some parties argued that the standard being adopted by Florida courts was that an impact fee will be upheld if it is "fairly debatable" that the fee satisfies the dual rational nexus test.[30] In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court rephrased the standard as a "reasonableness" test.[31] Although the standard is not clearly defined, prior to 2009 the courts generally did not require a local government to defend its impact fee by as high of a standard as preponderance of the evidence.

The Legislature, in 2009, codified the standard of review in Chapter 2009-49, Laws of Florida, requiring the government to prove by a preponderance of the evidence that the imposition or amount of the fee

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[25] 760 So.2d 126 (Fla. 2000), at 134. Volusia County had imposed a school impact fee on a mobile home park for persons aged 55 and older.
[26] 831 So.2d 223 (Fla. 2d DCA 2002).
[27] 5 Fla. Prac., Civil Practice § 16:1 (2009 ed.).
[28] The Florida Standard Jury Instructions define "greater weight of the evidence" as the more persuasive and convincing force and effect of the entire evidence in the case. *See In re Standard Jury Instructions In Civil Cases-Report* No. 09-01 (Reorganization of the Civil Jury Instructions), 35 So. 3d 666 (Fla. 2010).
[29] *See St. Johns County v. Northeast Florida Builders Ass'n, Inc.,* 583 So.2d 635 (Fla. 1991).
[30] *See* THE FLORIDA IMPACT REVIEW TASK FORCE, February 1, 2006 Final Report & Recommendations, *available at* http://www.floridalcir.gov/taskforce.cfm (last visited February 16, 2011).
[31] 760 So. 2d 126 (Fla. 2000).

meets the requirements of state legal precedent or that of section 163.31801, Florida Statutes, and prohibiting the court from using a deferential standard.

Effect of Proposed Changes

This bill reenacts existing law created by Ch. 2009-49, Laws of Florida that amended s. 163.31801, F.S., requiring that, should a person challenge an impact fee ordinance, the government that enacted the ordinance must show, by a preponderance of the evidence, that the imposition or amount of the fee meets the requirements of state legal precedent or section 163.31801, Florida Statutes. The bill provides that the court may not use a deferential standard. The effect of this law is that the court may not use the "fairly debatable" standard of review when evaluating the legality of an impact fee ordinance.

This bill states that it fulfills an important state interest. A two-thirds vote of the membership of each house of the Legislature would also be necessary to moot the constitutional arguments raised in the pending litigation alleging that Chapter 2009-49 is an unconstitutional mandate on counties and municipalities and restricts their authority to raise revenues.

B. SECTION DIRECTORY:

Section 1: reenacts s. 163.31801(5), F.S., regarding impact fees.

Section 2: provides that the Legislature finds that this act fulfills an important state interest.

Section 3: provides that this act shall take effect upon becoming law, and shall operate retroactively to July 1, 2009. Also provides that if a court of last resort finds retroactive application to be unconstitutional, the act shall apply prospectively from the date it becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

This bill reenacts existing law and therefore does not contain any fiscal impact on local governments.

1. Revenues:
   None.

2. Expenditures:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
None.

D. FISCAL COMMENTS:
None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
This bill reenacts existing law and therefore does not contain any mandates on counties and municipalities. For a discussion of mandates under Chapter 2009-49, Laws of Florida, see the "Current Situation" section.

2. Other:
None.

B. RULE-MAKING AUTHORITY:
For a discussion of rule-making authority, see the "Current Situation" section.

C. DRAFTING ISSUES OR OTHER COMMENTS:
None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to impact fees; reenacting s. 163.31801(5), F.S., relating to the burden of proof required by the government in an action challenging an impact fee; providing a legislative finding of important state interest; providing for retroactive operation; providing for an exception under specified circumstances; providing an effective date.

WHEREAS, in 2009, the Florida Legislature enacted Chapter 2009-49, Laws of Florida, for important public purposes, and

WHEREAS, litigation has called into question the constitutional validity of this important piece of legislation, and

WHEREAS, the Legislature wishes to protect those that relied on the changes made by Chapter 2009-49, Laws of Florida, and to preserve the Florida Statutes intact and cure any constitutional violation, NOW, THEREFORE,

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

Section 1. Subsection (5) of section 163.31801, Florida Statutes, is reenacted to read:

163.31801 Impact fees; short title; intent; definitions; ordinances levying impact fees.—

(5) In any action challenging an impact fee, the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee meets the

requirements of state legal precedent or this section. The court may not use a deferential standard.

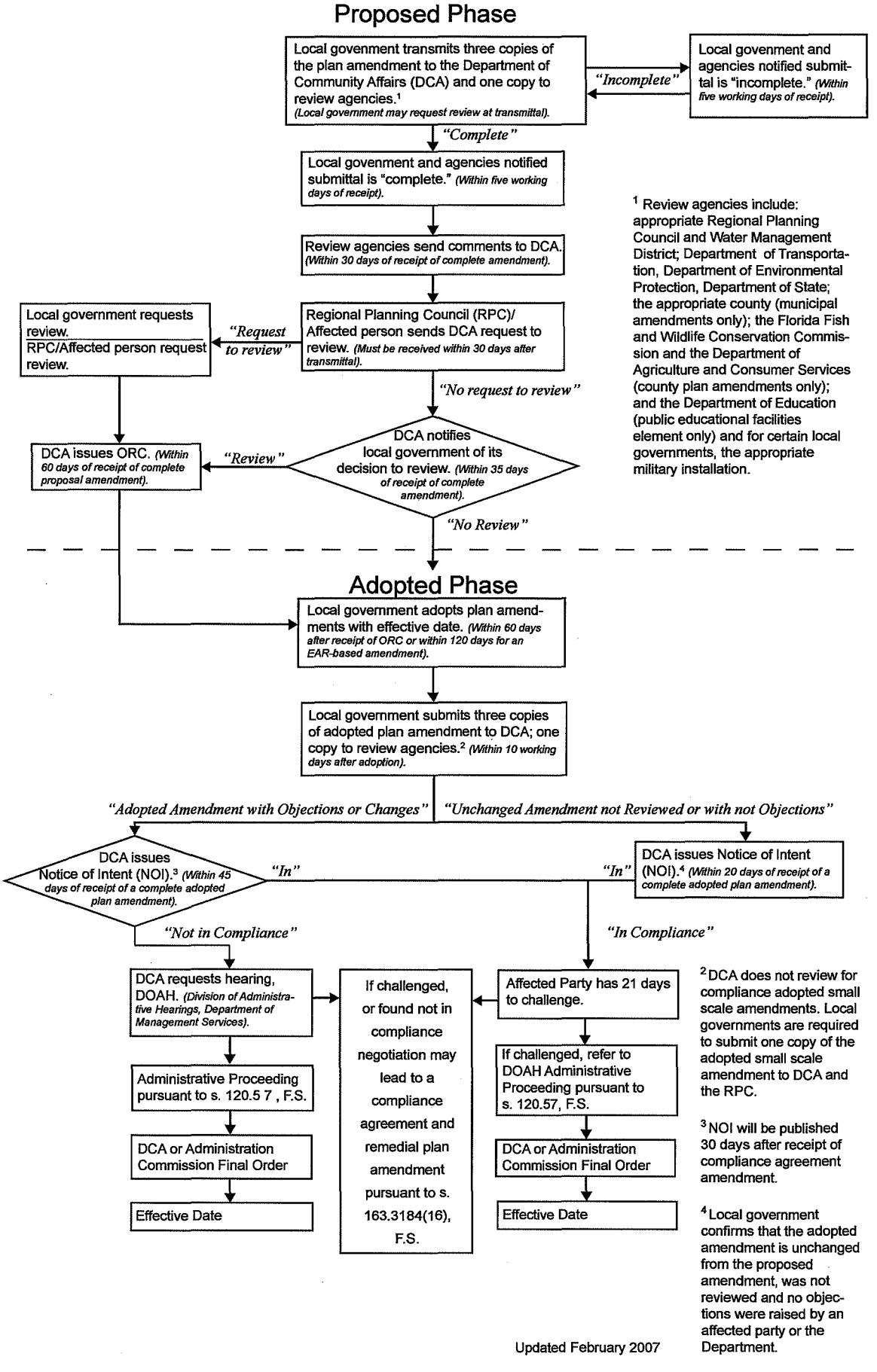
Section 2. The Legislature finds that this act fulfills an important state interest.

Section 3. This act shall take effect upon becoming a law, and shall operate retroactively to July 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, this act shall apply prospectively from the date that this act becomes a law.

Growth Management Reform

Comprehensive Plan Amendment Process

Section 163.3184, Florida Statutes



[1] Review agencies include: appropriate Regional Planning Council and Water Management District; Department of Transportation, Department of Environmental Protection, Department of State; the appropriate county (municipal amendments only); the Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services (county plan amendments only); and the Department of Education (public educational facilities element only) and for certain local governments, the appropriate military installation.

[2] DCA does not review for compliance adopted small scale amendments. Local governments are required to submit one copy of the adopted small scale amendment to DCA and the RPC.

[3] NOI will be published 30 days after receipt of compliance agreement amendment.

[4] Local government confirms that the adopted amendment is unchanged from the proposed amendment, was not reviewed and no objections were raised by an affected party or the Department.

Updated February 2007

Exhibit 1
The Traditional and Pilot Program Processes for Reviewing Comprehensive Plan Amendments Differ in Several Significant Ways

Steps in the Traditional Review Process [1]	Steps in the Expedited Review Process [2]
1. A local government must hold an initial public hearing on comprehensive plan amendments on a weekday at least seven days after the first advertisement (notice) is published.	1. A local government must hold an initial public hearing on comprehensive plan amendments on a weekday at least seven days after the first advertisement (notice) is published.
2. The local governing body transmits the proposed amendment by an affirmative vote of not less than a majority to the Department of Community Affairs, the appropriate regional planning council and water management district, and state agencies such as the Department of Environmental Protection, the Department of State, and the Department of Transportation. If the amendment relates to the public school facilities element, the state land planning agency shall submit a copy to the Office of Educational Facilities of the Commissioner of Education for review and comment.	2. The process is the same as the traditional process except that the local government transmits the amendments relating to the public school facilities element directly to the Office of Educational Facilities of the Commissioner of Education for review and comment.
3. The department reviews the amendment for completeness. All reviewing agencies, including regional planning councils, have 30 days from the determination of completeness to provide written comments to DCA. The public may also submit written comments within 30 days. The department performs a coordinating function by maintaining a single file containing all of the comments. Within 60 days from the determination of completeness, the department issues its Objections, Recommendations, and Comments report. The report also includes comments submitted by all other entities and the public.	3. The department does not conduct a completeness review. All governmental agencies, including regional planning councils, must submit their comments directly to the local government so they are received within 30 days after transmittal. Although the public can comment, the law creating the pilot program says nothing about the submission of public comments on an amendment. The department does not issue an Objections, Recommendations, and Comments (ORC) report that identify areas in which the amendment is inconsistent with state growth management laws. Agencies are encouraged to limit their comments to issues of regional and statewide importance. Agency comments must clearly identify issues that, if not resolved, may result in a challenge.
4. A local governing body has 60 days after receiving an Objections, Recommendations, and Comments report to adopt, reject, or adopt with changes an amendment by an affirmative vote of not less than a majority of those present. This must be done during a second public hearing held on a weekday at least five days after the second advertisement (notice) is published.	4. The law does not establish a deadline for local governments to adopt amendments after receiving comments. The public hearing requirement is the same.
5. After conducting a completeness review of the adopted amendment, the department has 45 days to review an adopted amendment and publish a notice of intent as to whether or not the amendment is in compliance with state law. The notice is published in a local newspaper and on the department's website. Any affected person may challenge's the department's decision that an amendment is in compliance by requesting an administrative hearing within 21 days. The department requests an administrative hearing when it finds an amendment is not in compliance.	5. A local government must transmit adopted amendments to the department and any other agencies that provided comments within 10 days of the second public hearing. Any affected person may challenge the local government's decision by requesting an administrative hearing within 30 days. The department may challenge the decision within 30 days after determining that the amendment is complete. The department does not publish a notice of intent as to whether the amendment complies with state law.

[1] Section 163.3184, *F.S.*
[2] Section 163.32465, *F.S.*

Source: OPPAGA review of the *Florida Statutes.*

Transportation Concurrency

Transportation Concurrency[i]

Transportation concurrency is a growth management strategy intended to ensure that transportation facilities and services are available "concurrent" with (at the same time as) the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate level of service for the transportation system, and then measure whether a proposed new development will create more demand than the existing transportation system can handle. If the development will create excess demand, the local government must schedule transportation improvements to be made as the development is built. If the roads or other portions of the transportation system are inadequate, then the developer must either provide the necessary improvements, contribute money to pay for the improvements, or wait until government provides the necessary improvements. These general concepts are further defined through Florida's growth management statutes and administrative rules.

Concurrency in Florida is tied to provisions in the state Growth Management Act requiring the adoption of level of service standards, addressing existing service deficiencies, and providing infrastructure to accommodate new growth reflected in the comprehensive plan. Plans and development regulations must achieve and maintain the desired level of service, and the Department reviews comprehensive plans to ensure that the capital improvement element is consistent with other elements of the plan, including the future land use element. Rule 9J-5.0055(3), Florida Administrative Code, establishes the minimum requirements for satisfying concurrency. It also requires local governments to develop and implement a concurrency management system, which typically includes a method for tracking transportation concurrency, an application for transportation concurrency and a review process.

In addition to considering capacity that is available or will be provided through development agreements, Rule 9J-5.0055(3), Florida Administrative Code, allows local governments to evaluate transportation concurrency against planned capacity in its Five-Year Schedule of Capital improvements. That schedule must reflect the Metropolitan Planning Organization's transportation improvement program in urbanized areas, under Section 163.3177(3)(a)(6), Florida Statutes. A community must demonstrate that the necessary facilities will be available and adequate to address the impacts of a development within three years of issuing the building permit or its functional equivalent. The schedule must include the estimated date of commencement and completion of the project, and this timeline may not be eliminated or delayed without a plan amendment approved by the Department. Changes to the schedule may be made outside of the regular comprehensive plan amendment cycle.

A "pay and go" option for concurrency, known as proportionate fair share mitigation, allows a development to proceed under certain conditions even though it otherwise fails to meet transportation concurrency, if the applicant contributes its fair share of the cost of improving the transportation facility. For a developer to utilize the pay and go option, the improvement must be financially feasible within a 10-year period and be included in (or added to) the local Five-Year Schedule of Capital Improvements.

Transportation Concurrency Alternatives

Alternatives to the general concurrency requirements are available under certain circumstances. Public transportation facilities, certain infill or redevelopment projects, and projects whose impacts may be considered insignificant or *"de minimis"* are exempted from concurrency, where certain criteria are met. These alternatives include:

- Transportation Concurrency Exception Areas - The Transportation Concurrency Exception Area is the most widely used alternative to concurrency. Provided for in Section 163.3180(5), Florida Statutes, these areas allow local governments to reduce obstacles that may limit urban infill and redevelopment, thereby lessening urban sprawl, by allowing development to proceed within a designated area despite a deteriorating level of service on roadways. To use this option, a community must demonstrate a commitment to increased mobility within the area by fostering alternative transportation modes and urban development patterns that will reduce single-occupant vehicle trips.

- Transportation Concurrency Management Areas - The second transportation concurrency alternative, Transportation Concurrency Management Areas, are also designed to promote infill development and redevelopment. According to Section 163.3180(7), Florida Statutes, such an area "must be a compact geographic area with an existing network of roads where multiple, viable alternative travel paths or modes are available for common trips." Within a Transportation Concurrency Management Area, a level of service standard is applied area-wide rather than on individual road segments. The area-wide level of service is determined by averaging the level of service on similar facilities within the designated area serving common origins and destinations. This alternative approach to strict concurrency should be used only where alternative modes are truly viable.

- Multimodal Transportation Districts - The third alternative, the Multimodal Transportation District, is an area in which primary priority is placed on "assuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit" (Section 163.3180(15)(a), Florida Statutes). To use this alternative, a local government must incorporate community design features that reduce the use of vehicles while supporting an integrated multimodal transportation system. Common characteristics of a Multimodal Transportation District include the presence of mixed-use activity centers, connections between the streets and land uses, transit-friendly design features, and accessibility to alternative modes of transportation. Multimodal Transportation Districts must include level of service standards for bicycles, pedestrians, and transit as well as roads.

- Long-Term Transportation Concurrency Management Systems - Many local governments have existing transportation concurrency deficiencies that require special attention and longer time frames to overcome. In such cases, local governments may adopt a long-term transportation concurrency management system with a planning period of up to 10 years (Section 163.3180(9), Florida Statutes). This allows local governments time to set priorities and fund projects to reduce the backlog of transportation projects. For severe backlogs and under specific conditions, a local government may request the Department's approval for a planning period of up to 15 years.

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[i] Florida Department of Community Affairs website, last visited 2/21/11, http://www.dca.state.fl.us/fdcp/dcp/transportation/CurrentTopics.cfm#ETDM

Statewide Transportation Concurrency Exception Area List
Department of Community Affairs
June 2010

No.	Municipality	Size (in Acres)	Plan Amendment Number	Justification for TCEA	SIS Facility Impacted
1	Boynton Beach	669	05-1	Urban Redevelopment	I-95
2	Collier County	1,073	03-2	Urban Infill, Urban Redevelopment, Public Transit	None
3	Coral Gables[1]	1,123	95-2	Urban Infill, Urban Redevelopment	None
4	Daytona Beach	310	95-1	Downtown Revitalization	I-95, I-4
5	Delray Beach	436	95-1	Urban Redevelopment, Downtown Revitalization	I-95
6	Escambia - Fairfield	2,056	02-1ER	Urban Redevelopment	I-110
7	Escambia - Warrington	1,311	02-1ER	Public Transit	I-110
8	Gainesville	19,704	99-2ER	Urban Redevelopment	I-75, SR 26
9	Inverness	1,408	08-1ER	Urban Redevelopment	US 41, SR 44
10	Jacksonville	1,740	05-2B	Downtown Revitalization	I-95, I-10
11	Largo - Clearwater - Largo Road	407	98-1ER	Urban Redevelopment	None
12	Largo - West Bay Drive	77	98-1ER	Urban Redevelopment	None
13	Lake Worth	338	03-1	Urban Redevelopment	I-95
14	Maitland	256	09-1	Infill, Development	None
15	Manatee County - 14th St.	256	08-1	Infill, Development	US 41
16	Manatee County - South	404	08-1	Infill, Development	US 41
17	Miami-Dade County[2][3]	128,000	94-2	Urban Infill, Urban Redevelopment, Public Transit	I-95, I-75, FL Turnpike, SR 826, SR 836, SR 112
18	New Port Richie	150	99-1	Downtown Revitalization	None
19	Ocala	2,381	96-R1	Urban Infill, Urban Redevelopment	US 27, I-75
20	Orlando	26,132	98-1SUA	Urban Redevelopment, Urban Infill, Downtown Revitalization	I-4, FL Turnpike, SR 408
21	Oviedo	500	97-1	Urban Redevelopment, Downtown Revitalization	None
22	Palm Bech County - Westgate	1,170	02-1	Urban Infill, Urban Redevelopment	I-95, SR 80
23	Panama City Beach	1,910	04-2	Urban Redevelopment	None
24	Pensacola	1,308	95-1	Urban Infill, Urban Redevelopment	I-110
25	Port Orange	271	06-1	Urban Infill	US 1
26	Riviera Beach	645	03-1	Urban Redevelopment	SR 710
27	St. Petersburg	22,632	00-2	Urban Infill, Urban Redevelopment	I-275, I-375, I-175
28	Sanford	357	00-2ER	Redevelopment	None
29	Safety Harbor	110	98-1ER	Urban Redevelopment, Downtown Revitalization, Public Transit	None

(1) Coral Gables adopted a TCEA separate from the Miami-Dade County TCEA

(2) Miami-Dade County TCEA includes TCEAs for the municipalities of Aventura, Hialeah, Miami, Miami Beach, Miami Gardens, Miami Lakes, Miami Shores, Miami Springs, North Miami Beach, Palmetto Bay, Pinecrest, South Miami

(3) Although included within the Miami-Dade County TCEA boundary, these municipalities do not reference or adopt the TCEA within their respective comprehensive plans: Bal Harbour, Bay Harbour Islands, Biscayne Park, El Portal, Golden Beach, Indian Creek Village, Key Biscayne, Medley, North Bay Village, North Miami, Opa-Locka, Sunny Isles Beach, Virginia Gardens, West Miami

Statewide Transportation Concurrency Exception Area List
Department of Community Affairs
June 2010

No.	Municipality	Size (in Acres)	Plan Amendment Number	Justification for TCEA	SIS Facility Impacted
30	City of Sarasota	640	98-1ER	Revitalization	None
31	Stuart	581	01-1	Urban Infill, Urban Redevelopment	None
32	Tallahassee	925	94-2	Urban Infill, Downtown Revitalization	None
33	Tampa	42,337	98-2ER	Urban Infill, Downtown Revitalization	I-4, I-275, SR 589, SR 60
34	Temple Terrace	225	04-1	Urban Redevelopment	None
35	West Palm Beach	786	97-1	Urban Infill, Downtown Revitalization	None

Statewide Multimodal Transportation District List
Department of Communitiy Affairs
June 2010

No.	Final Execution Municipality	Size (in Acres)	Plan Amendment No.	SIS Facility Impacted
1	**Destin**	3,878	05-R1	None
2	**Kissimmee**	3,697	1-Aug	US 192
3	**Tallahassee**	11,648	09-1EAR	US 90
4	**Tarpon Springs**	250	08-1EAR	US 19
5	**Temple Terrace**	4,519.88	09-1EAR	I-75

2010 List of Local Governments Qualifying as Dense Urban Land Areas[i]

Pursuant to Section 163.3164(34), Florida Statutes, the Florida Legislative Office of Economic and Demographic Research transmitted to the Department of Community Affairs on June 30, 2010, a list of counties and municipalities qualifying as dense urban land areas. The Department posted this list on its Web site on July 7, 2010.

The jurisdictions listed below have been identified by the Legislative Office of Economic and Demographic Research based on April 1, 2009 population estimates and the statutory definition as follows (see Section 163.3164, Florida Statutes - Local Government Comprehensive Planning and Land Development Regulation Act; definitions). Dense urban land area is defined by Section 163.3164(34), Florida Statutes to mean:

a. A municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;
b. A county, including the municipalities located therein, which has an average of at least 1,000 people per square mile of land area; or
c. A county, including the municipalities located therein, which has a population of at least 1 million.

An asterisk (*) indicates that the municipality is included based on conditions (b) or (c) and may or may not meet condition (a) alone.

Counties

- Broward County
- Duval County
- Hillsborough County
- Miami-Dade County
- Orange County
- Palm Beach County
- Pinellas County
- Seminole County

Municipalities

- Altamonte Springs*
- Apopka*
- Arcadia
- Atlantic Beach*
- Atlantis*
- Aventura*
- Avon Park
- Bal Harbour*
- Baldwin*
- Bay Harbor Islands*
- Bay Lake*
- Belle Glade*
- Belle Isle*
- Belleair Beach*
- Belleair Bluffs*
- Belleair Shore*
- Belleair*
- Biscayne Park*
- Boca Raton*
- Bonita Springs
- Boynton Beach*
- Bradenton
- Briny Breezes*
- Callaway
- Cape Canaveral
- Cape Coral
- Casselberry*
- Clearwater*
- Clermont
- Clewiston
- Cloud Lake*
- Cocoa

- Cocoa Beach
- Coconut Creek*
- Cooper City*
- Coral Gables*
- Coral Springs*
- Crestview
- Cutler Bay*
- Dade City
- Dania Beach*
- Davie*
- Daytona Beach
- Daytona Beach Shores
- DeBary
- Deerfield Beach*
- DeLand
- Delray Beach*
- Deltona
- Destin
- Doral*
- Dunedin*
- Eatonville*
- Edgewood*
- El Portal*
- Eustis
- Fernandina Beach
- Flagler Beach
- Florida City*
- Fort Lauderdale*
- Fort Meade
- Fort Myers
- Fort Myers Beach
- Fort Pierce
- Fort Walton Beach
- Gainesville
- Glen Ridge*
- Golden Beach*
- Golf*
- Greenacres*
- Gulf Breeze
- Gulf Stream*
- Gulfport*
- Haines City
- Hallandale Beach*
- Haverhill*
- Hialeah Gardens*
- Hialeah*
- Highland Beach*
- Hillsboro Beach*
- Holly Hill
- Hollywood*
- Holmes Beach
- Homestead*
- Hypoluxo*
- Indian Creek*
- Indian Harbour Beach
- Indian Rocks Beach*
- Indian Shores*
- Islamorada, Village of Islands
- Islandia*
- Jacksonville Beach*
- Jacksonville*
- Juno Beach*
- Jupiter Inlet Colony*
- Jupiter*
- Kenneth City*
- Key Biscayne*
- Key West
- Kissimmee
- Lady Lake
- Lake Buena Vista*
- Lake Clarke Shores*
- Lake Mary*
- Lake Park*
- Lake Worth*
- Lakeland
- Lantana*
- Largo*
- Lauderdale Lakes*
- Lauderdale-by-the-Sea*
- Lauderhill*
- Lazy Lake*
- Lighthouse Point*
- Longboat Key
- Longwood*
- Loxahatchee Groves*
- Lynn Haven
- Macclenny
- Madeira Beach*
- Maitland*
- Manalapan*
- Mangonia Park*
- Marathon
- Marco Island
- Margate*
- Medley*
- Melbourne
- Miami Beach*
- Miami Gardens*
- Miami Lakes*
- Miami Shores*
- Miami Springs*
- Miami*
- Milton
- Miramar*
- Mount Dora
- Naples
- Neptune Beach*
- New Port Richey
- Niceville
- North Bay Village*
- North Lauderdale*
- North Miami Beach*
- North Miami*
- North Palm Beach*
- North Redington Beach*
- Oakland Park*

- Oakland*
- Ocala
- Ocean Ridge*
- Ocoee*
- Okeechobee
- Oldsmar*
- Opa-locka*
- Orange City
- Orange Park
- Orlando*
- Ormond Beach
- Oviedo*
- Pahokee*
- Palatka
- Palm Bay
- Palm Beach Gardens*
- Palm Beach Shores*
- Palm Beach*
- Palm Springs*
- Palmetto
- Palmetto Bay*
- Panama City
- Parkland*
- Pembroke Park*
- Pembroke Pines*
- Pensacola
- Pinecrest*
- Pinellas Park*
- Plant City*
- Plantation*
- Pompano Beach*
- Port Orange
- Port St. Lucie
- Punta Gorda
- Redington Beach*
- Redington Shores*
- Riviera Beach*
- Rockledge
- Royal Palm Beach*
- Safety Harbor*
- Sanford*
- Sarasota
- Satellite Beach
- Sea Ranch Lakes*
- Sebastian
- Sebring
- Seminole*
- South Bay*
- South Daytona
- South Miami*
- South Palm Beach*
- South Pasadena*
- Southwest Ranches*
- Springfield
- St. Augustine
- St. Augustine Beach
- St. Cloud
- St. Pete Beach*
- St. Petersburg*
- Stuart
- Sunny Isles Beach*
- Sunrise*
- Surfside*
- Sweetwater*
- Tallahassee
- Tamarac*
- Tampa*
- Tarpon Springs*
- Tavares
- Temple Terrace*
- Tequesta*
- Titusville
- Treasure Island*
- Venice
- Vero Beach
- Virginia Gardens*
- Wellington*
- West Melbourne
- West Miami*
- West Palm Beach*
- West Park*
- Weston*
- Wilton Manors*
- Windermere*
- Winter Garden*
- Winter Haven
- Winter Park*
- Winter Springs*
- Zephyrhills

Note: Palm Coast was on the prior year's list (2009), but no longer meets the criteria. No other jurisdictions were added.

All designated local governments shall adopt into its comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation by July 8, 2011, pursuant to Section 163.3180(5)(b)4, Florida Statutes.

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[i] Florida Department of Community Affairs website, last visited 2/21/11, http://www.dca.state.fl.us/fdcp/dcp/Legislation/2010/CountiesMunicipalities.cfm

School Concurrency

School Concurrency

EDUCATION FACT SHEET 2010-11

What is school concurrency?

School concurrency is a system of land use regulations designed to meet the demands placed upon public school capacity by new residential development.[1] District school boards and local governments[2] achieve school concurrency when there are adequate school facilities available to accommodate increases in student enrollment resulting from new residential development.[3]

School concurrency involves both intergovernmental coordination and timing. District school boards and local governments must coordinate their respective educational facilities and comprehensive plans.[4] Before approving proposed residential development, local governments and school boards must jointly determine whether adequate school capacity will be available to accommodate the development.[5] A local government must deny an application for new residential development if adequate school capacity will not be available or under construction within three years of approving the application.[6]

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[1] David L. Powell & Michelle Gazica, *And Now ... School Concurrency*, 79 Fla. B.J. 44, at 44 (2005); *see also* Florida Department of Education, *School Concurrency Frequently Asked Questions*, http://www.fldoe.org/edfacil/faq.asp#schoolconcurrency (last visited Sept. 10, 2010). Florida local governments, i.e., counties and municipalities, are also required to adopt concurrency management systems for sewer, solid waste, drainage, potable water, parks and recreation, schools, and transportation services. A local government may extend its concurrency management system to include additional types of public facilities and services. Section 163.3180(1)(a), F.S.

[2] For school concurrency purposes, the term "local government" refers to counties and municipalities. Section 163.3164(13), F.S.

[3] Florida Department of Community Affairs, *Best Practices for School Concurrency*, at 8 (April 2007), *available at* http://www.dca.state.fl.us/fdcp/DCP/SchoolPlanning/Files/schoolsbp.pdf [hereinafter *Concurrency Best Practices*].

[4] Section 163.3180(13)(a), F.S.; *see* Anne Trefz Gibson, *Implementing School Concurrency: The Challenges of Adopting a United Vision*, 80 Fla. B.J. 38, at 38-41 (2006). An educational facilities plan is a land use planning document that is adopted annually by the district school board. The plan includes long-range planning for facilities needs over 5-year, 10-year, and 20-year periods. The plan must be developed in coordination with local governments and be consistent with the local government comprehensive plans. Section 1013.35(1)-(2), F.S. Local governments must adopt comprehensive plans to plan for, and coordinate with other local governments, the use and development of land. Section 163.3177, F.S.; *see infra* text accompanying notes 19-26 (discussion of comprehensive plans).

[5] Section 163.3180(13)(b) and (e), F.S.; *Concurrency Best Practices*, *supra* note 3, at 90-97 (discussion of school capacity determination and development application review processes).

[6] Section 163.3180(13)(e), F.S. If adequate school capacity will not be available or under construction within three years of approval, the developer may provide "mitigation" to offset the impacts of the development on school capacity. If mitigation is provided, the development may proceed. *Id.*; *see infra* text accompanying notes 46-52 (discussion of proportionate share mitigation).

The Florida Legislature first required local governments to adopt school concurrency management systems in 2005.[7] To comply with these requirements, each local government was required to amend its comprehensive plan and public school interlocal agreement[8] to incorporate a school concurrency management system. Specifically, each local government was required to:[9]

- Update the intergovernmental coordination element of its comprehensive plan and interlocal agreement to include procedures for implementing school concurrency.[10]
- Adopt a public school facilities element into its comprehensive plan.[11]
- Adopt level-of-service standards to establish maximum permissible school utilization rates relative to capacity and include these standards in an amended capital improvements element of the comprehensive plan and in the interlocal agreement.[12]
- Establish a financially feasible public school capital facilities program under which the adopted level-of-service standards will be met and include it in the comprehensive plan.[13]
- Establish a proportionate-share mitigation methodology and include it in the public school facilities element and interlocal agreement.[14]
- Establish public school concurrency service areas to define the geographic boundaries of school concurrency and include these areas in the interlocal agreement and in the supporting data and analysis for the comprehensive plan.[15]

Each of these requirements is discussed individually below. The deadline for adopting a public schools facilities element and interlocal agreement updates was December 1, 2008.[16] As of October 2010, 61 school districts have executed the required interlocal agreements with local governments, and the Department of Community Affairs (DCA) has determined the agreements to be consistent with minimum requirements. Of those districts, 38 have implemented school concurrency on a district-wide basis, which means the county and all municipalities within the county have adopted compliant public school facilities elements.[17] Palm Beach County School

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[7] *See* s. 5, ch. 2005-290, L.O.F. Prior to 2005, local government implementation of school concurrency was optional. Section 163.3180(13), F.S. (2004).

[8] *See infra* text accompanying notes 27-33 (description of public school interlocal agreement).

[9] Department of Community Affairs, *School Planning and Coordination*, http://www.dca.state.fl.us/fdcp/dcp/SchoolPlanning/index.cfm (last visited Sept. 13, 2010).

[10] Sections 163.3177(6)(h), 163.3180(13)(g) and (h), and 163.31777(1)(d), F.S.

[11] Sections 163.3180(13)(a) and 163.3177(12), F.S.; *see infra* text accompanying notes 34-38 (discussion of public school facilities element).

[12] Section 163.3180(13)(b), F.S.; *see infra* text accompanying notes 39-42 (discussion of level-of-service standards).

[13] Section 163.3180(13)(d), F.S.; s. 163.3177(3), F.S.; *see infra* text accompanying notes 43-45 (discussion of financial feasibility).

[14] Section 163.3180(13)(e), F.S.; *see infra* text accompanying notes 46-52 (discussion of proportionate share mitigation).

[15] Section 163.3180(13)(c) and (g), F.S.; *see infra* text accompanying notes 53-55 (discussion of concurrency service areas).

[16] Section 163.3177(12)(i), F.S.

[17] Email, Florida Department of Education, Legislative Affairs Director (Oct. 12, 2010). DCA has approved waivers for three districts (Franklin, Jefferson, and Monroe Counties) and two districts (Calhoun and Liberty Counties) have not submitted agreements for review. *Id.*

District implements school concurrency under an "optional" public school facilities element approved by the Department of Community Affairs in 2002.[18]

What is comprehensive planning?

Local governments must adopt comprehensive plans to guide future growth and development. Each plan must contain chapters or "elements" that address:

- Capital improvements;[19]
- Future land use planning;
- Traffic circulation;
- Sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge;
- Conservation and protection of natural resources;
- Recreation and open space;
- Housing;
- Coastal management;
- Coordination of local government comprehensive plans with the state plan and the plans of adjacent counties and municipalities;[20] and
- Public school facilities.[21]

Subject to certain exceptions, a local government may amend its adopted comprehensive plan up to twice per year.[22] Every seven years, local governments must adopt an evaluation and appraisal report that evaluates the successes and weaknesses of the comprehensive plan and recommends changes.[23] Among other things, the report must assess the comprehensive plan's effectiveness in projecting and meeting school capacity needs.[24] Each report must be reviewed by the DCA.[25] Subsequent to such review, a local government must amend its comprehensive plan based upon recommendations made in the report.[26]

What is the public schools interlocal agreement?

The county and each municipality within a school district must enter into a public schools interlocal agreement to coordinate the district school board's educational facilities plan with each

[18] Email, Florida Department of Education, Legislative Affairs Director (Oct. 12, 2010). Legislation enacted in 1998 established subsection (12) of s. 163.3180, F.S. (1998), which authorized local governments to implement school concurrency on an optional basis. Section 5, ch. 98-176, L.O.F. This legislation first established standards for adopting a public school facilities element for incorporation into local comprehensive plans. Section 4, ch. 98-176, L.O.F.

[19] Section 163.3177(3)(a), F.S.

[20] Section 163.3177(6)(a)–(h), F.S.

[21] Section 163.3177(12), F.S.

[22] Section 163.3187(1), F.S. Florida law specifies 17 exceptions to the limit on comprehensive plan amendments, including a specific exception for school concurrency related plan amendments. Sections 163.3177(12)(i) and 163.3187(1)(j), F.S.

[23] Section 163.3191(1)-(2), F.S.

[24] Section 163.3191(2)(k), F.S.

[25] Section 163.3191(6)-(9), F.S.

[26] Section 163.3191(10), F.S.

local government's comprehensive plan.[27] The agreement includes the methodology and procedures for determining level-of-service standards, concurrency service areas, and proportionate share mitigation options for public school facilities.[28] Each interlocal agreement must be submitted to DCA and the Department of Education's (DOE's) Office of Educational Facilities.[29] The agreement must include procedures for:

- Coordinating projections of population growth and forecasts of student enrollment;
- Coordinating and sharing information about existing and planned public school facilities;
- School facility site evaluation and new school site selection;
- Determining the need and timing of off-site improvements;
- Preparing school district facilities work program and plant surveys;
- Joint use of local government facilities for school purposes;
- Dispute resolution;
- Oversight; and
- Communicating regarding school capacity issues resulting from comprehensive plan amendments.[30]

When planning the public schools interlocal agreement, district school boards and local governments must:

- Consider allowing students to attend the school located nearest their homes when a new housing development is constructed, including attendance at a school located in an adjacent county;
- Consider the effects of the location of public education facilities, including the feasibility of keeping central city facilities viable in order to encourage central city redevelopment; and
- Consult with state and local road departments to assist in implementing the Safe Routes to Schools Program administered by the Department of Transportation.[31]

The public schools interlocal agreement is necessary because local governments and school boards are constitutionally created entities with distinct spheres of authority over land use planning and school operations, respectively.[32] The agreement facilitates collaborative school planning and decision making and enables these entities to coordinate their efforts in preparing, adopting, and amending the public school facilities element; annually updating the local government's capital improvements element and the school district's five-year educational facilities plan; and overall implementation of the school concurrency management system.[33]

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[27] Section 163.31777(1)(a), F.S.

[28] Section 163.3180(13)(g), F.S.; *Concurrency Best Practices, supra* note 3, at 23.

[29] Section 163.31777(1)(a), F.S.

[30] Section 163.31777(2), F.S.; *Concurrency Best Practices, supra* note 3, at 23-24.

[31] Section 1013.33(1), F.S. The Safe Routes to Schools Program is a Federal Highway Administration grant program which aids the planning and construction of safe bicycle and pedestrian pathways for children to schools and parks. *See* Florida Department of Transportation, *Guidelines for Florida's Safe Routes to Schools Program: 2009-2010*, at 1 (Dec. 22, 2009), *available at* http://www.dot.state.fl.us/safety/SRTS_files/SRTS%20Guidelines.pdf. Statute refers to this program as the "Safe Paths to Schools Program." Section 1013.33(1), F.S.

[32] Section 163.3180(13)(g), F.S.; *see* ss. 1 and 2, Art. VIII and s. 4, Art. IX of the State Constitution (county, municipality, and school board authority); *see also Concurrency Best Practices, supra* note 3, at 22.

[33] Sections 163.3177(3)(b)1., 163.31777(2)(a) and (f) and (12), and 163.3180(13)(g)1., F.S.; *Concurrency Best Practices, supra* note 3, at 22-25.

What is the public school facilities element?

Each county and municipality, in coordination with the district school board, must include a public school facilities element in its local comprehensive plan unless exempt or subject to a waiver.[34] This element is the primary school planning component of the local comprehensive plan. The purpose of the element is to implement a joint planning process between school boards and local governments for meeting educational facilities needs. It provides the analytical basis for projecting school capacity needs, establishing level-of-service standards and school concurrency service areas, defining school siting criteria, and locating future schools.[35]

The public school facilities element facilitates county-wide compliance with the constitutional requirement for a uniform system of public education and must be consistent among all local governments within the county.[36] The element must be based upon professionally-accepted data and analysis from such sources as the public schools interlocal agreement, school district educational plant surveys and five-year school district educational facilities plans, population and housing projections used in local government comprehensive plans, and school enrollment projections developed through the consensus estimating process.[37] The statutory planning period requires a minimum of a five-year time-frame and a long-term planning period of at least 10 years.[38]

What are level-of-service standards?

The level-of-service standard for a public school facility is the number of pupils to be served by the facility and is most often expressed as the percentage (ratio) of student enrollment to the student capacity of the school.[39] Public school level-of-service standards must be included in the public school facilities element and the capital improvements element of the local comprehensive plan and applied district-wide to all schools of the same type.[40] Types of schools may include elementary, middle, and high schools, as well as special purpose facilities such as magnet schools.[41] District school boards and local governments may utilize tiered level-of-service

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[34] Section 163.3177(12), F.S.; *see infra* text accompanying notes 57-60 (discussion of waiver of school concurrency requirements).

[35] Section 163.3177(12)(c), F.S.; *Concurrency Best Practices, supra* note 3, at 38-39.

[36] Section 163.3177(12), F.S. (introductory paragraph at beginning of subsection); *see* s. 1(a), Art. IX of the State Constitution; *Concurrency Best Practices, supra* note 3, at 38.

[37] Section 163.3177(12)(c), F.S.; *Concurrency Best Practices, supra* note 3, at 38-39.

[38] Section 163.3177(5)(a), F.S.

[39] *Concurrency Best Practices, supra* note 3, at 67-68; s. 163.3180(13)(b)1., F.S.; rule 9J-5.003(62), F.A.C. Rule defines "level-of-service" as the actual or proposed degree of service provided by a public facility based upon its operational characteristics. Level-of-service standards must indicate the capacity per unit of demand for each public facility and is a way of specifying when the demand on a facility or service has exceeded its capacity. Rule 9J-5.003(62), F.A.C.

[40] Sections 163.3177(12)(c) and 163.3180(13)(b)2., F.S. Uniform district-wide application of level-of-service standards is derived from the constitutional requirement that a uniform system of free public schools be provided in each county. *See* s. 1.(a), Art. IX of the State Constitution; *see* Florida Department of Community Affairs, *Final Report: Establishing Level of Service Standards for Public School Concurrency,* at 10 (May 2006), *available at* http://www.dca.state.fl.us/fdcp/DCP/SchoolPlanning/Files/LevelofService.pdf [hereinafter *Level-of-Service Standards*].

[41] Section 163.3180(13)(b)2., F.S.

standards to address student backlogs in public school facilities. This is to allow time to achieve an adequate level-of-service as circumstances warrant.[42]

What is "financial feasibility?"

Under school concurrency, each district school board and local government entity must establish a financially feasible public school capital facilities program under which the adopted level-of-service standards will be met and maintained.[43] "Financial feasibility" means that committed financing for capital improvements to school facilities must be currently available for the first three years, or will be available for years four and five, of a five-year capital improvement schedule. A comprehensive plan may satisfy the financial feasibility requirement for school facilities even if level-of-service standards are not met in a particular year, as long as the standards are met by the end of the planning period used in the capital improvement schedule.[44] A local government that has adopted a long-term transportation and school concurrency management system may use a period of 10 or 15 years.[45]

What is "proportionate share mitigation?"

When school capacity is unavailable to support the impacts of a particular development proposal, such development is precluded from proceeding. "Proportionate-share-mitigation" enables a developer to execute a legally binding commitment to provide mitigation to offset the demand on public school facilities created by the development so that it may proceed. Options for proportionate-share mitigation are established locally in the public school facilities element and interlocal agreement.[46] Authorized mitigation options include:

- Contribution of land or payment for land acquisition for a public school facility;
- The construction, expansion, or payment for construction of a public school facility;
- The construction of a charter school that complies with the requirements for charter school facilities;[47] or

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[42] Section 163.3180(13)(b)3., F.S.

[43] Section 163.3180(13)(d), F.S.

[44] Section 163.3164(32), F.S. Financing for capital improvements may include such sources as ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and developer contributions. *Id.*

[45] Section 163.3177(2), F.S.

[46] Section 163.3180(13)(e), F.S.; *see also* Florida Department of Community Affairs, *Proportionate Share Mitigation for School Concurrency*, at 4-6 (May 2006), *available at* http://www.dca.state.fl.us/fdcp/DCP/SchoolPlanning/Files/ProportionateShareMitigation.pdf.

[47] Start-up charter schools may choose to comply with State Requirements for Educational Facilities, but such compliance is optional. At a minimum, such schools must comply with the Florida Building Code and Florida Fire Prevention Code. Section 1002.33(18), F.S. Provisions authorizing the construction of a charter school as a proportionate share mitigation option were enacted into law by the passage of CS/CS/SB 360 in 2009. CS/CS/SB 360 (2009); s. 4, ch. 2009-96, L.O.F., *codified at* s. 163.3180(13)(e), F.S. On Aug. 26, 2010, the Circuit Court for the Second Judicial Circuit held that portions of CS/CS/SB 360 (2009) violate the State Constitution's prohibition of unfunded local mandates. Rather than severing those provisions not held invalid, the court's order invalidates the entire bill. *City of Weston v. Crist*, No. 2009 CS 2639 (Fla. 2nd Cir. Ct. Aug. 26, 2010); *see* Art. VII, s. 18(a) of the State Constitution. The state has appealed the trial court's decision, which operates to stay the court's ruling while the appeal is pending. Notice of Appeal, filed Sept. 24, 2010, *City of Weston v. Crist*, No. 2009 CS 2639 (Fla. 2nd Cir. Ct. Aug. 26, 2010)(appeal of denial of state's request for rehearing); Fla. R. App. P. 9.310. The bill contained several

- ❖ Mitigation banking, which allows the developer to contribute mitigation that exceeds the actual impact of its development in exchange for proportionate share credits toward impact fees[48] or future development.[49]

With the exception of mitigation banking, a developer who provides proportionate-share mitigation receives a dollar-for-dollar credit towards any impact fee or exaction imposed by the local government.[50] Any proportionate-share mitigation received by the district school board from a developer must be used to improve school capacity as identified in the district's five-year educational facilities work plan. Funds received as mitigation may not be used for operational expenses.[51] While all approved public school facilities elements set local policies for acceptance of proportionate share mitigation, four Florida school districts report the use of proportionate share mitigation in their FY 2010-11 district facilities work plans. These districts are Hernando, Nassau, St. Johns and St. Lucie.[52]

What are "concurrency service areas?"

Once level-of-service standards are set for each public school, the district school board and local government must establish concurrency service areas that the school will serve. The service area is the area within which the level-of-service will be measured when an application for a residential subdivision or site plan is reviewed. This allows the district and local government to assess whether proposed development will exceed the adopted level-of-service standards.[53]

Concurrency service areas are included in the public schools interlocal agreement and the public school facilities element of the comprehensive plan.[54] Florida law encourages school boards and local governments to initially adopt district-wide concurrency service areas. Within five years after adopting school concurrency, school boards and local governments must utilize service areas that are less than district-wide, such as school attendance zones. Applying concurrency on

provisions impacting school concurrency which are discussed herein. CS/CS/SB 360 (2009); ss. 3 and 4, ch. 2009-96, L.O.F.; *see infra* text accompanying notes 58 and 61-63.

[48] Impact fees are used by local governments to control development and offset the impact of growth on local infrastructure and services. Unless superseded by constitutional or statutory provisions, local governments have broad authority to impose impact fees or exactions on development. Section 163.31801, F.S. (statutory authorization for impact fees); *see* ss. 1(f)-(g) and 2(b), Art. VIII of the State Constitution (home rule powers of counties and municipalities); s. 125.01(1) and (3), F.S. (county powers/duties); s. 166.021(1)-(4), F.S. (municipal powers/duties); *Hollywood, Inc. v. Broward County, Florida,* 431 So. 2d 606, 609-610 (Fla. 4th D.C.A. 1983)(Holding that Florida counties have implicit authority to impose impact fees or exactions on development so long as such fee or exaction is not inconsistent with general law and is rationally related to the need for additional infrastructure or services caused by the development).

[49] Section 163.3180(13)(e)1., F.S.

[50] Section 163.3180(13)(e)2., F.S.

[51] Section 163.3180(13)(e)3., F.S.

[52] Email, Florida Department of Education, Legislative Affairs Director (Oct. 12, 2010). This data is derived from FY 2010-11 facilities work plans submitted to DOE by Oct. 1. As of October 8, 2010, the DOE had not completed review of work plan data and therefore it may be subject to change. *Id.*

[53] Section 163.3180(13)(c), F.S.; *Level-of-Service Standards, supra* note 40, at 9-10.

[54] Section 163.3177(12)(g) and (h), F.S.; s. 163.31777(2), F.S.; s. 163.3180(13)(c) and (g)5., F.S.; *Concurrency Best Practices, supra* note 3, at 23.

a less than district-wide basis allows these entities to better coordinate development with the adopted levels-of-service.[55]

Besides mitigation, when may a residential development commence despite inadequate classroom capacity?

If development is precluded because inadequate classroom capacity is available to mitigate its impacts on educational facilities, it may nevertheless commence if:

- The approved capital improvement element contains accelerated facilities that are scheduled for construction in year four or later of the plan and such facilities will mitigate the impact of the proposed development on school capacity when built; or
- Accelerated facilities are provided for in the next annual update of the capital facilities element, the developer and school district have entered into a binding, financially guaranteed agreement that the developer will construct the accelerated facility within the first three years of the plan, and the cost of the school facility is equal to or greater than the developer's proportionate share. The developer receives impact fee credits when the completed school facility is conveyed to the school district.[56]

May local government entities receive a waiver or exemption from school concurrency requirements?

Yes. DCA may provide a county and the municipalities within that county with a waiver from school concurrency requirements if the capacity rate for all schools within the school district is no greater than 100 percent and the projected five-year capital outlay full-time equivalent student growth rate is less than 10 percent.[57] DCA may allow the projected five-year capital outlay full-time equivalent student growth rate exceed 10 percent when the projected 10-year capital outlay full-time equivalent student enrollment is less than 2,000 students and the capacity rate for all schools in the district in the tenth year will not exceed the 100 percent limitation.[58] DCA may allow a single school to exceed the 100 percent limitation if the capacity rate for that single school is not greater than 105 percent.[59]

Further, DCA may exempt a municipality from school concurrency requirements if the municipality:

- Has issued development orders for fewer than 50 residential dwelling units during the preceding five years or has generated fewer than 25 additional public school students during the preceding five years;
- Has not annexed new land during the preceding five years in land use categories that permit residential uses that will affect school attendance rates; and
- Has no public schools located within its boundaries.[60]

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[55] *Id.*

[56] Section 163.3180(13)(e)4., F.S.

[57] Section 163.3177(12)(a), F.S.

[58] *Id.*; *see supra* note 47 (discussion of CS/CS/SB 360 (2009)).

[59] Section 163.3177(12)(a), F.S.

[60] Section 163.3177(12)(b), F.S.

What are the penalties for failure to implement school concurrency?

DCA may require a local government or district school board to show cause for failure to enter into an interlocal agreement or otherwise implement school concurrency. If sufficient cause is not found, DCA must submit its findings to the Administration Commission. The Administration Commission may impose specified penalties on local governments.[61] A local government entity may be declared ineligible for state funding for roads, bridges, or water and sewer systems; specified state grants; and beach management funds.[62] The State Board of Education may impose the following penalties on district school boards – reduction of discretionary lottery funds, withholding of state funds and discretionary grant funds, or ineligibility for competitive grants. Additionally, a school board may be required to periodically report its progress towards compliance to the state board.[63]

Where can I get additional information?

Florida Department of Education
Office of Educational Facilities
(850) 245-0494
http://www.fldoe.org/edfacil/

Department of Community Affairs
Division of Community Planning
School Planning and Coordination
(850) 487-4545
http://www.dca.state.fl.us/fdcp/dcp/index.cfm

Florida House of Representatives
Education Committee
(850) 488-7451
http://www.myfloridahouse.gov

[61] Section 163.3177(12)(j), F.S.; *see supra* note 47 (discussion of CS/CS/SB 360 (2009)). The administration commission is a body consisting of the Governor and cabinet. Section 163.3164(1), F.S.

[62] Section 163.3184(11), F.S.; *see supra* note 47 (discussion of CS/CS/SB 360 (2009)).

[63] Section 1008.32(4), F.S.; *see supra* note 47 (discussion of CS/CS/SB 360 (2009)).