



The Florida Senate

Interim Project Report 2006-108

September 2005

Committee on Community Affairs

Senator Michael S. "Mike" Bennett, Chair

GROWTH MANAGEMENT GLITCH BILL

SUMMARY

The enactment of Senate Bill (SB) 360 made significant changes to Florida's Growth Management Act. The bill's provisions affected transportation concurrency, school concurrency, and water concurrency. It also provided much needed funding for roads, schools, and water. The bill provided regulatory incentives for better planning in the form of urban service boundaries and the development of a community vision.

Since the passage of SB 360, the Department of Community Affairs (DCA), Florida Department of Transportation (FDOT), and the Department of Environmental Protection (DEP) have worked cooperatively to provide information on the implementation of the bill. Some questions and issues that are discussed below will be addressed during the implementation phase. Others may require a legislative solution.

Staff requested that stakeholders and other interested parties identify glitches in the bill and suggest any changes necessary to fully implement the provisions of the bill. Staff categorized the comments received and those comments are included in this report. At the committee's direction, staff will prepare a glitch bill to address those issues identified by the committee.

BACKGROUND

The Legislature enacted SB 360 in the 2005 regular session which made significant changes in planning for and funding infrastructure. Specifically, the legislation revised concurrency requirements for roads, schools, and water; provided regulatory incentives for developing a community vision and established an urban service boundary; created two task forces; and established the Century Commission for a Sustainable Florida. It also provided \$1.5 billion in recurring and nonrecurring funding for infrastructure in the 2005-06

fiscal year and \$750 million in recurring funding in subsequent years. Following passage of SB 360, DCA held briefings around the state to discuss the implementation of the legislation. Significant components of Senate Bill 360 include:

Capital Improvements Element

Local governments are required to annually update their schedule of capital improvements in its capital improvements element (CIE). Amendments to implement the new provisions relating to the CIE must be adopted and transmitted by December 1, 2007. A local government that adopts a long-term concurrency management schedule under s. 163.3180(9), F.S., must also adopt a long-term schedule of capital improvements for up to a 10-year or 15-year period.

School Concurrency

Prior to the 2005 legislation, the public schools facilities element of a local government's comprehensive plan was optional. In 2002, the Legislature required local governments to negotiate a public schools interlocal agreement. The 2005 legislation requires each local government to adopt a public school facilities element in its comprehensive plan and to adopt required updates to its public schools interlocal agreement. These tasks must be completed by December 1, 2008. However, a waiver is available to counties and cities within those counties that do not exceed certain capacity rates.

Transportation Concurrency

Transportation facilities must be in place or under actual construction within 3 years from the local government's approval of a building permit or its functional equivalent that results in traffic generation. Each local government must adopt a methodology for assessing proportionate fair-share mitigation options by December 1, 2006. A developer may choose to satisfy transportation concurrency requirements by contributing or paying proportionate fair-share mitigation for those facilities or segments that are identified in the 5-year schedule of capital

improvements. Updates to the 5-year schedule may not be found not in compliance by the state land planning agency if additional contributions or payments are reasonably anticipated during a 10-year period to fully mitigate impacts on the transportation facilities. If the funds in an adopted 5-year schedule are insufficient to fully fund construction of the transportation improvements required by the local government's transportation concurrency management system, the local government may still enter into a binding proportionate share agreement with the developer. This agreement would allow a developer to construct the amount of development on which the proportionate fair share is calculated if the amount in the agreement is sufficient to pay for an improvement that will, in the opinion of a governmental entity, significantly benefit the impacted transportation system.

Water Concurrency

The bill strengthens the link between development approval and water supply planning. Specifically, the potable water element must incorporate water supply projects identified by the local government from the regional water supply plan or proposed by the local government within 18 months after the update of the regional water supply plan. Prior to the approval of a building permit or its functional equivalent, a local government is required to consult with the applicable water supplier to determine whether adequate water supplies will be available to serve the new development at the certificate of occupancy.

Rural Lands Stewardship Areas

The bill revises the rural land stewardship area program to require a plan amendment establishing such an area to provide a process for mixed land uses that include adequate available work force housing and affordable housing. Also, a stewardship receiving area must have a listed species survey. The bill addresses the issue of balancing the impacts to areas developed as receiving areas and the environmental benefits of protected areas when determining the adequacy of protection of listed species habitat within rural land stewardship areas. Following adoption of the plan amendment, the local government must adopt a methodology for the transfer of credits within the rural land stewardship area by ordinance.

Small Scale Amendments

This bill increases the 10-acre residential density limitation for small scale amendment review within a rural area of critical economic concern as designated under s. 288.0656(7), F.S., if the local government certifies that certain economic objectives are met. The

bill also amends the 10-acre residential density threshold for small scale review to include amendments for which the proposed future land use category allows a maximum residential density that is the same or less than the density allowable under the existing future land use category. Small scale amendment review is also provided for amendments involving the construction of affordable housing units meeting certain criteria.

Community Vision

A local government is encouraged to develop a community vision. The process of developing a community vision requires the local government to hold a workshop with stakeholders and two public hearings. Also, a local government is encouraged to adopt an urban service boundary. This area must be appropriate for compact, contiguous urban development within a 10-year planning timeframe. The establishment of an urban service boundary does not preclude development outside the boundary.

Urban Service Boundaries

As an incentive for development within an urban service boundary established under the provisions of the bill or in an urban infill and redevelopment area as designated under s. 163.2517, F.S., the bill provides for small scale review of map amendments within the urban service boundary or designated urban infill and redevelopment area. However, this provision does not apply in areas of critical state concern or to amendments that would increase densities in high hazard coastal areas. As an additional incentive, development within an urban service boundary is exempt from development-of-regional-impact review if the local government has entered into a binding agreement with certain jurisdictions and the FDOT regarding the mitigation of certain impacts and has adopted a proportionate share methodology. This exemption from development-of-regional-impact review is also extended to proposed development within a Rural Land Stewardship Area and proposed development or redevelopment within an urban infill and redevelopment area designated under s. 163.2517, F.S.

Evaluation and Appraisal Reports

The bill address the evaluation and appraisal report process under s. 163.3191, F.S. Amendments to update a comprehensive plan based on an evaluation and appraisal report (EAR) must be adopted during a single amendment cycle within 18 months after the report is determined to be sufficient by the state land planning agency. Beginning July 1, 2006, failure to timely adopt

and transmit updated amendments to the comprehensive plan based on the EAR shall result in a prohibition on plan amendments until the EAR-based amendments are adopted and transmitted to the state land planning agency.

Boundary Study

The Office of Program Policy Analysis and Government Accountability is directed to perform a study by December 31, 2005, regarding adjustments to the boundaries of the Florida Regional Planning Councils, Florida Water Management Districts, and FDOT Districts. The written report will be submitted to the Governor and the Legislature by January 15, 2006.

Century Commission for a Sustainable Florida

The bill creates the 15-member Century Commission for a Sustainable Florida with its members to be appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives. One member will be designated as chair of the commission by the Governor. The members will represent diverse interests, with the first meeting to be held not later than December 1, 2005. Beginning January 16, 2007, the Century Commission will send an annual written report to the Governor and the Legislature. The President of the Senate and the Speaker of the House of Representatives will create a joint select committee in 2007 to review the findings and recommendations of the commission.

Florida Impact Fee Review Task Force

The bill creates the Florida Impact Fee Review Task Force to be composed of 15 members who are charged with surveying and reviewing the current use of impact fees as a method of financing local infrastructure to accommodate new growth and current case law controlling the use of impact fees. The Legislative Committee on Intergovernmental Relations will serve as staff to the task force. The task force shall provide a report to the Governor and the Legislature by February 1, 2006.

Transportation Regional Incentive Program

The bill establishes the Transportation Regional Incentive Program for the purpose of providing funds to improve regionally significant facilities in regional transportation areas. Funding awarded for projects under this program require a 50-percent local match. For a 2-year period, the bill allows FDOT to include right-of-way services as part of certain design-build contracts and to combine the design and construction phases of any project into a single contract.

Appropriations

SB 360 appropriates \$1.5 billion, consisting of \$750 million nonrecurring and \$750 million recurring, for 2005-2006 to fund specified transportation, school, and water projects. Thereafter, it appropriates \$750 million annually to fund these types of projects. Specifically, the bill provides \$200 million in funding for the first year of the Water Protection and Sustainability Program in s. 403.890, F.S., which is created in SB 444, and \$100 million annually thereafter.

Also, this bill establishes the High Growth District Capital Outlay Assistance Program in s. 1013.78, F.S., to provide funds for qualifying high student enrollment growth school districts which will receive \$30 million in nonrecurring funding for fiscal year 2005-06. An additional \$83.4 million is budgeted for school construction for fiscal year 2005-06, and \$75 million thereafter. Priority transportation projects will receive \$1.1 billion in funding for fiscal year 2005-06, and \$541.7 million thereafter.

The bill appropriates \$3 million annually from the Grants and Donations Trust Fund to DCA for technical assistance. The bill also appropriates \$250,000 in nonrecurring funding to support the first year of the Century Commission.

METHODOLOGY

Staff solicited comments from stakeholders and interested parties. In addition, staff met with stakeholders, including developers, local governments, the Governor's Office, DCA and FDOT.

FINDINGS

The following are comments and recommendations from stakeholders on changes that may be necessary to fully implement the intent of SB 360.

Capital Improvements Element and the Financial Feasibility Requirement

- Concern that a local government may not include a project in the capital improvements element or exact conditions from a developer in order to include the necessary improvement in the schedule.
- Concern over a construction moratorium while a citizen challenge to the CIE annual update is pending.
- Further streamline the comprehensive plan amendment process because DCA will have a much heavier workload as the result of reviewing the annual updates to the CIE.

- Specify what can be adopted by ordinance versus what must be included in the annual update to the CIE.
 - Revise the definition of “financial feasibility” to specify the requirement that level of service standards be achieved and maintained for a specific roadway or school does not apply to a development approved under the proportionate share process in s. 163.3180(12) and (16), F.S.
 - Revise language requiring a comprehensive plan to be “financially feasible” so that a local government can meet this requirement by satisfying the definition of “financially feasible” in s. 163.3164(2), F.S., or as provided for in 163.3177(3)(d), F.S., using professionally accepted methodologies.
 - Concern that the definition of “financial feasibility,” which states “the requirement that level-of-service standards be achieved and maintained shall not apply if the proportionate-share process set forth in s. 163.3180(12) and (16) is used,” undermines any meaningful enforcement of level-of-service standards.
 - Require multiple utility providers that serve new areas of development to execute an interlocal agreement among all the providers as a component of the CIE.
 - Provide that no moratorium on comprehensive plan amendments may be imposed until after the Administration Commission has issued its final order declaring the CIE not “financially feasible.”
 - Eliminate the language prohibiting map amendments after December 1, 2007, until the local government has transmitted and adopted the CIE annual update.
 - Require a petitioner to post a bond or some other security in order to challenge the “financial feasibility” of an update to the CIE.
 - Provide for attorneys’ fees and costs when a petitioner files a frivolous challenge relating to the “financial feasibility” of a CIE update.
 - Clarify whether sanctions will be imposed against a local government if it has transmitted the required annual update of the CIE but DCA does not approve the update.
 - Revise the reference to the proportionate fair-share process in the definition of “financial feasibility” to explicitly recognize a local government’s “ability to rely on anticipated revenues over a 10-year period so that financial feasibility and the capital improvement element are better harmonized.”
 - Concern that the provisions for proportionate fair-share payments and a financially feasible capital improvements element are internally inconsistent.
 - Define the terms or provide criteria for “committed funding sources,” “planned funding sources,” “professionally accepted methodologies,” and “tax revenues.”
 - Concern that the bill does not contemplate the effect of the timing of the capital improvements element as it relates to a county’s Annual Update and Inventory Report.
 - Provide an exemption in the financial feasibility requirements for a local government that experiences level-of-service issues resulting from substantial increases in traffic generated by other jurisdictions.
- School Concurrency*
- Concerns have also been raised regarding the legislation’s impact on the levy of impact fees.
 - Define role of municipal government in funding infrastructure necessary to support proposed schools.
 - Encourage rather than require that concurrency be applied on less than a districtwide basis within 5 years.
 - Mitigation options for school concurrency should also include the infrastructure necessary to support schools such as potable water, wastewater, drainage, solid waste, transportation, sidewalks, bicycle paths, turn lanes, and signalization.
 - Provide incentives, regulatory or otherwise, for school districts to increase school capacity in urban areas rather than building a new school in an undeveloped area.
 - Amend chapters 163 and 1013, F.S., to expressly state that school districts must abide by local government land development regulations.
 - Delete the following language that is used to describe appropriate mitigation options for school concurrency because its intent and applicability are not clear: “and actually developed on the property, taking into account residential density allowed on the property prior to the plan amendment that increased the over all density...”
 - Clarify the roles of the county planner, the school board, and the Department of Education with respect to school concurrency.

- Extend the deadline for adopting the required public schools facilities element and updating the interlocal agreement.
- Concern that concurrency requirement applies at the site plan approval stage, but proportionate fair-share payments are not required until the residential units are actually developed on the property.
- Clarify whether the entire value of land that is dedicated for schools is credited against required impact fees.
- Specify whether the county or the school board, or both, determine if the location of land that will be dedicated for schools is an appropriate school site.
- Specify that a local government may deny a plan amendment based on school capacity.
- Specify that a local government shall deny a plan amendment if the capacity report does not adequately identify how the school board will meet the demand for capacity.
- Require local planning agencies to include a school board representative as a voting member.
- Provide an exemption from concurrency requirements for public schools located within an urban infill and redevelopment area.

Transportation Concurrency

- Specify that a local government may adopt concurrency requirements that are more stringent than those contained in the bill.
- Coordinate impact fees with proportionate share payments.
- Eliminate the two-year multimodal district reporting requirement because the staff time and complexity of preparing such a report so often is a disincentive to create a multimodal district; instead, require a progress report on the multimodal district to be incorporated with local government's evaluation and appraisal report.
- Concern that new FDOT authority with respect to transportation concurrency management areas, transportation concurrency exception areas, and multimodal transport will disturb the balance between competing transportation and planning objectives that previously existed under the Growth Management Act.
- Clarify what it means to "consult" with FDOT regarding impacts to SIS.
- Specify what level of "cooperation" is required to develop a plan to mitigate the impacts to SIS.

- Clarify what should happen if FDOT and the local government do not concur about development and level-of-service issues.
- Provide parameters on the scope and timing of FDOT's review of proportionate fair-share for impacts on the Strategic Intermodal System.
- Revise language addressing de minimus transportation impacts to ensure that the 110-percent threshold covers all development above a single-family home, regardless of the status of vesting or other questioned criteria.
- Clarify whether the first or last building permit in a development triggers the concurrency requirement or require the facilities to meet the concurrency requirement to be under construction within 3 years of platting.
- Concurrency management systems should be developed by FDOT and consistent throughout the state.

Regional Transportation Plans

- Require each entity with a role to play in the development of a regional transportation plan to participate in the development of the plan.

Proportionate Share for Transportation Concurrency

- Allow mitigation payments to be credited only against impact fees for roadway construction projects that are not identified in the 5-year capital improvements schedule or in the long-term capital improvements schedule.
- Provide local governments with the authority to implement more stringent concurrency requirements.
- Require improvements to a transportation system to be greater than the proportionate share calculation payment in order to meet the significant benefit test that allows local government to approve a development even though needed improvements have not yet been included in the 5-year schedule of capital improvements.
- Eliminate the option for local governments to accept payment from a developer and approve the development if additional contributions or funding sources needed for full mitigation are reasonably anticipated within a 10-year period.
- Clarify the provisions relating to impact fee credits to avoid confusion in implementation by local governments.
- Concern that local governments have very differing views on proportionate-share language; the Legislature may need to clarify

the parameters and limitations of the legislation.

- Concern that language could lead to multiple payments by developers; revise the language to allow all developers to meet all their transportation mitigation obligations by paying their proportionate fair-share of transportation impacts regardless of the type of development (i.e., small scale, multi-use DRI, or non multi-use DRI).
- Provide that once a developer pays the proportionate fair-share for transportation impacts, then all other transportation impact fees will have been satisfied regardless of whether the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government's impact fee ordinance.
- Specify that the proportionate fair-share mitigation option is available to developers regardless of whether the impacted transportation facilities are included in the local government's 5-year capital improvements schedule or reflected in the next annual update to the schedule.
- Provide an exemption from the proportionate fair-share methodology requirement for a local government that has impact fees and an established Transportation Concurrency Management System.
- Concern that proportionate fair-share provisions do not recognize that transportation impacts are not isolated to the subject road where proportionate share applies, but to the entire road system.
- Concern that there is no limitation on the number of projects that must be approved if proportionate fair-share is used.
- Revise the language to allow counties to specifically identify which roads in the 5-year schedule of capital improvements are candidates for proportionate fair-share payments.
- Provide some limitation to ensure that planned capacity improvements are not exhausted before they are actually constructed.
- Require all local governments to use the FDOT model to ensure consistency.

Water Concurrency

- Ensure that regional water supply plans use reasonable growth projections for water supply planning.

- Add regional planning councils to the list of agencies charged with multijurisdictional water supply planning and water management.
- Address what happens if a local government determines the development will not have adequate water supply.

Amendments Based on Evaluation and Appraisal Reports

- Concern regarding the prohibition on plan amendments until a local government adopts its EAR amendments.

Rural Land Stewardship Areas

- Amend the language of the program to ensure that a municipality annexing lands that are part of an existing rural lands stewardship area cannot undermine the sending and receiving areas that were previously established in the county comprehensive plan.
- Concern that requirement for affordable housing in rural land stewardship areas could result in a lack of flexibility for more appropriate, off-site affordable housing mitigation.

Developments of Regional Impact

- Concern that language in SB 360 seems to require an interlocal agreement to address interjurisdictional impacts in order to receive an exemption in certain circumstances from development of regional impact review, regardless of whether there are any impacts to adjacent jurisdictions.
- Provide greater incentives for DRI projects inside the urban service boundary.
- Streamline the process and information requirements for DRI review.
- Make it easier to change a DRI in response to market demand by revising the process and thresholds for determining whether the change constitutes a substantial deviation.
- Eliminate DRI review for projects that are subject to extensive regulatory programs that adequately protect the public.
- Review all exemptions from DRI review to see if some may be deleted.
- Exempt DRIs from the prohibition against map amendments if the "financial feasibility" of a DRI is challenged.

Urban Infill and Redevelopment Areas

- Some local governments have expressed concern that the bill does not offer enough

incentives to encourage infill and redevelopment.

- Direct recurring infrastructure funding to designated urban infill and redevelopment areas or establish smart growth criteria for the expenditure of such funds.
- Concern that the exemption from DRI review in designated urban infill and redevelopment areas and within urban service boundaries, if a local government meets certain conditions, does not consider the other impacts besides transportation that are addressed in the DRI process.
- Provide criteria for determining whether a binding agreement is adequate for purposes of the DRI exemption in designated urban infill and redevelopment areas or within urban service boundaries.
- Eliminate the requirement for an interlocal agreement that addresses transportation impacts for the DRI exemption to be effective in an urban infill and redevelopment area or within an urban service boundary.
- Revise the DRI exemption for urban infill and redevelopment areas, as well as the DRI exemption within urban service boundaries, to provide that within 6 months after a local government adopts its proportionate fair-share methodology, the local government must enter into an interlocal agreement with adjacent jurisdictions and FDOT regarding transportation impacts or the DRI exemption will still apply regardless of the lack of an agreement.
- Encourage urban infill and redevelopment by allowing the creation of school concurrency exception areas where a school meets certain criteria.

Transportation Concurrency Exemptions

- Encourage large-scale developments that incorporate new urbanism elements intended to reduce sprawl and dependence on roadways by making existing transportation concurrency exemptions less difficult to use.

Transportation Regional Incentive Program

- Amend the criteria to qualify for TRIP to exclude a local government that has not completed a community vision and established an urban service boundary or, alternatively, given a greater priority to projects proposed by a local government that has completed these requirements.

Urban Service Boundaries

- Clarify language on land needed to accommodate the projected population growth for a 10-year planning timeframe because nonresidential land use needs within an urban core may rely on population projections greater than the potential urban service boundary.
- Clarify whether the population projection is for the urban service boundary area only or for the entire jurisdiction.
- Concern that urban service boundaries can be changed at the whim of local governments.
- Concern about the loss of oversight by DCA when a local government develops a community vision and establishes an urban service boundary and then its map amendments are subject to small scale amendment review under the new legislation.
- Require local governments to discuss strategies for the creation and development of neighborhood and community parks and outdoor recreation opportunities as part of the process of developing a community vision.
- Direct recurring infrastructure funding to established urban service boundaries or establish smart growth criteria for the expenditure of such funds.
- Provide greater financial incentives to establish a boundary.
- Include affected and adjacent local governments among the list of required stakeholders in the process for establishing a boundary.
- Allow municipalities to automatically qualify their borders as urban service boundaries.
- Specify how to determine the projected population growth for a 10-year period.
- Provide for low-density land use designations or prohibitions on the provision of urban infrastructure outside an urban service boundary in order to make the boundary truly effective.
- Allow existing urban service boundaries to remain in effect, but require an evaluation for compliance with the new standards as part of the evaluation and appraisal report process.
- Concern that population projections from the Bureau of Economic and Business Research are for counties and not municipalities.
- Clarify that a workshop is not required for each stakeholder group.

- Clarify that each jurisdiction may have only one urban service boundary.

Developing a Community Vision

- Concern that the process for developing a community vision will continue to allow development interests to trump other interests because there is no requirement for a public vote.
- Provide greater financial incentives to develop a community vision.
- Include affected and adjacent local governments among the list of required stakeholders in the process for developing a community vision.
- Make the development of a community vision mandatory and require that it be incorporated into a local government's comprehensive plan.
- Provide matching funds or grants to help support the new community visioning process.

Century Commission for a Sustainable Florida

- Restore recurring funding for the commission or, at a minimum, provide funding for the second year.
- Revise the intent language regarding the commission to include "sustainable building design" among the goals to be fostered by the state's growth management system.
- Reduce the planning timeframe to a 5-year or 10-year plan.

Appropriations

- Reduce the \$200 million appropriation for 2005-06 to fund projects on the Strategic Intermodal System to its intended \$175 million.
- Provide for transfer of \$33.25 million from the Public Education Outlay Trust Fund to the Classrooms for Kids Program, which is the balance of the \$75 million that was appropriated in the bill.

Other

- Broaden the definition of "infrastructure" to include parks and recreation for the purpose of funding.
- Reallocate a portion of the recurring funding in the bill to match local land acquisition programs or to fund the existing Rural and Family Lands Act.
- Provide a local option revenue source for municipalities or remove the local match requirement for municipalities.

- Provide additional funding or grants to small municipalities for technical assistance because of the difficulty in developing and implementing good comprehensive plans.
- Restore the home rule land use powers of municipalities located within charter counties by limiting the ability of charter counties to preempt local land use decisions.
- Increase funding for the Florida Communities Trust Program and begin planning for the reauthorization of Florida Forever.
- Enhance the role of the regional planning councils and provide increased funding.
- Restore funding for the school concurrency task force.
- Provide a time limit for a local government to complete a sector plan after it has initiated the process.
- Subject development by a local government to the same concurrency requirements as a private developer.
- Specify that the water management districts cannot use their match of the state grant funding provided in the bill for anything other than new water supply projects.
- Specify that the funding in the bill for alternative water supply projects can only be used for potable water supply projects and also require an audit on the use of these funds.
- Require DCA to adopt rules for implementing provisions of the bill relating to the following: criteria for grandfathering existing urban service boundaries, new capital improvements element requirements, proportionate fair-share payments, transportation concurrency, school concurrency, and water concurrency.

RECOMMENDATIONS

Staff recommends that the glitch bill, at a minimum, correct certain cross-references and address the appropriations issues discussed above, as well as any specific changes as directed by the committee.