

Comments and Responses on the Draft Proportionate Share Report

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1	This new law isn't concurrency! I don't know what to call it, but allowing deficient links to go unaddressed is the polar opposite of concurrency! The primary problem with concurrency in the past is that it encouraged urban sprawl and discouraged urban infill. I don't see anything changing with the new system. Developer's are pretty savvy and hate paying fees. So, they are going to hire smart traffic engineers (like me) who will find locations where the road links are either so far under capacity that their new development won't cause a problem -or are over capacity and already deficient so they won't trigger a contribution. They will avoid areas where roads are close to capacity and "ready to tip" because these are the one's that will cost them money. Traffic on these "ready to tip" links will get closer and closer to the edge but no developer will be stupid enough to push them over. Then we will take new traffic counts and (guess what?) will find that natural growth pushed the links over the edge. Then the link will be deficient and everybody can build in that area again without anybody paying a frigin' cent!	Noted	
2a	L - 32: should be "adequate transportation facilities" available concurrent with impacts	Editorial	Edit made
2b	L - 56-58: 9J 5 originally required needed roads to be under actual construction no later than 3 years after permit issuance. In 1993, the ELMS III legislation changed that availability standard to 3 years after issuance of a certificate of occupancy or equivalent, for transportation facilities. The 2005 legislation switched back to the original 9J 5 availability standard.	Noted	
2c	L - 59-60: Before 1993, there was considerable disagreement about whose LOS standards should govern on the State Highway System. In the 1993 ELMS III legislation, the statutes were changed to reflect compromise proposal of giving DOT rulemaking authority to set LOS standards on the FIHS, and to require local governments to set LOS standards on all other roads. Local governments were responsible for enforcing both DOT's and their own LOS standards. So I think the 2005 change reflected creation of the SIS but also narrowed the scope of DOT authority to set LOS standards.	Clarify	The 2005 changes broadened the required use of DOT's LOS standards. Ch. 93-206, LOF, required local governments to use the department's LOS standards for the FIHS. Ch. 99-378, LOF, amended this to give local governments more flexibility by allowing them to set LOS standards for general use lanes in urbanized areas of the FIHS with the concurrence of FDOT. The 2005 legislation broadened the scope of the department authority to set the LOS standards used by local governments for facilities on the SIS and FIHS, and facilities receiving Transportation Regional Incentive Program funding.
2d	Chart page 3: Re 2005, I think it is more accurate to say that SB 360 codified the financial feasibility requirement in the statutes. There was a financial feasibility requirement in 9J 5 since the late 1980s, in the rule on capital improvements elements, however, the rule did not use the phrase "financial feasibility," as best I recall. The only time that I know of where the financial feasibility requirement was actually litigated was in the Broward school concurrency case in the late 1990s. The Governor and Cabinet found Broward had not complied with the financial feasibility requirement in setting up its school concurrency system. But financial feasibility was not in the statutes and was not a defined term anywhere before 2005.	Clarify	Previously s. 163.3177(2), F.S., required comprehensive plans to be "economically feasible" but this term was not defined. SB 360 (2005) amended this language to say "financially feasible" and provided a definition of the term and other related requirements. SB 360 specified local comprehensive plans had to demonstrate financial feasibility by December 1, 2007. In 2007, this due date was postponed to December 1, 2008, then postponed to December 1, 2011 in 2009.
2e	Chart page 3: Re 2005, with respect to PS, the first authorization for proportionate share as a means for addressing concurrency was enacted in 1999, based on recommendations from the Transportation and Land Use Study Committee created in 1998. (I served on the committee.) Essentially we recommended the provision which became § 163.3180(12), providing for a developer of a mixed use DRI (with 3 or more uses, one of which was residential) to mitigate both regional transportation impacts and local transportation concurrency issues through a proportionate share payment directed to one or more improvements to a regional facility. This provision married up the "pay and go" idea (which had never been accepted for purposes of transportation concurrency) with the old DRI pipelining rule and was intended, among other things, as an inducement for DRI developers to do mixed use projects. The 2005 PS language in § 163.3180(16) was for non DRI projects. Over time the subsection (12) prop share for DRIs was liberalized.	Clarify	Ch. 99-378, Laws of Florida, authorized development of regional impact to satisfy transportation concurrency by a payment of proportionate share contribution. Added this to the chart in the "1999" row.
2f	L - 88 94: These provisions were carried forward from the original § 163.3180(12) provisions for mixed use DRIs and were in turn borrowed from the original DCA pipelining rule and 9J 2 DRI uniform transportation standard rule.	Noted	
2g	L - 150 152: This has always been an issue where "pay and go" is coupled with pipelining, namely, what do you do about roads that either get no improvement at all (and thus continue to operate below the adopted LOS standard) or roads that get an improvement but it's not enough to bring it up to the LOS standard? The answer has been that we live with the additional congestion; that is the policy trade off being made to arrive at a workable system that treats the individual applicant fairly by not making him/her responsible for bringing the road all the way to the adopted LOS standard.	Noted	Under prior law, local governments could pool contributions from subsequent development to mitigate their new, additional impacts to deficient roadways to help finance the needed improvements. As noted on lines 145-147, this effectively is precluded under current law.

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2h	L - 175 - 183: As we have discussed, I believe the distinction between DRI and non DRI projects is irrelevant. The heart of the argument seems to be the assumption that DRIs have multiple phases and non DRI projects do not. That is demonstrably not the case, especially in these days of increasing exemptions from DRI review for certain large projects. I have done multi phase DRIs and multi phase subthreshold projects. And I have done single phase DRIs and singlephase subthreshold projects. I think other practitioners would tell you the same.	Noted	Other stakeholders identified the DRI and sub-DRI distinction as an important issue, particularly related to the calculation of proportionate share contributions.
2i	L 189-196: As for whether the impact is "on a much more localized area," that is a judgment call made by the local government when determining the significance of an impact in a non DRI project. I agree with DCD that local governments have the discretion to determine "significance".	Noted	
2j	L 203-205: There is a legitimate issue as to whether prop share payments for a non DRI should be required to be directed to a "regionally significant transportation facility." I don't think that's a bad policy decision, but I do agree that perhaps local governments should have more discretion when it comes to directing those prop share payments from a non DRI project.	Noted	Potential recommendation
2k	L 206-212: See my comment above about the 3 years, although it is a technical detail. I think local governments have the discretion to decide when the mobility improvement must be delivered – presumably when the local government has enough money to pay for it.	Noted	
2l	L 216: Some impact fee systems require payment when pulling a building permit, not when the CO is issued.	Concern	Edit made to clarify that proportionate share is generally assessed/collected and then later the impact fees are assessed. As noted, the exact timing for proportionate share and impact fee payments varies among local governments.
2m	L 224-225: In addition to opting for a mobility fee in lieu of concurrency, a local government which imposes transportation impact fees can just repeal concurrency and rely upon its transportation impact fees. That is the simplest system to administer and would have many of the same benefits of a mobility fee without the novel methodology and legal issues presented by a mobility fee.	Noted	
2n	At bottom, I think the Legislature should just let the system work for awhile and see what issues actually emerge. Given the fact that the real estate markets are in the doldrums, it is probably a few more years before we will truly have enough experience to figure out whether there are problems with what was passed last year and, if so, what the best responses would be.	Noted	Potential recommendation
3	Page 6 footnote: strike "of analysis and"	Editorial	Edit made
4a	My staff and reviewed the report and are in agreement with the findings and observations. I am also concerned that by eliminating development traffic from roadways that do not meet the level of service standards, developments will not be mitigating their true impacts. There should be a way to calculate a fair proportionate share that does not cause the new development to pay for the existing deficiency, but does require it to mitigate its impacts. In this way, the local government will eventually accumulate enough funds to improve the facility.	Noted	
4b	I hope the methodology developed will also consider assessments to mitigate impacts within designated multi-modal districts.	Noted	Potential recommendation
5a	My impression from the Draft is that the stakeholders raising concerns to the revisions to the formula were primarily those representing local government. Second, that the objections related more to the projects below the DRI thresholds than those undergoing DRI review. If so it would be helpful to make these clarifications.	Clarify	The concerns were also noted by engineering and planning consultants representing local governments and developers. While initial concerns were expressed regarding smaller developments, others later noted concerns related to "pipelining" of contributions pursuant to DRIs as well.

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5b	As to the substantive issues raised by stakeholders as to the impacts of the revised formula, the primary objection seems to focus on the fact that a deficient link is removed from the calculations of proportionate share for any projects that impact the road in a deficit posture. When you consider the overall context of how roads become deficient and how the local governments control the allocation of resources to only specific roads, the result is not illogical or unfair. Proportionate share is not in actuality any system of equitable allocation of transportation costs. For reasons outlined in my letter, it is instead the accidental consequence of the location of a parcel of land in combination with decisions made exclusively by the local government as to where and when to apply the funds from tax revenues and development exactions towards road improvements. It results in winners and losers. So the prospect of any applicant (whether number one or number 50) being faced with the financial consequences of a deficit road link is entirely outside of the control of an applicant.	Noted	
5c	In addition, the tools available to the local government to more rationally allocate the costs to the traveling public in the form of higher taxes, gas taxes, increased impact fees or more comprehensive mobility fees are typically avoided since charging individual applicants one at a time is much less controversial politically than methods that affect many users in equal measure. This is not a reasonable justification, however, for preserving a system that is terribly flawed.	Noted	
5d	The statement that mobility fee systems are too complex as a justification to preserve the status quo on proportionate share seems almost comical when one considers the extraordinary complexity and arbitrariness nature of the concurrency process (loaded with statutory exemptions and exceptions) and proportionate share payment systems.	Noted	
5f	Finally, I am somewhat confused by the comments made related to the calculation of impact fee credits. Typically proportionate share payments once paid are entitled to impact fee credits as and when they are actually paid over or expended in construction of improvements. This is contemplated by Section 380.06 (16), F.S., and the same concept is included in most proportionate share ordinances at the local level. I do not believe the language of the statute creates a reversal of the credit. If a proportionate share payment yielding credits is paid in advance of impact fees it should be credited against them. Similarly, the credit afforded by the payment of impact fees referenced in Section 163.3180(5) 9(h) 3.c(ii) (E), F.S., is designed to address the situation in which the local government refuses impact fee credit for proportionate share payments made to improve roads that are outside of a specific local network based on the local impact fee ordinance. In those cases, impact fees are to be paid and this section of statute allows such impact fee payments to receive a corresponding credit against future proportionate share payments. There is nothing that "reverses" the credits afforded under prior law.	Clarify	Edits made to clarify wording. Under prior law after a proportionate fair-share (PFS) payment was paid and if the developer was later assessed an impact fee (addressing the same improvement), then the developer could receive a credit against the impact fee for the PFS payment made. The sequencing in the prior law was consistent with that in s. 380.06(16), F.S. The Act now provides when calculating the amount due for proportionate share, the applicant receives credit for impact fees made or payable in the future -- the sequencing is now different than that in s. 380.06(16), F.S.
6a	L 11: Suggest edit as follows, "specified, including how, <u>or if</u> , the landowner will be assessed a proportionate share of the costs of providing"	Editorial	
6b	L 94: Add following bullet: <u>"The applicant's significant traffic impacts one or more facilities where no proportionate share payment is required because the facility(ies) have been defined as deficient"</u>	Editorial	The list reflects the three requirements for local governments implementing transportation concurrency specified in s. 163.3180(5)(h), F.S. The proposed bullet is not one of these three requirements.
6c	Lines 137-140: "significant transportation facility. However, even though if improvements will be made <u>to the deficient facility</u> , the contribution or construction is not required to <u>will not</u> be sufficient to ensure the adopted level of service (LOS) on the impacted transportation facility is achieved and maintained. As a result, the transportation facility could <u>will</u> still be deficient after the improvements are made. <u>Further, there is no requirement that those improvements be made to the facility affected by the project; improvements could be made to a facility that is not itself deficient.</u> "	Editorial	Several edits made
6d	Lines 159-160: "The entity having maintenance responsibility for the facility will be responsible for mitigating the impacts from the <u>initial and</u> subsequent developments and until the entity is able to finance..."	Editorial	Clarifying edit made

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6e	Lines 162-167: "Development community representatives said all applicants for development should contribute their fair share to mitigating their impacts on transportation facilities and have a "level playing field." While acknowledging the inequities in the scenario outlined, some questioned how often this situation will actually occur. These representatives suggested the Legislature should wait until there has been experience with implementing the Act before making revisions to identify any other unanticipated consequences that may emerge and to clarify what, if any, changes to state law are needed. [Comment: If everyone acknowledges that the new legislation creates inequities, we should not have to wait until several developments have benefitted from an inequity before making a recommendation to eliminate it.]	Editorial	Where some felt the new legislation creates new inequities or exacerbates existing inequities, others felt it was a theoretical problem and time was needed to see if this actually will occur.
6f	If lines 164-167 must remain, add this sentence after line 167: " <u>Government representatives took the opposite view, believing that the scenario of development traffic affecting deficient roadways and therefore requiring no mitigation will be the most common occurrence, and that failure to make changes to the law to establish equitable treatment of all new developments will significantly inhibit the ability of local governments to provide adequate transportation infrastructure.</u> "	Editorial	We did not receive this feedback during our initial round of feedback from all local government officials. Although since this time, representatives from several local governments have expressed the view that immediate action would be preferable.
6g	L 217-222: The report should recommend that proportionate share mitigation payments should only be applied as a credit against impact fees to the extent that they are used to fund the same facilities contemplated by the impact fee. There should be no arbitrary cap on the percentage of credit (currently set at 80%) - if the developer and local government agree to use the proportionate share contribution for purposes outside those contemplated by the local impact fee ordinance, no impact fee credit should be applied to the development.	New	Potential recommendation
6h	L197-205: Does DEO and/or FDOT believe there is a definition in the Act for "regionally significant transportation facility" or has that term also been left to local governments to define in their comprehensive plan or land development regulations? The report should address this.	New	Edit to add the observation that the term "regionally significant transportation facility" is not defined for sub-DRI. Potential recommendation
6i	L 206-212: Does the current language in the Act even allow accumulation of proportionate share payments for financing or partially funding improvements? Should there be discussion of making changes to the Act to specifically allow such accumulation? Further, if a proportionate share payment is made and a specific improvement is identified, how can that decision/agreement be modified to allow those dollars to be shifted to a different improvement if circumstances change (additional money made available for the new improvement from another development, grant monies, etc.)?	Clarify	Potential recommendation
6j	L 216 - We question the statement that "Generally, impact fees are collected later when the CO is issued." We think just the opposite, that generally impact fees are collected prior to the certificate of occupancy (we collect prior to issuance of building permits). Do the development community representatives that have been part of this review process and who deal in multiple jurisdictions agree with the current statement as drafted?	Concern	Clarifying edit made
6k	L 244-251: We would like to see discussion about the difficulty of having mobility fees in counties with many separate jurisdictions – for example, in Palm Beach County there are 39 different local governments (38 municipalities and the county). While the County runs the mass transit system, there is no funding for the system from the other local governments.	New	Edit to add information about the principles recommended in the Joint Report on the Mobility Fee Methodology Study (published in December 2009), which included the recommendation that mobility fees have a countywide application at minimum.
7a	All references to "transportation concurrency" as applied to the regulations that local governments are permitted to impose after the "2011 Community Planning Act" should be deleted because these regulations could no longer be consistent with the accepted definition of "concurrency".	Editorial	
7b	L 155: Another equity problem could result from the following scenario --- Even though a development may cause a road to become "deficient" and thereby be required to pay proportionate share, the proportionate share payment could be minimized by the development proposing a minimal first phase. According to the legislation, "transportation impacts mitigated in a previous development phase shall be considered fully mitigated in a transportation analysis for subsequent phases". This is an "equity problem" because any development may be able to "fully mitigate" a capacity deficiency with a ridiculously small payment when its ultimate traffic impact (and consumption of the additional capacity that must be created to serve the project) may be many times greater (especially with a large DRI-scale development).	Noted	
7c	L 163-167: A review of historical development approvals from around the State can answer this question (about the adequacy of proportionate share contributions to fund needed transportation capacity under the rules of the 2011 Community Planning Act) without having to wait to see "how often this situation will occur". Since this inequity will create a serious funding shortfall for government jurisdictions responsible for road construction, it needs to be remedied immediately.	Noted	Potential recommendation

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8a	L 123: Counties should be able to collect at least a percentage of normal mitigation amount.	Noted	
8b	L 125: Further explanation of fully mitigated subsequent phases.	Clarify	Not clear what clarification was needed.
8c	L 145: How would counties prevent continued development on roadways that are already over capacity?	Clarify	See prior comment.
8d	L 153: Why can't local gov pool funds? I don't like that idea.	Noted	As noted in the draft report, this is due to several provisions in state law. The proportionate share contribution needs to be sufficient to accomplish one or more improvements to a regionally significant facility. For deficient facilities, the costs to improve the deficient facility must be taken out of the calculation of the proportionate share contribution and the needed improvements must be presumed to be in place for the calculation. For additional explanation, please contact the Department of Economic Development for this and other information describing changes enacted by the 2011 legislation.
8e	L 156: How to make this conundrum equitable?	Noted	
8f	L 205: What? Does it matter which facility is deficient? When would this be triggered?	Clarify	If the contribution is not made to the impacted facility, then the facility will remain deficient. (See comments to #8d.)
8g	L 206: How does current law relate to planned improvements?	Clarify	Current law does not address how planned improvements are to be treated other than to say the 5-year capital improvement plan must demonstrate the level of service standard will be achieved and maintained. Regarding concurrency, the local governments need to define how planned improvements will be considered.
8h	L 213: Please provide more clarification.	Clarify	Clarifying edits made.
9a	Staff generally agrees with a majority of the report, but has concerns regarding a few paragraphs, which are outlined below. The Department is eager to assist in the formulation of this report as it may have widespread implications for the transportation planning community. Excerpt from Page 4 of the Draft Report Transportation impacts mitigated in a previous development phase shall be considered fully mitigated in a transportation analysis for subsequent phases Leon County Response: Leon County believes this gives a developer a significant advantage when proposing a project to reduce concurrency mitigation to a low amount based on a first phase with relatively few trips. The local government would then have to consider the impact totally mitigated regardless of whether the improvement was in place. Under this scenario, local taxpayers are burdened by either increased congestion on the Concurrency Management System (CMS) or have to fund more roadway projects through taxation.	Noted	If proportionate share was paid for trips in the first phase, only those trips would be considered fully mitigated. Trips from phase 2 would be included in the numerator for any improvements needed for phase 2.
9b	Excerpt from Page 5 of the Draft Report Section 163.3180(5)(h)3.c(II)(B), F.S., provides if any road is determined to be deficient without the proposed development's traffic under review, the costs of correcting that deficiency shall be removed from the project's PS calculation and the needed improvements to correct the deficiency shall be assumed in place (whether actually funded or not) for purposes of the calculation. This effectively precludes local governments from charging developers for new trips added to deficient facilities and pooling contributions from multiple developments impacting the facility to help finance the needed transportation improvements. Leon County Response: Local governments will have no choice but to abolish traditional concurrency based on the opinion noted in the last line of the report. A majority of significantly impacted segments within the Concurrency Management System are already deficient. Leon County does not charge a developer for an existing deficiency, per se, as that would be a clear violation of prior versions of Chapter 163.3180 F.S. However, it is much easier to significantly impact a segment that is already deficient. Leon County believes that existing practice is both fair to the developer and the community at large. If one has to assume that the mitigation for the deficient segment is in place, then a project would fundamentally have to cause a segment to exceed the LOS Standard twice (i.e. deficient with mitigation, then be deficient again). This would reduce the collection of mitigation monies to such an extent as to require the community as a whole to pay for roadway projects to the detriment of existing infrastructure and the need to develop a sound economy. A lack of infrastructure in this State will eventually stifle economic development as businesses do not want to locate in areas with high congestion as this costs a great deal of money in lost wages and time.	Noted	

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9c	Excerpt from Page 6 of the Draft Report - As a result, only the first development to cause a roadway to exceed the LOS standard must make a proportionate share payment, generally not the subsequent developments, which may be seen as inequitable. Leon County Response: This is almost a return to concurrency mitigation prior to proportionate share. The first developer to cause the LOS Standard to be exceeded would have to pay the entire amount of the mitigation prior to 2005. Later developers became 'free riders' under this system. Leon County agrees with FDOT that not only that it may be seen as inequitable, but actually is.	Noted	
9d	Excerpt from Page 6 of the Draft Report -The entity having maintenance responsibility for the facility will be responsible for mitigating the impacts from the subsequent developments and until the entity is able to finance the needed improvements, congestion will increase on the transportation facility. Leon County Response: The effect of the reduction in incoming concurrency mitigation dollars will delay projects and maintenance costs will increase. The actual cost of the delay and maintenance costs are indeterminate at this time.	Noted	
10a	L 50: The word "was" should be revised to "has"	Editorial	
10b	L 130-167: It is noted that for the purpose of calculating the proportionate share amount, improvements needed to achieve the level of service standard should be assumed to be in place before project traffic is added, whether they are funded or not. However, it is recommended that the legislature provides more explicit guidance indicating that only existing and funded improvements should be considered to be in place for the purpose of determining whether a project has a "significant impact" on a deficient facility.	New	Potential recommendation
10c	L 168-222: The legislation should be revised to provide guidance to determine "significant impacts" for Sub DRI projects while still allowing local governments to have their own definition.	New	Potential recommendation
10d	It is noted that for purposes of calculating the mitigation amount, the mitigated trips from an earlier development phases are excluded. However, it is recommended that more explicit language be added to the legislation to indicate that all trips are to be counted in the analysis, whether mitigated or not, for the purposes of calculating a development "significant impact".	New	Potential recommendation
10e	Technical issues regarding timing of funding and needed improvements were identified in this section. It is encouraged that the legislation be revised to provide better guidance of the time line when improvements should be funded and implemented.	New	Potential recommendation
10f	L 242: The word "detail" should be revised to "detailed"	Editorial	
10g	L 223-255: While this section identifies some of the pros/cons of implementing alternative approaches to concurrency and affirms that statutory guidance and authorization for transportation concurrency would be beneficial, there are no clear issues identified in this section that would serve as a foundation for recommendations to revise the Statute in order to provide better guidance to local governments that decide to adopt alternative approaches to concurrency.	Concern	Reference to the Joint Report on the Mobility Fee Methodology Study (published in December 2009) recommendations related to this added
10h	It is recommended that the Proportionate Share Report contain recommendations to help guide local governments in the management of deficient roadways in order to ensure that the adopted levels of service are reasonably met since the pooling of proportionate share contributions may not be permissible under the statutory framework.	New	Potential recommendation
10i	It is recommended that Section 163.3180(5)(h)3.a., F.S. be revised to provide more clarity as to with whom an applicant should enter into a binding agreement to pay for or construct its proportionate share of the required improvements.	New	Potential recommendation
10j	Section 163.3180(5)(e) F.S. encourages local governments that apply transportation concurrency within their jurisdiction... "to develop policy guidelines and techniques to address potential negative impacts on future development: In urban infill and redevelopment, and urban service areas, with special part-time demands on the transportation system, with de minimis impacts, and on community desired types of development, such as redevelopment, or job creation projects". It is recommended that statutory guidance be provided to local governments in the creation such policy guidelines to address potential negative impacts from future development.	New	Potential recommendation
11a	L 33-35: The concept of "concurrency" was introduced into the comprehensive planning process in 1985, but was developed and matured during the development of regional impact (DRI) review process.	Noted	
11b	L 38- 39: Use of the terms "ensure new development does not occur" unless adequate facilities are "in place" suggests an inflexible approach to concurrency that fortunately has not prevailed except in a relatively few local governments in Florida. It would be more representative of the manner in which concurrency has been implemented and the goal of the policy to say that it is an additional funding mechanism put in place to ensure that a development mitigates its impacts on public facilities.	Noted	Clarifying edit

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11c	L 52-53: Alternatives were put in place not just "where the ability to widen roadways is more constrained," nor was that the primary rationale for the alternatives. For many participants, the main motivation was to encourage development and redevelopment in urban areas where artificially set levels of service were preventing projects from moving forward.	Noted	Clarifying edit
11d	Chart on page 3: First box, more accurate to add "for most projects" after "becomes required" to differentiate between DRIs and other projects, but still recognize statutory project exceptions. In third box, we believe it was 1999 when the proportionate share formula first became part of the statutes. In the fourth box, the reference to establishing a "developer proportionate fair share payment system" is unclear. In the fifth box, the reference to s. 163.31801 as impact fee "enabling legislation" is incorrect. Impact fees were created under the home rule authority of local governments; it would be more accurate to refer to that statute as one which includes "impact fee requirements."	Editorial	Edit to reflect when proportionate share contribution was authorized as a means to satisfy transportation concurrency. Clarifying edit on impact fees.
11e	L 107-110 (3rd and 4th bullets) misstate the situation applicable to cumulative impacts. This portion of the law was very carefully crafted to require that where transportation impacts to a roadway from one stage or phase have been included in the proportionate share payment, they cannot be included cumulatively in the analysis of impacts of the next phase. Use of the word "mitigated" when describing this concept may lead to the inaccurate conclusion that if the impact on a particular roadway was not addressed in the proportionate share payment, those same impacts can be included when the next phase is analyzed. This same use of the word "mitigated" appears in lines 125-126.	Editorial	No change to 3rd bullet; clarifying edit to 4th bullet. Note: s. 163.31809(5)(h)3.c.(II)C, F.S., uses the term "mitigated" -- "...all transportation impacts from that stage or phase for which mitigation was required and provided shall be deemed <u>fully mitigated</u>"
11f	L 130: Use of the term "create inequities" assumes that inequities are new to this process, thus ignoring the undisputed fact that there were major inequities in way in which the previous statute operated.	Noted	Clarifying edit to the finding statement.
11g	Further, suggesting in line 134 that an "unanticipated" consequence of the changes in the Act was that a transportation facility could still be deficient (line 140) assumes that a developer should be required to pay 100% of the cost of correcting a deficiency, even if the roadway was deficient before the developer got there, or that the developer only contributed a small amount to creating the deficiency. To avoid that situation is EXACTLY why the changes were made!	Concern	The report does not assume that a developer would be required to pay 100% of the cost of correcting a deficiency (i.e., "backlog"), since requiring a developer to pay for the "backlog" or pre-existing deficiencies was already prohibited by state law. The report indicates these two provisions (reflected on lines 135-147) taken together the unanticipated consequence of prohibiting developers paying for their additional
11h	L 145-147: By using the term "effectively precludes", assumes that local governments do not have the authority to allow "pooling" of contributions. We submit that pooling is not required, but that the statute does not prohibit a local government from utilizing that technique.	Concern	Refer to response to item #8d.
11i	L 148-152: The hypothetical assumes that the local government chose to use the proportionate share payment to make one or more different "mobility improvements that will benefit a regionally significant transportation facility" other than the one in question. A developer cannot legally be required to fix everything!	Concern	The hypothetical does not made this assumption -- it assumes the payment was made to the impacted (regionally significant facility), but improvement was not sufficient to bring the facility back to the adopted level of level service standard -- thus was still deficient after the improvement was made. (Refer to lines 137-140 in the draft report.)
11j	L153-155: Assumes pooling is prohibited, which is not the case.	Concern	Refer to response to item #8d.
11k	L159-161: Is true today, regardless of any change in the statutes, and it seems hypocritical to "blame" this allegedly "new" scenario on either a change in the statutes, or the development community, in general. Local governments have many other tools at their disposal to fairly assess the impacts of development, such as impact fees and mobility fees. Putting reasonable restrictions on the use of the proportionate share funding mechanism does not unduly limit local governments.	Noted	Under prior law, local governments were able to pool contributions from developments.
11l	L 186: In the preceding paragraph, it is acknowledged that the formula has been the same for DRI and non-DRI projects (lines 179-180), thus it should not be referred to as the "former DRI formula."	Editorial	Sentence deleted
11m	L 203-205: This is an incorrect statement of the law. The mobility improvement does not have to be to a regionally significant transportation facility, it must be of benefit to a regionally significant transportation facility. Since it is the local government who decides which facility will receive the proportionate share contribution, it is confusing that this complaint would be raised.	Concern	Clarifying edit made to add the word "benefitting"
11n	L 216: We are unaware of any study in Florida that demonstrates that impact fees are generally collected when a certificate of occupancy is issued, and would appreciate receiving such a study. Our experience has been that impact fees are often collected at the building permit stage. Regardless, this complaint seems hollow to us. The point is that you should not collect twice for the same impact and it does not matter which fee is paid first.	Clarify	Clarifying edits on the timing issue (see comments to #21). Note: The draft report does not suggest the developer should pay twice for the same improvement. Under current law the credit no longer requires that the both contributions be for the same improvement or addressing the same need.

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11o	L 252-253: We do not agree that authorization for concurrency alternatives would be beneficial, nor that it is needed at this time. Several local governments have adopted mobility fees under their existing home rule authority, and we are unaware of any challenges to those fees. Until more experience is gained as to how these alternatives will function, statutory guidance is also premature.	Noted	
12a	L 141-161: Please clarify the following: If the level of service on a roadway is already failing, can the local government deny the development order due to transportation concurrency not being met? One is to assume that if the roadway is at LOS F that only the first development would be charged an impact fee and the subsequent developments would not.	Clarify	If the road is already deficient, then the improvements needed to remedy must be assumed to be in place. If the assumed capacity is sufficient to accommodate the development, then permits must be issued and no proportionate share paid.
13a	Regarding the calculation of proportionate share contribution, the current law states that transportation impacts mitigated in a previous development phase shall be considered fully mitigated in a transportation analysis for a subsequent phase. Please define "mitigated" and "impacts" with regarding this. Does this mean that if the deficiency-causing impacts are mitigated through proportionate share, impact fee payment; etc., the phase is considered fully-mitigated? Or does this mean that all impacts, whether they cause a deficiency or add to traffic on facility that is not deficient, are required to be mitigated?	Clarify	Mitigated means that proportionate share is paid or constructed for trips which result in significant impacts. Significant impacts for DRIs are defined in Rule 9J-2. Significant impacts for non-DRIs need to be defined in the local government's comprehensive plan by the local government.
13b	Regarding the "Finding: Changes made to the calculation of proportion share may create inequities and increase congestion on roadways" 2nd bullet: We do not agree with how this section is being interpreted by other local governments (e.g., once the road fails, subsequent developments don't have to mitigate for their impacts). We interpret this section in the following way: We still are able to calculate and collect the development's proportionate share on roads that are determined to be deficient as long as the development is paying for only the impact the development is causing. In the case of a large development coming through the process, we would not be able to have the developer fund the entire roadway project because he would not be financially responsible for the other developments' that caused and prolonged the deficiency.	Noted	Section 163.3180(5)(h)3.(II)(B), F.S., in describing the use of the proportionate share formula, provides "[I]f any road is determined to be transportation deficient without the project traffic under review, the costs of correcting that deficiency shall be removed from the ... calculation and the necessary transportation improvements to correct deficiency shall be considered in place for ... the calculation."
13c	Page 7, Timing of needed improvements: Considering the transportation funding issues (e.g., less gasoline tax revenue, temporary suspension of impact fees and less impact fees being collected in general) and witnessing of declining traffic counts in most locations throughout the county, we do not see this as an issue. Eliminating the 3 year construction implementation rule makes sense in today's times, and allows us to do the best we can do considering our resources.	Noted	
13d	Page 7, Calculation of Impact Fee credits: Guidance or clarification is needed with the new law's credit on proportionate share contribution for impact fees, mobility fees, and other transportation mitigation requirements paid or made payable in the future.	Noted	Potential recommendation
13e	Page 8, Alternative approaches to concurrency: Statutory guidance and authorization for transportation concurrency alternatives is definitely needed, while keeping in mind the need to provide flexibility to the local governments.	Noted	Potential recommendation
14a	While the draft report provides a valuable overview (and historical perspective), and points out a number of "problems" associated with the new law, the report does not provide any recommended changes or alternative methodology for the calculation of proportionate share as required by the statute.	Noted	As indicated in the posted the draft of the report, it was acknowledged recommended changes had not yet been prepared and input was solicited on potential recommendations. The final report includes recommendations and potential policy alternatives.
14b	Recommend FDOT take the lead in identify potential language changes in the statute or in F.A.C. that can make the provisions and intent of the statute implementable.	Noted	See prior comment.
15a	Proportionate Share Calculation (pp. 4 and 5 of the report). The Community Planning Act combines the two previous mechanisms for satisfying transportation concurrency, one for DRI developments (Proportionate Share) and the other for smaller developments (Proportionate Fair Share), into one mechanism (Proportionate Share contribution). Development community representatives feel development in the past have been "overcharged" for their impacts on the transportation system and therefore are supportive of the changes made in the Act to address this issue. County staff agrees that development applicants should not be required to pay for the costs of pre-existing deficiencies on transportation facilities; however, the Act may have unanticipated consequences because even though proportionate-share contribution is required it may not be sufficient to ensure that the adopted LOS standard on the impacted transportation facility is achieved or maintained.	Noted	

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15b	Findings Section (p. 5 of the Report) - Changes made to the calculation of proportionate share may create inequities and increase congestion on roadways. County staff concurs with this finding for the following reasons: 1) The proportionate-share contribution may not be sufficient to ensure the adopted LOS of the transportation facility impacted is achieved or maintained. As a result, the facility could still be deficient after the improvement. 2) Local governments cannot charge developers for new trips added to deficient facilities and precludes local governments from pooling contributions from multiple developments impacting the facility to help finance the needed improvements. And 3) it seems that proportionate-share contributions may be used only on mobility improvements benefitting a regionally significant transportation facility. This limitation may create congestion on non-regionally significant facilities. Governments are always trying to catch up and find funding for deficient facilities.	Noted	
15c	Line 125 Trips mitigated in a previous development phase must be considered fully mitigated for subsequent phases, not clear on this language. This is ok so long as all phases reviewed and all trips considered at time if initial review and/or mitigation for all phases conducted.	Noted	
15d	Line 162 All developments should pay for their proportionate share for their trips on deficient facility.	Noted	
15e	Line 174 Calculation for impact fee credit will be addressed at the same time of proportionate share calculation, through agreement.	Noted	
15f	Line 184 Same formula for DRI's and sub DRI's ok.	Noted	
15g	Line 189 This jurisdiction will follow DEO direction, and will use our discretion. We will continue to apply "significant impact" as we currently do for DRI's which is 5%, and for sub DRI's any impact which results in the adopted LOS being exceeded, will be considered a "significant impact."	Noted	
15h	Line 197 Language of "benefitting a regionally significant transportation facility" not defined. For sub DRI's, requires a definition so that funds can be expended to a facility. However, if mitigated due to a deficiency on a particular facility should benefit said facility, which we may consider to be another mode/facility impacting the facility.	New	Potential recommendation
	Line 213 Impact fee collected here at time of building permit, not CO. CO too late in process in order to be expended to accommodate the development's impact	Clarify	Clarifying edit (see comments to #2l)
16a	Page 7 Line 216- I thought impact fees are typically collected at the time of Building Permit and NOT certificate of Occupancy. We collect ours(When we collected them at building permit. Other Counties I have worked for collected at Building Permit)	Clarify	Clarifying edit (see comments to #2l)
16b	Concern over what could be varyiong definitions of significant impact.	Noted	
17a	It seems fair that all developments adding traffic to a deficient road should pay their share to fund the needed improvement. However, there are some cases where mitigation is collected by local government for a "theoretical" improvement. This is a roadway improvement that local government never intends to actually construct. They collect the proportionate share from the developer based on actual construction costs (i.e. widening a roadway), then they send the funds to other improvements. As a result, this deficient roadway is never actually improved and all developments that are deemed to have a significant impact or fail that roadway are subject to pay a proportionate share for it. This is an endless cycle due to the fact that the roadway is never actually improved and always remains deficient. Therefore, government is able to continue collecting proportionate share for an improvement that will never be constructed even after enough money has been collected to actually construct the improvement.	Noted	
17b	Legislative guidance should be provided that prohibits the collection of proportionate share or mitigation for "theoretical" roadway improvements. As an alternative, impact fees or mobility fees could be collected to fund the improvements of alternative modes of transportation. This is particularly relevant to urban areas where further widening and additional lanes are not feasible. Instead, a mobility fee could be collected to fund bike, bus, pedestrian, or other modes of transportation to enhance the area's overall mobility.	New	Potential recommendation
18a	Chapter 2011-139 combines the two previous mechanisms for satisfying transportation concurrency in the form of a transportation proportionate share contribution. In Southwest Florida, the current practice is for the local government to assess the new development with a proportionate share contribution towards a deficient segment or segments to address concurrency. To satisfy concurrency, the new development would pay that proportionate share contribution or the local road impact fee, whichever is higher.	Noted	In Charlotte, Collier and Lee Counties DRI developments are asked to pay the proportionate share or impact fees, whichever is higher. Other counties in Southwest Florida either report a different practice or have suspended/discontinued their impact fees.

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18b	The current practice with the payment of proportionate share contribution or local road impact fee, whichever is higher, negates the "unanticipated" consequences cited in the draft report such that: <ul style="list-style-type: none"> • Everybody pays - There is no free ride. • Since local road impact fees do not identify or exclude "transportation deficient" roadways in the fee structure, the new development would contribute its mitigation towards "transportation deficient" segments in the form of road impact fees even though a proportionate share contribution for a specific deficient roadway segment is not assessed. • The "pay and go" contribution/payment can be applied to pipeline a specific needed improvement. • Cumulative "pay and go" contribution/payment from multiple developments can be pooled to fund the needed improvement or improvements. 	Noted	As noted lines 213-214, most cities and counties do not impose impact fees and some jurisdictions with impact fees have suspended them. (The cited 2011 report indicates 58 cities and counties in Florida have imposed fees for roadway impacts and 13 of these jurisdictions have suspended their impact fees.) Also, as indicated on lines 141-147 (and guidance issued by DEO), the treatment of "deficient" roadways in the calculation of proportionate share effectively precludes the pooling of contributions from multiple developments.
18c	The current language in Chapter 2011-139 adequately addresses transportation concurrency if applied correctly, as reflective of the current local practices in Southwest Florida.	Noted	See prior comment to item 18b.
18d	The distinction in treating DRI and sub-DRI developments can be fine-tuned in local comprehensive plans and development codes.	Noted	
18e	DPA concur that the Legislature should wait until there has been experience with implementing the Act before making any significant revisions.	Noted	
18f	Lines 23-29: The report provides background and findings. We understand that FDOT's recommendations regarding changes to the proportionate share calculation language will follow. This is the most important piece of the report and we trust that the development community will be allowed adequate time to thoroughly review and comment on the recommendations.	Noted	
18g	Lines 53-54: The practice in Southwest Florida has been that the development will pay its proportionate share or local road impact fees, whichever is higher. The development and the local jurisdiction may agree on a "pay and go" to achieve concurrency through a scheduled or time-certain payment of the development's mitigation.	Noted	See prior comment to item 18b.
18h	Line 134: This statement assumes that there are "unanticipated" consequences". The consequences may have been clearly known and anticipated by the Legislature.	Noted	
18i	Lines 137-140: The new rule was not intended to fix a "broken" concurrency system. The new rule only removes the burden for new developments to mitigate pre-existing deficiencies.	Noted	Prior law also prohibited requiring new developments to mitigate pre-existing deficiencies. The current law effectively precludes pooling of contributions (see also related comment to item 18b).
18j	Lines 145-147: The practice in Southwest Florida has been that the development will pay its proportionate share or local road impact fees, whichever is higher. The development and the local jurisdiction may agree on a "pay and go" to achieve concurrency through a scheduled or time-certain payment of the development's mitigation.	Noted	
18k	Lines 152-161: Even if the entire roadway network were to be transportation deficient resulting in zero proportionate share contributions, the new developments would still be required to mitigate their impacts of new trips through the payment of local road impact fees. There is no free ride for either the first or last developments.	Noted	As noted in the report, most local governments do not impose impact fees; in such jurisdictions, developments would not be required to mitigate their impacts on deficient roadways.
18l	Lines 165-167: We concur that the Legislature should wait until there has been experience with implementing the Act before making any significant revisions.	Noted	
18m	Lines 178-179: The practice in Southwest Florida has been that the development will pay its proportionate share or local road impact fees, whichever is higher. The development and the local jurisdiction may agree on a "pay and go" to achieve concurrency through a scheduled or time-certain payment of the development's mitigation.	Noted	
18n	Lines 187-188: While some terminology is applicable to DRIs and not to sub-DRIs, we would assume that these adjustments can be made in the local comprehensive plan amendments and local development regulations.	Noted	

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18o	Line 216: Impact fee collected here at time of building permit, not CO. CO too late in process in order to be expended to accommodate the development's impact	Clarify	Clarifying edit (see comments to #2l)
18p	Lines 236-237: The assessment of mobility fees, as with impact fees, does not guarantee that a needed improvement will be fully funded or constructed in a timely manner.	Noted	
19a	L 85-94: Referenced provisions represent minimum circumstances in which the local government must allow an applicant to meet concurrency, but there are additional means by which local government may determine that concurrency has been met. Particularly with regard to the requirement that proportionate share contributions must fund an improvement that "will benefit a regionally significant transportation facility," please clarify that local government may also accept a proportionate share contribution to fund other significant transportation facilities that may not be "regionally significant," or may pool contributions from multiple developers to fund such improvements, or may accept proportionate share in other circumstances that the local government determines to be beneficial to the local transportation system.	Clarify	This requested clarification is not consistent with the current wording in law; numerous stakeholders have suggested current law be modified to allow such practices.
19b	Page 5 footnote: Please eliminate footnote or clarify that it is one interpretation tat is used for the example to which the footnote refers. City reading finds only that the costs of correcting a deficiency will be removed from the proportionate share calculation, the improvement to correct the deficiency must be considered to be in place, that the development's share shall be calculated only for needed improvements that are greater than the identified deficiency, and of course that proportionate share is charged only for facilities that are determined to be significantly impacted by the projected traffic under review. If statute states that the development must <u>cause</u> the roadway to fail in order to be charged for the PS, please provide that reference in the report.	Clarify	No change need. If the roadway is presumed to operating at the established LOS (with the theoretical improvements in place) and continues to do so with the traffic from development, then this would not be included in the calculation of proportionate share.
19c	We agree with the findings of the report that revisions may be warranted to address technical issues arising from legislation. It would be useful to clarify Legislative intent of the deficiency adjustments to the proportionate share calculation. It is our opinion that the intent was to clarify that a development should not be charged for the higher costs associated with deficient segments (e.g., high right-of-way costs due to need for multiple lane additions or very high improvement costs resulting from large improvements necessary to address background traffic), that the proportionate share calculation should be based only on the proportion of capacity used by the development under review, and that proportionate share should be equitable, fair, and predictable such that a development of any size that significantly affects a roadway projected to operate over its adopted level of service should mitigate for its impacts commensurate with the size of the development.	Concern	Language in the current law does not support this interpretation, please refer to lines 135-147 in the draft report which identify the statutory language regarding the proportionate share contribution and treatment of deficient roadways in the calculation of this contribution.
19d	The opinion of the deficiency language expressed by some in the development community appears to be derived from the experience in costly proportionate share estimates for large DRIs, but ignores how that interpretation may affect sub-DRIs. The changes effectively potentially eliminate proportionate share contributions for all but the largest developments, as those are typically the only developments large enough in size to cause deficiencies with only their traffic. This opinion also reduces predictability because much analysis is needed to determine if the "phantom" road improvements put forth by this opinion will be sufficient to offset the development's traffic. And, this opinion does nothing to address the chief reason for high PS estimates, namely high total road improvement traffic cost estimates.	Noted	
19e	We note the final bill analysis prepared during the legislative session found (on pp. 26-27 of the analysis) that House Bill 7207 would have no fiscal impact on local governments, and that the bill: "removes state required transportation and school concurrency, allowing local governments the flexibility to employ less costly methods of managing transportation and school impacts. However, the local governments' authority to continue applying concurrency is retained." The analysis found that the bill "provides greater deference to local government decisions." It would be helpful for the report to reference this information, and explain the discrepancy between the post-session interpretation of the effects of HB 7207 with regard to proportionate share contribution calculation and the information provided to the members of the Legislature during session, and recommend whether any adjustments to the language should be made to correct that perceived discrepancy.	Concern	Current law provides transportation concurrency is optional. However, for local governments opting to retain transportation concurrency, s.163.3180(5), F.S., specifies requirements for transportation concurrency (including the calculation of proportionate share contributions).
20a	L 5-7: Recognize the reality of extra-jurisdictional impacts, particularly with regard to transportation resources and facilities of state and regional importance: "Perhaps...and provides local governments with greater control over planning decisions impacting their <u>and, in some cases, other</u> communities."	Editorial	
20b	L 38: Should add history that one of the ways the original (1975) Local Government Comprehensive Planning Act was strengthened by the 1985 act was through the addition of concurrency.	Editorial	
20c	L 50: Correction: "For example, the Act was <u>has been</u> amended..."	Editorial	

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20d	L 83-85: The document states: "... local governments are no longer required to use the LOS standards established by FDOT for SIS facilities." This statement and the statement on Line 77 ("Local governments must consult with FDOT when proposed amendments affect the SIS") may need to be clarified with relation to each other since they may be taken out of context if read independently. For example, one may assume from one statement that FDOT LOS standards are no longer used for the SIS, but the other statement still mentions that there should be coordination with FDOT. Is FDOT able to have a discussion regarding LOS standards for the SIS in that coordination meeting?	Clarify	Yes
20e	L 95: The "Proportionate Share Calculation" provides a good overview of the intent to combine "proportionate share" and "proportionate fair share". However, more detail regarding some of the technical nuances of these calculations is not included in this document. The intent may not be for this document to be the forum to include the "technical details", but we should be aware that more guidance is necessary regarding several technical components of the calculation. District 4 has been in discussions with Central Office regarding some specific questions (For example: Is there a difference in calculating the cost of mitigating the impacts of failing roadway segments vs. a failing segment in only one direction?). District 4 has also been in discussions regarding how to handle two adjacent DRI's and their responsibilities and process with regard to Prop Share calculations and commitments.	Noted	
20f	L 135: The section that states the proportionate share contribution needs to "be sufficient to accomplish one or more mobility improvements benefiting a regionally significant transportation facility" is unclear and could be interpreted to exclude local or state facilities. What if the proportionate share contribution is not sufficient to accomplish a mobility improvement?	Noted	Current law does not define "regionally significant transportation facility (see also comment to item 6h). In order to satisfy concurrency, the contribution or construction needs to be sufficient to accomplish one or more mobility improvements benefiting a regionally significant transportation facility.
20g	L 145: The last sentence prevents local governments to collect funds from multiple developments to improve a deficient facility. The first development that makes the facility deficient with its project's impacts is the only development that will be required to provide a proportionate share payment.	Noted	
20h	L 159-161: The sentence on these lines notes an entity, such as FDOT, having maintenance responsibility for a facility will be responsible for mitigating the impacts from subsequent developments and until the entity is able to finance the needed improvements, congestion will increase on the facility. The report should recognize "until" may be decades later, if ever, given substantial existing transportation needs, funding shortfalls/limits, and the possibility a deficient facility subject to unmitigated impacts may not match up with project priority lists for MPOs or others.	Editorial	
20i	L 191: The law should define "significant impact" for sub-DRI developments.	Noted	Potential recommendation
20j	Relating to the comment on Lines 5-7, the report findings do not address the subject of how transportation facilities that cross jurisdictional lines are to be handled. How will segments of such facilities be identified for transportation analysis (deficiency determinations) – by local governments with jurisdictional limits and their particular purposes in mind or by the entity having maintenance responsibility and a focus on functionality of the facility crossing jurisdictional lines? Which level of service standards will be used if they are not the same crossing jurisdictional lines? Also, the report findings do not address the apparent lack of recourse for local governments subject to unmitigated impacts and possibly protracted increased congestion as a result of development decisions made by a neighboring local government(s).	Noted	
20k	The report findings on lines 246-248 note concern that uncertainty and unpredictability for the development community may be created if widely varying approaches to mobility fees are implemented by local governments. They should recognize the complex landscape for the development community and others that will unfold as some but not all local governments retain transportation concurrency, some but not all local governments collect impact fees, some but not all local governments implement mobility fees, etc.	Noted	
20l	Potential recommendation: Tie continued implementation of transportation concurrency to the establishment of transportation deficiency areas under s. 163.3182, FS, if deficient facilities for proportionate share payment purposes are identified.	New	Potential recommendation

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20m	Potential recommendation: Have transportation concurrency systems require contributions to increase other modal (transit, pedestrian, bicycle) capacity in cases where facilities impacted by developments have already been deemed deficient using a roadway level of service standard.	New	Potential recommendation
20n	Potential recommendation: Provide statutory authority that mandates assessments for facilities that are deficient or projected to become deficient (as determined by the jurisdiction with maintenance responsibility, not the developer) by establishing a special funding district where all properties within the impact/influence area pay their fair share of the project costs based on the maximum number of new automobile trips generated from the site that will impact the deficient facility within the funding district (similar mechanism of a municipal service benefit unit). The special assessment fee should not receive an impact fee credit since the impact fee is applied to the broader transportation network needs that are within a specific zone (sometimes countywide). However, the assessment fee and the impact fee should not be combined to pay for the deficient facility. The assessment fee should be transferred to the jurisdiction that has maintenance responsibility for the deficient facility. The deficient facility should be designated as "constrained/congested" until there are enough funds amassed to pay for the construction of the improvement. If the deficiency cannot be mitigated by roadway improvements, the fee should be used for multimodal improvements such as transit infrastructure and operations.	New	Potential recommendation
20o	The final report finding could be reframed as a recommendation: Provide statutory guidance and authorization for use of alternatives to transportation concurrency. Even with such a recommendation, however, it remains unclear how a "patchwork" approach to addressing transportation system impacts from development across local governments will meet the "predictable, equitable and fair" bar for developer contributions or ensure the availability of transportation facilities and services within and crossing jurisdictional lines needed by residents, businesses and visitors.	New	Potential recommendation
21a	L 35-36: Revise to state "...have evolved and changed to subsequent to the 1985 Act"	Editorial	
21b	L 39-40: Revise to state "...adequate transportation facilities and services are available concurrent with the impacts of development"	Editorial	text revised
21c	L 51: Revise "exemption" to "exception"	Editorial	edit made
21d	L 133-134: Revise "I...they indicated the following provisions..." to "...they indicated that the following provisions..."	Editorial	
21e	L 153-155: Revise to state "Since the roadway is made deficient by the first development, local governments..."	Editorial	
22a	The Background Section is well written but should be expanded to include information essential to a full understanding of transportation concurrency and its inescapable shortcomings.	Editorial	Moved the conclusions of the 2009 joint mobility fee study to the background section, which highlight stakeholder concerns about transportation concurrency.
22b	The Background Section does a nice job of highlighting legislative changes over the years but should recognize statutory provisions prohibiting payment for backlogged conditions as a part of proportionate fair-share and better highlight the extensive geographic concurrency exemptions adopted in 2009.	Editorial	
22c	The discussion of the Community Planning Act of 2001 should recognize the elimination of productive tools for areas with deficient transportation facilities to provide relief and shift attention back to planning and funding most notably multi-modal districts. The text should also recognize the addition of multiple paragraphs of hard-to-understand language governing the calculation of proportionate fair-share. Another important topic to cover is the statutory merging of 'proportionate fair-share' with 'proportionate share' into 'proportionate-share' that appears to render the majority of locally established concurrency schemes inconsistent.	Editorial	
22d	The Findings Section starts with a sweeping conclusion from stakeholders consulted for the report; however, the stakeholders are not named and the conclusion sets a tone that everything is okay when that is far from the case.	Concern	A list of stakeholders providing input to this report will be added to the FDOT website containing the final report and other related information

Comments and Responses on the Draft Proportionate Share Report

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22e	The initial finding should be strong and direct. There is no question that the calculation of proportionate fair-share creates serious inequities due to the problems outlined above and new ability of local governments to opt-out of transportation concurrency allowing a 'crazy-quilt' pattern of participation.	Noted	
22f	Finding two should assertively state that revisions to state law are essential to reconcile the blending of proportionate fair-share and proportionate share.	Noted	
22g	I like the final Finding and good sub-points but recommend that it be strengthened to emphasize that Mobility Fees are a dramatic departure from transportation concurrency and hold the promise of ensuring development contributions that are fair to the public and developers alike, predictable and help achieve good planning objectives including incentives for compact development and a revenue stream for transportation improvements	Noted	
22h	Add a direct statement concurring with the findings of the 2009 joint report to the Legislature referenced in lines 231 – 235 of this draft.	Noted	Revised the report to reference the recommendations of the 2009 joint report
22i	Add a direct statement supporting legislative revisions to encourage local governments on a county-basis to adopt mobility fees as a substitute for transportation concurrency. As the report notes, mobility fees methodologies were previously identified for the Legislature pursuant to Chapter 2009-96, Laws of Florida.	Noted	See prior comment
22j	Add a direct statement that local governments should retain authority to control the timing of development at the time of zoning or subdivision approval but not at time of permits that authorize physical development.	Noted	
23a	Line 107: This is not quite the correct restatement of the current law. The current law says that Prop Share that is "required and provided" in any particular phase is considered to be mitigation for those impacts. A developer may still owe Prop Share for a previous phase if the subsequent cumulative analysis determines that some of his impacts which were created but for which payment was not provided in his previous agreement is still owed as the document points out in Line 109 but again is misquoted in line 125.	Concern	While line 107 does not repeat verbatim what is stated in law, it reflects the meaning. Line 125 was intended to reflect the same language on line 107 and was edited to clarify this.
23b	Line 137: I believe this finding misstates an important point: If the Level of Service (LOS) on a roadway is still deficient after the constructed developer fix, it means the local government should either arrange additional steps to satisfy the desired LOS, or they should change the LOS to better reflect real world conditions. Such additional steps could include: 1) commitment of impact fees from future developments that submit applications but do not trigger additional deficiencies; 2) Create a Deficiency Authority under F.S. 163.3182 over the area, not project, to pledge additional funding resources. These funds would be bondable; 3) Create a planning/assessment area for all developments in the designated transportation impact area. The established fee would thus equally apply to all. 4) Move away from a concurrency-based system if the local government cannot fulfill its required LOS. All of these are options but not new or contingent on HB 7207.	Concern	It is unclear what misstatement appears in line 137 ("... significant transportation facility. However, even though improvements will be made, the ..." or in the finding appearing on lines 130-131.
23c	Line 141: The conclusion is true, but not completely stated. It is the local governments' responsibility to fund transportation improvements, not potential or real developers. Under HB 7207 they must provide a CIE of funded and unfunded projects and a schedule to provide for the unfunded requirements. This requires planning and long-range decisions about areas, not individual developments. While the individual developer projects may provide the funding for the improvements, this is different than the statement that developers are responsible for the improvements. Further, the paragraph as written misses the issue that many developments impact much more than one road. Total funds collected by local governments from several Prop Share-impacted roads may be utilized to fund only one or more complete improvements on other roadways. In that situation, even though a deficiency still remains on an individual segment, the developer has created sufficient capacity in the area to mitigate his impacts. Additionally, nothing in the new law HB 7207 prohibits "pooling" since the timing of improvements is not specified. HB 7207 only specifies that funding must be sufficient for one or more improvements that benefit, not necessarily that totally complete, any specific roadway or other mode improvement. A local government may pool funds and time the improvement to better match the several developments' actual impacts on the area.	Concern	It is unclear what is misstated in line 141 ("Section 163.3180(5)(h)3.c.(II)(B)., F.S., provides if any road is determined to be deficient without ..." Regarding the pooling of contribution, one subsection of law states the contribution must be sufficient for one or more improvements benefitting a regionally significant facility. However, the paragraph beginning on line 141 cites another section of law pertaining to the calculation of these contributions, which cites the treatment of deficient roadways --- costs of making such improvements taken out of the calculations and presuming the needed improvements are in place. Refer to the comments to item #13b for more details about this.

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23d	Lines 148-161: While your conclusion may be true, the underlying interpretation is debatable. The situation as identified in the "comments" is so situational as to be meaningless. While the presentation may fit sub-DRI's as you point out on Line 172 it is not applicable to DRI developments since they are bound by 9-J2 rules for cumulative analysis of prior and subsequent traffic impacts. For a development to not be charged Prop Share on a roadway that is failing is not inequitable for the reasons listed in the answers above. Simply stated, the funds may be collected and can be assigned to the roadway, but the ultimate responsibility for LOS rests with the local government since they may determine the desired level of congestion that should fit their long-range transportation plans. An increase in congestion will provide better flexibility in choosing the correct additional "modes" for transportation fixes as congestion is a primary criteria in transit applications for urbanized or urbanizing areas.	Concern	It is not clear what underlying interpretation in lines 148-161 is seen as debatable. The situation described in lines 148-161 is also applicable to DRIs (see related comments to item #5a). Note: Section 163.3180(5)(h)3 provides proportionate share must be allowed to satisfy the requirements of s. 380.06, F.S., when applicable.
23e	Line 168: The current HB 7207 language for Prop Share was only designed to deal with a problem of inequities in payment for DRI's. However, the current legislative language in HB 7207 makes no distinction between development types.	Noted	
23f	Page 6 Footnote 4: The wording is not correct in the example as per DCA. A phantom lane occurs when there is a road that is failing and a subsequent developer impact triggers an additional deficiency and the developer attempts to not pay for the additional deficiency since the first improvement is not yet built. A developer always owes some form of mitigation for his traffic impacts regardless of the road condition. They just may not owe Prop Share in that phase depending on the road condition and type of development.	Concern	It is not clear what example "per DCA" is being referred to, staff with the Department of Economic Development believe the wording in the footnote is correct. The statement that developer will always owe mitigation regardless of road condition (i.e., is deficient) in true only if the local government has adopted impact or mobility fees. As noted in the report, most local governments have not done so.
23g	Line 191: I agree that "significant impact" may need further definition. Since there is no longer a statutory distinction between DRI and sub-DRI projects, the DCA interpretation identified in this report may not be legally sustainable. I believe Legislative action to clarify distinctions between DRI and sub-DRI without removing the issue of backlog may be necessary.	Noted	Potential recommendation
23h	Line 197: I believe that the current legislative connection of Prop Share for regionally significant roadways may be too restrictive. The original intent of this language in the 2005 law was to help local governments in an orderly process of improvements by reference to the Five Year CIE for eligibility. Now the reference to regionally significant may in some circumstances become a handicap to allowing funding for a significant improvement but one that is not regionally significant. For cities this language may be too restrictive.	Noted	
23i	Line 206: Nothing in the new Legislation provides a timing for improvements. This is why "pooling" is allowed as stated previously. Since the local government adopts the concurrency system, they may identify when the project improvements may be required through their CIE schedule. While the developer funding must be sufficient to pay for one or more improvements for (not necessarily to) a regionally significant roadway, Prop Share does specify that the improvements must fully restore LOS. Therefore a timing of improvements would allow for additional contributions to be utilized on the scheduled improvement.	Noted	See prior comments related to "pooling" (items #23c, 13b). The Department of Economic Opportunity's (DEO) interpretation is that pooling of proportionate share funds is not permissible as the statutes are now written. DEO has also agreed that the law does not specify when the improvements must occur, which could allow for the deferral and staging of improvements so that the entire project becomes viable at one time. While local governments may identify when the project improvements are required through the capital improvement element (CEI) schedule, there is currently nothing in statutes that requires this. The respondent may have inadvertently omitted the work "not" in the third sentence, and meant to say "prop share does <u>not</u> specify that the improvements must fully restore LOS."
23j	Line 223: I agree that the new legislation may require statutory guidance but not for the reasons listed. The problem for both local developers and local governments is there is no agreed upon case law for mobility plans and no statutory reference for what requirements are legally available for mobility plans since much of the current law only references by inference existing concurrency plans.	Noted	
23k	Line 236: A Mobility fee is for new development. It will not address the issue of deficient roadways that is the basis of many local governments complaints about the new Prop Share formula. While it might be possible to work around that issue, it would require a complex plan to designate a fully integrated transportation system that utilizes not just developer funding but also local government contributions to many of the same roadways as has been done in Alachua County.	Noted	