Proportionate Share Calculation Report

Submitted to the President of the Florida Senate and the Speaker of the Florida House of Representatives, pursuant to Section 77, Chapter 2011-139, Laws of Florida

Prepared by the Florida Department of Transportation

December 15, 2011

Florida Department of Transportation

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SECRETARY

December 15, 2011

The Honorable Mike Haridopolos
President of the Senate
The Capitol
Tallahassee, Florida 32399-1100

The Honorable Dean Cannon
Speaker of the House of Representatives
The Capitol
Tallahassee, Florida 32399-1300

Dear President Haridopolos and Speaker Cannon:

Pursuant to the Community Planning Act, Chapter 2011-139, Laws of Florida, the Florida Department of Transportation respectfully submits the Proportionate Share Calculation Report. The report includes background information on transportation concurrency and proportionate share, findings based on extensive stakeholder review and input, and potential policy options for changes to the calculation of proportionate share contributions to mitigate impacts of development on the transportation system.

The Department prepared this report in consultation with developers and local government representatives, as well as other interested parties. We commend all participants for their contributions and input to ensure development contributions to mitigate impacts on the transportation system are assessed in a predictable, equitable and fair manner.

Sincerely,

for Ananth Prasad, P.E.
Secretary

INTRODUCTION

Chapter 2011-139, Laws of Florida, the *Community Planning Act*, made significant changes to Florida's statutory requirements for local government comprehensive plans, state review of local comprehensive plans and amendments, developments of regional impact, concurrency, and other key elements of the state's growth management laws. Perhaps most notably, the Act focuses state oversight on protecting important state resources and facilities and provides local governments with greater control over planning decisions impacting their communities.

The Act eliminated the state mandate for transportation concurrency and specified requirements for local governments opting to retain transportation concurrency. For example, the conditions under which local governments must allow development applicants to satisfy transportation concurrency were specified, including how the landowner will be assessed a proportionate share of the costs of providing transportation facilities needed to serve the proposed development. The Act also made revisions to the methodology for calculating proportionate share and directed the Florida Department of Transportation (FDOT) to submit a report on the calculation of proportionate share contributions. Specifically, the Act provided:

> *The Department of Transportation shall develop and submit to the President of the Senate and the Speaker of the House of Representatives, no later than December 15, 2011, a report on recommended changes to or alternatives to the calculation of the proportionate share contribution in s. 163.3180(5)(h)3., Florida Statutes. The department's recommendations, if any, shall be designed to ensure development contributions to mitigate impacts on the transportation system are assessed in [a] predictable, equitable and fair manner and shall be developed in consultation with developers and representatives of local governments.*

FDOT has prepared this report based on extensive input from numerous stakeholders, including representatives of the development community, municipal and county governments, and professional transportation engineers and planners. The report includes:

- Background on changes to transportation concurrency over time and changes to transportation concurrency and the calculation of proportionate share made by the Act;
- Findings from stakeholder comments about the *Community Planning Act* and the calculation of proportionate share contributions; and
- Potential policy options for future changes to the proportionate share statutory provisions.

BACKGROUND

Transportation concurrency is intended to ensure adequate transportation facilities are available "concurrent" with the impacts of development. In 1985, the concept of concurrency was included in the state's Local Government Comprehensive Planning and Land Development Regulation Act (Growth Management Act). Florida's transportation concurrency requirements have evolved and changed over the intervening years.

The Evolution of Transportation Concurrency

Pursuant to the 1985 Growth Management Act,[1] local governments were required to ensure adequate transportation facilities and services are in place concurrent with the impact of development. To implement concurrency, local governments must define what constitutes an adequate level of service (LOS) for the transportation system, adopt a plan and improvement program to achieve and maintain adequate LOS, and measure whether the service needs of a new development exceed existing capacity of the transportation system, including capacity from scheduled improvements. If adequate capacity is not available, then the developer must provide the necessary improvement, provide a monetary contribution toward the programmed improvements, or wait until government provides the necessary improvements.

While a significant benefit from the growth management laws has been coordinating the timing of development with the availability of transportation facilities and services, concurrency has created challenges for local governments and the development community. In response, the Growth Management Act has been extensively amended over the last 25 years (as highlighted on the Transportation Concurrency Chronology table on page 3). The Act was been amended several times to provide concurrency alternatives (e.g., transportation concurrency exception areas, multi-modal transportation districts) to better accommodate and encourage growth in urban centers, for example, where the ability to widen roadways is more constrained. Proportionate share and proportionate fair-share mechanisms were added to allow development to "pay and go" – pay for impacts and proceed to develop. Legislation enacted in 2005 made numerous changes to the transportation concurrency provisions, for example, by:

- Closing the gap between new development and the construction of needed transportation facilities (i.e., be in place or under construction within three years of the building permit resulting in traffic generation);
- Requiring local governments to use FDOT's LOS standards for Strategic Intermodal System[2] (SIS) facilities; and
- Requiring local governments to consult with FDOT on mitigating impacts to SIS facilities.

The legislation enacted in 2009 eliminated the state mandated transportation concurrency requirements in dense urban land areas and required local governments to develop and fund mobility strategies for such areas. In addition, this legislation directed the Florida Departments of Transportation and Community Affairs to submit a joint report evaluating and considering the implementation of a mobility fee as an alternative to transportation concurrency.[3] The 2009 joint report observed

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[1] The Growth Management Act required local governments to adopt a comprehensive plan, established standards for the content of the plans, established a state review process of plans and plan amendments, and required periodic review and update of the plans.

[2] The Strategic Intermodal System is a high priority network of transportation facilities and services critical to Florida's economic competitiveness and quality of life.

[3] The Joint Report on the Mobility Fee Methodology Study was prepared by the Florida Department of Transportation and Florida Department of Community Affairs and submitted to the President of the Florida Senate and the Speaker of the Florida House of Representatives on December 1, 2009, pursuant to Section 13, Chapter 2009-96, Laws of Florida. The joint report was prepared with the assistance of working groups, which included representatives of local governments, developers, regional planning councils, environmental groups, and planning and engineering firms.

transportation concurrency has created challenges for local governments and the development community:

- The system is increasingly complex to administer;
- Mitigation costs have been unpredictable;
- Costs are often perceived as inequitable because of the "last in pays" approach; and
- The system is generally focused on expanding roadway capacity instead of extending mobility across all modes, such as transit.

The joint report included principles for a mobility fee, options for legislative action, a plan to implement a mobility fee, an economic analysis, potential costs and benefits, and activities necessary to implement a fee.

TRANSPORTATION CONCURRENCY CHRONOLOGY	
YEAR	**ACTION**
1985	Concurrency becomes required with the passage of Florida's Growth Management Act (Ch. 163, Part II, F. S.).
1992, 1993	Ch. 163, Part II, F. S., is amended to authorize transportation concurrency exception areas, transportation concurrency management areas, and long term concurrency management plans.
1999	The Legislature authorizes proportionate share contribution as a means for a development of regional impact to satisfy transportation concurrency and added multi-modal transportation districts as an alternative transportation concurrency option.
2005	The Legislature enacts the first Senate Bill 360, which imposed new financial feasibility requirements for the capital improvement elements of local plans, adopted stricter requirements for the transportation concurrency flexibility options, and established a developer proportionate fair-share payment system for transportation concurrency. It also required the approval of FDOT for mitigation of impacts on the SIS.
2006	FDOT develops LOS Standards for the SIS and impact fee requirements are enacted.
2009	The Legislature enacts the second Senate Bill 360, which eliminates state-mandated transportation concurrency requirements in 238 cities and the existing urban service areas of six large counties.
2011	The Community Planning Act makes transportation concurrency optional and revises the requirements for local governments opting to retain transportation concurrency. It also revises the methodology for calculating proportionate share contributions.

2011 Community Planning Act

Chapter 2011-139, Laws of Florida, the *Community Planning Act*, made substantial changes to growth management, including the statutory requirements for transportation concurrency and the calculation of proportionate share contributions. The Act made transportation concurrency optional. Currently seven local governments have or are in the process of rescinding transportation concurrency.[4]

[4] Citrus County, City of Longboat Key, Nassau County, Pasco County, City of St. Augustine, Sumter County, and City of Tavares.

If local governments elect to retain transportation concurrency, their comprehensive plans must comply with the requirements included in s. 163.3180(5), F.S. (many of which had been previously required by state law and rule), such as:

- Studies and techniques for evaluating and measuring LOS must be professionally accepted;
- The capital improvement element of the comprehensive plan must identify facilities needed to meet adopted LOS during a five-year period;
- Local governments must consult with FDOT when proposed amendments affect the SIS; and
- Public transit facilities are exempted from concurrency.

Local governments electing to retain transportation concurrency are encouraged by the Act to develop policies to address potential negative impacts on future development (e.g., in urban infill, redevelopment, and urban service areas) and to develop tools and techniques to complement the application of transportation concurrency (e.g., establish multimodal LOS standards).

The Act established other changes to transportation concurrency. For example, the five-year schedule of capital improvements is no longer required to be financially feasible and local governments are no longer required to use the LOS standards established by FDOT for SIS facilities. In addition, local governments must allow an applicant for a development of regional impact (DRI) development order, rezoning, or other land use development permit to satisfy transportation concurrency when:

- The applicant enters into a binding agreement to pay for or construct its proportionate share of required improvements;
- The proportionate share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility; and
- The local government has provided a means by which the landowner will be assessed a proportionate share of the cost of providing the transportation facilities needed to serve the proposed development.

Proportionate Share Contribution Calculation - The Act combines the two previous mechanisms for satisfying transportation concurrency (one for DRI developments – proportionate share, the other for smaller developments – proportionate fair-share) into one - a proportionate share contribution. The Act also provides the applicant shall not be held responsible for the additional costs to correct deficient transportation facilities.[5] Under current law, the following governs the calculation of the proportionate share contribution:

- The local government shall not require an applicant to pay more than a development's proportionate share of the improvements needed to mitigate its impacts;
- If any road is determined to be transportation deficient without the development's projected traffic, the cost of correcting that deficiency shall be removed from the calculation and the needed improvements to correct the deficiency will be assumed to be in place for the purposes of the calculation;

[5] Pursuant to s. 163.3180(5)(h)3.e, F.S., deficient transportation facilities are those on which the adopted LOS is exceeded by the existing, committed, and vested trips, plus additional projected background trips from any source other than the development project under review.

- Transportation impacts mitigated in a previous development phase shall be considered fully mitigated in any transportation analysis for subsequent phases;
- Trips from a previous stage or phase not requiring mitigation may be cumulatively analyzed with trips from a subsequent stage or phase to determine if mitigation is required for subsequent stages; and
- In projecting the number of trips generated by a development, any trips assigned to a toll-financed facility shall be eliminated from the analysis.

Impact Fee Credits – The Act changed the statutory provisions in Ch. 163, F.S., governing the application of credits for developer contributions and impact fee payments. Under prior law, proportionate fair-share mitigation was applied as a credit against impact fees to the extent that all or a portion of the contribution addressed the same capital infrastructure improvements contemplated by the local government's impact fee ordinance (e.g., the developer is not to be charged twice for the same improvement). Instead of applying the contribution as a credit against impact fees, the Act amended s. 163.3180, F.S., to provide the developer shall receive a credit against the proportionate share contribution for impact fees, mobility fees, and other mitigation requirements paid or payable in the future for the project.[6] In addition, the requirement that the contribution and impact fee address the same improvements was removed. The Act did not amend the impact fee credit provisions included in s. 380.06(16), F.S.[7]

FINDINGS

The local government and development community stakeholders consulted in preparing this report expressed support overall for the changes made to the growth management statutes by the *Community Planning Act*. Representatives of local government, for example, appreciate the increased flexibility provided to local governments by the Act (e.g., eliminating the evaluation and appraisal report sufficiency review and mandatory plan updates) and reduced oversight by focusing the state's role in the growth management process to protecting important state resources and facilities. Development community representatives felt developments in the past have been "overcharged" for their impacts on the transportation system and were supportive of the various changes made in the Act to address this issue, such as the provisions specifying:

- An applicant for development shall not be held responsible for the costs of improvements to correct transportation facilities determined to be deficient; and
- Transportation impacts mitigated in a previous development phase shall be considered fully mitigated in any transportation analysis for subsequent phases.

[6] The law also provides the credit shall be reduced up to 20 percent by the percentage share that the project's traffic represents of the added capacity of the selected improvement or by the amount specified by local ordinance, whichever yields the greatest credit.

[7] Section 380.06(16), F.S., provides if the development order requires a DRI to contribute land or a public facility or construct, expand, or pay for land acquisition or construction or expansion of a public facility (e.g., roadway) and the developer is also subject to impact fees or exactions to meet the same need, the local government shall establish and implement a procedure that credits a development order exaction towards the impact fee.

While the stakeholders were satisfied overall with changes to growth management made by the Act, concerns were expressed about some of the changes made to the calculation of proportionate share. These concerns warrant additional monitoring and review.

Finding: Changes made to the calculation of proportionate share may continue to create inequities and increase congestion on roadways.

While local government representatives acknowledge applicants for development should not be required to pay the costs of pre-existing deficiencies on transportation facilities, concerns were cited with the following provisions in the Act:

- Section 163.3180(5)(h)3.b., F.S., provides the proportionate share contribution or construction needs to be sufficient to accomplish one or more mobility improvements benefiting a regionally significant transportation facility. However, even if improvements will be made to the deficient roadway or facility, the contribution or construction is not required to 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 still be deficient after the improvements are made.

- 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 proportionate share calculation and the needed improvements to correct the deficiency shall be assumed in place (whether actually funded or not) for purposes of the calculation.[8] This effectively precludes local governments from charging developers for new trips added to deficient facilities and pooling contributions from multiple developments impacting the deficient facility to help finance the needed transportation improvements.

If a development's traffic impacts cause a transportation facility (currently operating at the adopted LOS) to fail and the development's proportionate share contribution is not sufficient to finance the needed improvements to the impacted facility to achieve the adopted LOS, then the transportation facility will become deficient if the state or local government is unable to provide the additional funding to finance the needed improvements. The implications of this scenario are:

- Since the roadway is now deficient, the local governments cannot charge subsequent developments for the new trips added to this deficient roadway to pool contributions for the needed improvements.[9]

- As a result, only the first development to cause the roadway to exceed the LOS standard must make a proportionate share contribution. Subsequent developments also impacting this roadway, generally, will not make a proportionate share contribution due to the now deficient status of the roadway, which may be seen as inequitable.

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[8] For deficient roadways, an applicant for development will only be charged for impacts on such roadway if its traffic impacts cause the roadway (with the assumed improvements in place) to fail (i.e., too congested to maintain the adopted LOS standards).

[9] Once a transportation facility becomes deficient, for subsequent developments the costs of correcting the deficiency is removed and needed improvements are assumed to be in place (i.e., "phantom" lanes) for the purpose of the proportionate share calculation. If traffic impacts from a subsequent development cause the phantom lanes to fail, the development's proportionate-share can only be calculated based on an additional improvement beyond what is assumed to be in place.

- The entity having maintenance responsibility for the facility will be responsible for mitigating the impacts from this and subsequent developments. Congestion will increase on the transportation facility with trips from each new development until the entity is able to finance and construct the needed improvements.

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.

Finding: Some revisions to the state law may be warranted to address technical issues associated with implementing the changes to the calculation of proportionate share contributions.

Stakeholders identified several technical concerns about the revised proportionate share calculation enacted by the Act:

- Application of the proportionate share calculation to non-DRI developments;
- Timing of needed improvements; and
- Calculation of impact fee credits.

Non-DRI developments. Prior to the passage of the Act, Florida law established two similar methods for calculating costs to mitigate the traffic impacts from development. Large, multi-phased projects qualifying as a DRI were allowed to satisfy transportation concurrency by paying a proportionate share contribution. Smaller, sub-DRI developments were allowed to mitigate their traffic impacts through a proportionate fair-share contribution. While the formulas for proportionate fair-share and proportionate share were the same, the application of the formulas differed. For example, the proportionate fair-share applied to a smaller, usually single-phased, development with the impact being analyzed on a much more localized area, rather than the broader system analysis associated with a DRI.

The Act eliminated this distinction and provided an applicant for development must be allowed to satisfy transportation concurrency through a proportionate share payment. Some stakeholders observed the revised statutory language uses terminology applicable to DRIs but not to smaller, sub-DRI developments.

Section 163.3180(5)(h)3.c.(II)(B), F.S., now provides the proportionate share formula "... shall be applied only to those facilities that are determined to be significantly impacted by the project traffic under review." However, Ch. 163, F.S., does not define the term "significant impact." While Rule 9J-2.045(6) defines significant impact as being at least 5 percent of the service volume of the roadway at the adopted LOS standard for DRI projects, there is no comparable state standard for sub-DRI developments or larger developments exempted from the DRI process. The Division of Community Development (Department of Economic Opportunity) has observed the local government has discretion over what constitutes a significant impact, which should be adopted in the comprehensive plan or land development regulations.

Section 163.3180(5)(h)3.b., F.S., provides the proportionate share contribution needs to be sufficient to accomplish one or more improvements benefitting a regionally significant transportation facility. DRI

developments often impact numerous local and regional transportation facilities. The practice has been for DRI developments to satisfy transportation concurrency by making a proportionate share contribution for improvements to a regionally significant facility, while the smaller sub-DRI developments made a proportionate fair-share contribution to mitigate impacts to the affected local or regional transportation facility. However, under current law, contributions made by sub-DRI developments must be for improvements that will benefit a regionally significant transportation facility, not the facility actually impacted by the development. In addition, Ch. 163, F.S., does not define the term "regionally significant transportation facility."[10]

Timing of needed improvements. Under prior law, transportation facilities needed to serve new development had to be in place or under construction within 3 years after the local government approved a building permit or its equivalent that results in traffic generation. The Act does not specify the timing for when the mobility improvement, financed, or constructed in part or in total by the proportionate share contribution, must be accomplished. As a result, this creates uncertainty for the development applicant and the public regarding when the improvement will actually be fully funded and implemented.

Calculation of impact fee credits. According to a 2011 survey, about 60 Florida local governments have adopted transportation impact fees, which are governed by local ordinances.[11] A development's contribution to satisfy transportation concurrency is generally required as part of the condition for securing development approval. The collection of impact fees can occur later, for example, when the building permit is issued.

Under prior law, proportionate fair-share mitigation was to be applied as a credit against impact fees. However, under current law the application of credit is reversed, impact fees are applied as credit against proportionate share contributions. Section 163.3180(5)(h)3.c.(II)(E), F.S., provides the development applicant shall receive a credit on the proportionate share contribution for impact fees, mobility fees, and other transportation concurrency mitigation requirements paid or made payable in the future. Some stakeholders had questions about when and how this credit can be calculated, since the credit also applies to future, potential impact fee payments. Also, in some jurisdictions the impact fees are paid after the proportionate share mitigation is determined.

In addition, under prior law the credit for proportionate fair-share mitigation was conditioned on the mitigation and impact fee being used to address the same improvements contemplated by the local government's impact fee ordinance. The Act removed this condition from s. 163.3180, F.S. The credit is to be granted even if the mitigation and impact fees are not used to address the same roadway improvements (e.g., proportionate share mitigation is for a state road, while the impact fee is used for local roads). Some local government officials have expressed concerns this change prevents them from charging a development its fair share of roadway improvements needed to support that development. For example, if the contribution and impact fee are not used to finance the same improvement, the contribution may no longer be sufficient to finance the needed improvement after the credit is applied and the roadway will remain deficient. Other stakeholders have observed this change was made because some local governments were refusing to apply proportionate share mitigation as a credit against impact fees.

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[10] For DRIs, Rule 9J-2.045 provides direction for identifying state and regionally significant roadways.

[11] National Impact Fee Survey prepared by Clancy, Mullen, Duncan Associates (Austin, Texas) on November 20, 2011.

Finding: Statutory guidance for use of mobility fees as an alternative to transportation concurrency may be needed.

Representatives of the development community observed that if local governments do not like the revised provisions for calculating proportionate share and other changes to concurrency established by the Act, local governments may replace transportation concurrency with alternatives, such as a mobility fee.

In contrast to proportionate share, a mobility fee is a charge on all new development to provide mitigation for its impact on the transportation system. Although a mobility fee is similar to an impact fee in that it is a charge on new development for its impacts on transportation facilities, the mobility fee can be different from an impact fee in significant ways. For example, the mobility fee approach recommended in the 2009 joint report would be sensitive to vehicle or person miles traveled, encouraging shorter trips and reduction of total travel thereby promoting compact and mixed-use development and would fund multi-modal transportation improvements for roadways, transit, bikeways, and pedestrian walkways. In addition, impact fees typically are the same across different types of development (e.g., single family, multi-family, commercial), while a mobility fee would vary by location and development type.

Several local governments have adopted alternative approaches to transportation concurrency using mobility fees. For example, Alachua County provides for a payment of multimodal transportation fees in lieu of traditional concurrency. (Appendix A includes a more detailed description of the approach used in three counties.)

While many stakeholders were generally supportive of the use of a mobility fee as an alternative to transportation concurrency, some concerns were expressed. For example, some stakeholders noted mobility fees are complex and require time and resources to design, plan, and implement. Others observed as more local governments adopt mobility fees, this may create uncertainty and unpredictability for the development community if widely varying approaches are implemented. In addition, some noted having statutory authorization for mobility fees could help minimize legal challenges and clarify the intent that mobility fees are a replacement, not addition, to existing fees (e.g., proportionate share contributions, impact fees).

As a result, statutory guidance and authorization for transportation concurrency alternatives would be beneficial. While acknowledging guidance may be warranted, some stakeholders stated local governments should be provided flexibility in designing mobility fee programs to address the specific needs of their area.

Recommendations and Policy Options

The 2011 *Community Planning Act* made significant changes to Florida's growth management statutory provisions. The state is still in the early stages of implementing the changes made by this Act, including applying the changes made to the calculation of proportionate share contributions. The Legislature should defer making substantive changes to the Act until developers and local governments have had more time to operate under the revised transportation concurrency and proportionate share statutory provisions, since additional policy and technical issues may continue to emerge.

This section contains preliminary observations about potential policy options and alternatives to consider based on stakeholder feedback and experience thus far. The policy options are analyzed within the context of ensuring development contributions are assessed in a predictable, equitable, and fair manner as directed by the *Community Planning Act* for this report.

To ensure proportionate share contributions can be collected from multiple developments impacting a transportation facility in a more equitable and fair manner, the Legislature should consider one or more of the following potential changes to state law:

Options	Advantages	Disadvantages
Amend s. 163.3180(5)(h)3., F.S., to provide proportionate share is one option that may be used to satisfy transportation concurrency.	Provides flexibility by broadening options to local governments and developers on how to calculate the mitigation for satisfying transportation concurrency.	Less predictably to the developer on the calculation of proportionate share. May allow local governments to require payment beyond what is needed to mitigate the development's impacts.
Revise s. 163.3180(5)(h)3.b., F.S., as follows: "The proportionate share contribution or construction ~~is sufficient to accomplish~~ supports one or more mobility improvements that will benefit a regionally significant transportation facility."[12]	Does not preclude the pooling of contributions.	May delay when the proportionate share contribution is actually used to finance the needed improvement(s), while the local government pools contributions from multiple developments impacting a roadway.
Add language to s. 163.3180(5)(h)3.c.(II)(B), F.S., to clarify that while development shall not be held responsible for the additional costs of reducing or eliminating pre-existing or projected transportation deficiencies, the proportionate share calculation may reflect the proportion of capacity used by the number of trips generated by the development under review.	Provides for a more equitable assessment of developer contributions, allowing proportionate share contributions from multiple developments adding trips and impacting a deficient roadway, not just the first developer that triggers concurrency.	Would increase the proportionate share payment from developments impacting deficient roadways.

The following are policy options the Legislature may wish to consider for several technical issues regarding the application of proportionate share calculation to non-DRI developments:

Issues/Options	Advantages	Disadvantages
Issue - the term "significant		

[12] Note: page 11 of this report also recommends the term "regionally significant" either be defined or changed to reflect the impacted transportation facility.

impact" is not defined for non-DRIs. Option: • Specify that significant impact is either at a set percentage (e.g., 5%) or as specified in the local comprehensive plan.	Creates more predictability for sub-DRI developments or developments exempted from the DRI process.	Could reduce local government flexibility if a set percentage is specified.
Issue - improvement must benefit a regionally significant facility, not necessarily the impacted facility and is not defined for sub-DRIs. Options: • Add definition of "regionally significant" to law <u>or</u> • Replace with the "impacted or planned local or regionally significant transportation facility."	Provides clarification, greater certainty. Better assurance the mitigation benefits the impacted or planned transportation facility.	Improvement still may not be to the impacted facility and may remain deficient.

The following are policy options for clarifying several other issues concerning the proportionate share calculation:

Issues/Options	Advantages	Disadvantages
Issue: timing of needed improvements not defined. Option: • Amend law to specify the timing of the needed improvements must be identified in the binding agreement.	Provides greater certainty to the development applicant/public regarding when the improvement will be implemented.	If the law is amended to allow contributions from multiple developments impacting a deficient roadway, the local government may not know precisely when sufficient funds will be accumulated to implement the needed improvement(s).
Issue: How and when the impact fee credits can be calculated (e.g., the credit applies to impact fees payable in the future and impact fees are paid after proportionate share is calculated before impact fees are paid in some jurisdictions) and inconsistency with s. 380.06, F.S.		

Options: • Amend s. 163.3180(5)(h)3.c.(II)(E), F.S., to have proportionate share contribution be a credit against impact fees <u>or</u>	Provides a credit to the developer based on payments made (as opposed to impact fees payable in the future).	Provides consistency between the impact credit provisions in Chapters 163 and 380, F.S.
• Amend s. 380.06, F.S., to provide impact fees paid or payable in the future as a credit against DRI exactions.	Provides consistency between the impact credit provisions in Chapters 163 and 380, F.S.	Does not resolve the questions of how and when to calculate the credit for impact fees payable in the future.
Issue: Credit no longer conditioned on the impact fee and proportionate share contribution being used to address the same improvements and inconsistency with s. 380.06, F.S. Options: • Amend s. 163.3180(5)(h)3.c.(II)(E), F.S., to specify the credit will be provided when the impact fee is used to address the same improvements/need <u>or</u>	Helps ensure the proportionate share contribution remains sufficient to finance the improvement needed on the impacted roadway.	Concern that the local governments will not actually grant the credit (i.e., results in the development being assessed twice for same improvement).
• Amend s. 380.06, F.S., to delete language conditioning the credit to contributions meeting the same need.	Provides consistency between the impact fee credit provisions in Chapters 163 and 380, F.S.	The proportionate share contribution and DRI mitigation/exaction may not remain sufficient to finance the needed improvement(s).

As noted on page 9, mobility fees represent an alternative method to transportation concurrency. While referenced in state law, the term "mobility fee" is not defined. If the Legislature opts to create a statutorily framework for mobility fees, the 2009 Joint Report on the Mobility Fee Methodology Study identified principles that could be used as guidance for developing and administering mobility fees. These principles are summarized as follows:

• *Fairness and Funding*: A mobility fee alone cannot address all of Florida's transportation needs. The approach should ensure all new development provides mitigation for its impacts on the transportation system. Development should not be required to pay for transportation backlogs caused by a shortfall in public investment in transportation infrastructure.

• *Transparency and Predictability*: A mobility fee should be transparent and predictable in its application so that proposed development is no longer required to endure lengthy concurrency reviews and approvals with uncertain and widely varying outcomes.

• *Countywide minimum application*: A mobility fee should be applied countywide with participation of each local government within the county. There should be an option for a regional/multi-county application. Local governments would enter into interlocal agreements to establish the framework for the mobility fee program: establishing funding priorities and methods to ensure equitable

distribution of funds. Comprehensive plan amendments would be necessary to establish the mobility fee program, provide for intergovernmental coordination and modify existing transportation concurrency management policies.

• *Multimodal Planning*: A mobility fee should be based on and help fund mobility plans. These plans should incorporate multimodal choices including roadways, transit, bikeways, pedestrian walkways, congestion management strategies and other appropriate facilities and services.

• *Promote Compact, Mixed-use and Energy Efficient Development:* To promote compact, mixed-use and energy-efficient development, a mobility fee should be sensitive to vehicle or person miles traveled and vary by location and development type. Mobility plans should identify areas where development is desired to reduce auto dependence. A mobility fee would depend on the location of new development to support a growth management policy encouraging urban infill, redevelopment, transit supportive development and design strategies and measures to reduce transportation demand.

• *Local Government Flexibility:* Local governments should have the option to retain the ability to pursue land use and transportation strategies that address the specific needs of their area.

APPENDIX A: Examples of Alternatives to Transportation Concurrency

Alachua County Mobility Plan & Multi-Modal Transportation Mitigation Program

Alachua County has developed an alternative approach to traditional transportation concurrency by coordinating land use and transportation strategies to support multimodal mobility options. The Mobility Plan (adopted in 2010) established multi-modal supportive land uses through policies and incentives that allow for private entities to design transit oriented developments (TOD) and traditional neighborhood developments (TND) by right within the designated urban cluster (UC). The plan also contains LOS standards for pedestrian, bicycle, transit, and roadway facilities and identifies infrastructure and transit service needed to provide mobility within the UC.

A key element of the plan is the Multi-Modal Transportation Mitigation (MMTM) Program. The MMTM Program allows for future development to mitigate its transportation impact through a one-time payment covering multiple modes, including transit capital and operational costs. The mitigation cost is based on a vehicle miles of travel (VMT) calculation for the development. The VMT rate (cost per trip) is determined by the projected cost of the multi-modal projects identified in the Mobility Plan divided by the projected increase in VMT between 2008 and 2030. Reductions in fees are provided for TODs and TNDs. Developments lock in their MMTM rates at final development plan approval and are provided with several incentives to pre-pay their mitigation cost.

The MMTM Program applies to developments that have not received final transportation concurrency approval and do not currently have a valid certificate of level of service compliance. Developments within the UC without a valid certificate of level of service compliance as of the effective date of the MMTM Program (April 12, 2011) are required to pay the MMTM. Implementation of the MMTM Program will be phased-in over a three year period. Additional information on the Alachua County Mobility Plan and MMTM Program are available at: http://growth-management.alachua.fl.us/

Pasco County Mobility Fee

In July 2011 Pasco County replaced its transportation impact fee with a mobility fee and tax increment financing to support new multi-modal initiatives and provide enhanced flexibility in transportation and land use planning. The mobility fee relies on the Pasco County Metropolitan Planning Organization's 2035 Long Range Transportation Plan as the county mobility plan and assesses new development for the capital costs of roads, transit, and bicycle/pedestrian facilities. The fee structure is coordinated with a future land use strategy adopted within the County's comprehensive plan and is intended to provide cost incentives for preferred development. Although fees have been lowered overall for most land use categories, the rate structure assessed is generally lower in planned urban market areas of Pasco County. The Mobility Fee Ordinance also creates more favorable rates for employment generating uses, TOD, and TND. Some of the most significant provisions of the Mobility Fee Ordinance include the following:

- Tiered fees allow for greater congestion in the urban market area, which generally includes U.S. 19 and S.R. 54/56 corridors. The County's strategy is to focus on alternate modes of transportation in these areas including standard bus service, bus rapid transit and/or long term light rail service. This is coupled with reinforcing the land use and transportation linkage by allowing higher densities and intensities, particularly in designated TOD nodes.

- A percentage of funds is earmarked to benefit SIS facilities (e.g., major state roads and I -75 which link Pasco County to the Tampa urban area and regional employment centers).
- Pasco County's cities may participate in the Mobility Fee Program, opening up potential revenue streams for local government and also encouraging growth in or near established downtown areas.
- Funds from tax increment financing (TIF) are intended to offset revenues from lower impact fees and provide a new long term revenue source for transportation infrastructure and transit operations and maintenance. The TIF concept avoids raising any existing taxes or fees and is only available if the County's taxable property values increase.

The Mobility Fee Ordinance is retroactive to building permits applied for or issued after March 1, 2011. However, the ordinance allows developments who believe that they have been adversely affected by the Mobility Fee Ordinance to have a 3-year period to opt-out and remain subject to transportation impact fees. Pasco County is also in the process of eliminating transportation concurrency county-wide and replacing it with a timing and phasing system (for discretionary land use approvals only) and mobility fees. Additional information on the Pasco County Mobility Fee is available at: http://portal.pascocountyfl.net/

Jacksonville Concurrency and Mobility Management System

The City of Jacksonville initially began to develop a mobility fee system as an alternative to transportation concurrency in response to the 2009 changes to the Growth Management Act. This legislation exempted dense urban land use areas (DULAs), such as Jacksonville, from the state-mandated transportation concurrency requirements and required local governments to develop land use and transportation strategies to support and fund mobility improvements within the areas exempt from concurrency.

The City's 2030 Mobility Plan, completed in May 2011, provides a framework to integrate land development with multi-modal mobility (pedestrians, bicycles, transit, and roads) and for replacing the existing transportation concurrency program with a mobility fee system. The City's approach applies a fee system to new development based on the link between land development and transportation, and is designed to encourage shorter trips and reduced vehicle miles traveled (VMT).

This new approach is referred to as the Concurrency and Mobility Management System. The mobility fees are tiered based on a set cost per VMT multiplied by the average VMT in the respective development area type (e.g., downtown, suburban area) multiplied by trip generation and is intended to encourage infill and redevelopment and discourage sprawl. The Concurrency and Mobility Management System requires payment of the applicable mobility fee prior to approval of final construction or engineering plans. However, pre-existing concurrency approvals, capacity availability statements, concurrency reservations, development agreements, and other vested rights remain valid until expiration. Similarly, the program allows existing proportionate fair-share contracts to be continued or extended, and provides credits against mobility fees for developer construction of needed improvements.

In October 2011 the City of Jacksonville enacted a 12 month moratorium on the collection of mobility fees. Additional information on the Jacksonville Concurrency and Mobility Management System and the 2030 Mobility Plan is available at http://www.coj.net/Departments/Planning-and-Development.aspx