

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 growth management law. 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; and
- Findings from stakeholder comments about the Community Planning Act and the calculation of proportionate share contributions.

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BACKGROUND

32 Transportation concurrency is intended to ensure transportation facilities are available “concurrent”
33 with the impacts of development. The concept of concurrency was first introduced in Florida in 1985 as
34 part of the Local Government Comprehensive Planning and Land Development Regulation Act (Growth
35 Management Act). Florida’s transportation concurrency requirements have evolved and changed over
36 the intervening years.

37 **The Evolution of Transportation Concurrency**

38 Pursuant to the 1985 Growth Management Act,¹ local governments were required to ensure new
39 development does not occur unless adequate transportation facilities and services are in place to
40 support the growth. To implement concurrency, local governments must define what constitutes an
41 adequate level of service (LOS) for the transportation system, adopt a plan and improvement program
42 to achieve and maintain adequate LOS, and measure whether the service needs of a new development
43 exceed existing capacity of the transportation system, including capacity from scheduled improvements.
44 If adequate capacity is not available, then the developer must provide the necessary improvement,
45 provide a monetary contribution toward the programmed improvements, or wait until government
46 provides the necessary improvements.

47 While a significant benefit from growth management has been coordinating the timing of development
48 with availability of transportation facilities and services, concurrency has created challenges for local
49 governments and the development community. In response, the Growth Management Act has been
50 amended over the last 25 years. For example, the Act was amended several times to provide
51 concurrency alternatives (e.g., transportation concurrency exemption areas, multi-modal transportation
52 districts) to better accommodate growth in urban centers where the ability to widen roadways is more
53 constrained. Proportionate share and proportionate fair-share mechanisms were added to allow
54 development to “pay and go” – pay for impacts and proceed to develop. Legislation enacted in 2005
55 made numerous changes to the transportation concurrency provisions, for example, by:

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

62 The legislation enacted in 2009 eliminated the state mandated transportation concurrency
63 requirements in dense urban land areas and required local governments to develop and fund mobility
64 strategies for such areas.

¹ The Growth Management Act required local governments to adopt a comprehensive plan, establish 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.

TRANSPORTATION CONCURRENCY CHRONOLOGY	
YEAR	ACTION
1985	Concurrency becomes required with the passage of Florida’s Growth Management Act (Chapter 163, Part II, Florida Statutes).
1992, 1993	Chapter 163, Part II, Florida Statutes, is amended to authorize transportation concurrency exception areas, transportation concurrency management areas, and long term concurrency management plans.
1999	The Legislature added multi-modal transportation districts as an alternative transportation concurrency option.
2005	The Legislature enacted 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 LOS Standards developed for SIS and impact fee enabling legislation enacted.
2009	The Legislature enacted the second Senate Bill 360, which eliminated state-mandated transportation concurrency requirements in 238 cities and the existing urban service areas of six large counties.
2011	The Community Planning Act made transportation concurrency optional and revised the requirements for local governments opting to retain transportation concurrency. It also revised the methodology for calculating proportionate share payments.

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66 **2011 Community Planning Act**

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68 Chapter 2011-139, Laws of Florida, the *Community Planning Act*, made substantial changes to growth
 69 management, including the statutory requirements for transportation concurrency and the calculation
 70 of proportionate share contributions. The Act made transportation concurrency optional. If local
 71 governments elect to retain transportation concurrency, then their comprehensive plans must comply
 72 with the requirements included in s. 163.3180(5), F.S. (many of which had been previously required by
 73 state law and rule), such as:

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

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

83 The Act established other changes to transportation concurrency. For example, the five-year schedule
 84 of capital improvements is no longer required to be financially feasible. In addition, local governments

85 are no longer required to use the LOS standards established by FDOT for SIS facilities. In addition, local
86 governments must allow an applicant for a development of regional impact (DRI) development order,
87 rezoning, or other land use development permit to satisfy transportation concurrency when:

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

95 *Proportionate Share Calculation* - The Act combines the two previous mechanisms for satisfying
96 transportation concurrency (one for DRI developments – proportionate share, the other for smaller
97 developments – proportionate fair-share) into one - a proportionate share contribution. The Act also
98 provides the applicant shall not be held responsible for the additional costs to correct deficient
99 transportation facilities.² Under current law, the following governs the calculation of the proportionate
100 share contribution:

- 101 • The local government shall not require an applicant to pay more than a development's
102 proportionate share of the improvements needed to mitigate its impacts;
- 103 • If any road is determined to be transportation deficient without the development's projected
104 traffic, the cost of correcting that deficiency shall be removed from the calculation and the
105 needed improvements to correct the deficiency will be assumed to be in place for the purposes
106 of the calculation;
- 107 • Transportation impacts mitigated in a previous development phase shall be considered fully
108 mitigated in a transportation analysis for subsequent phases;
- 109 • Transportation impacts not mitigated from a development phase will be cumulatively analyzed
110 to ensure adequate mitigation for subsequent stages; and
- 111 • In projecting the number of trips generated by a development, any trips assigned to a toll-
112 financed facility shall be eliminated from the analysis.

113

² 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.

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FINDINGS

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

- 123 • An applicant for development shall not be held responsible for the costs of improvements to
 124 correct transportation facilities determined to be deficient; and
- 125 • Trips mitigated in a previous development phase must be considered fully mitigated for
 126 subsequent phases.

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

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

132 While local government representatives acknowledge applicants for development should not be
 133 required to pay the costs of pre-existing deficiencies on transportation facilities, they indicated following
 134 provisions in the Act may have unanticipated consequences:

- 135 • Section 163.3180(5)(h)3.b., F.S., provides the proportionate-share contribution or construction
 136 needs to be sufficient to accomplish one or more mobility improvements benefiting a regionally
 137 significant transportation facility. However, even though improvements will be made, the
 138 contribution or construction is not required to be sufficient to ensure the adopted level of
 139 service (LOS) on the impacted transportation facility is achieved and maintained. As a result, the
 140 transportation facility could still be deficient after the improvements are made.
- 141 • Section 163.3180(5)(h)3.c(II)(B)., F.S., provides if any road is determined to be deficient without
 142 the proposed development’s traffic under review, the costs of correcting that deficiency shall be
 143 removed from the project’s proportionate-share calculation and the needed improvements to
 144 correct the deficiency shall be assumed in place (whether actually funded or not) for purposes of
 145 the calculation.³ This effectively precludes local governments from charging developers for new
 146 trips added to deficient facilities and pooling contributions from multiple developments
 147 impacting the facility to help finance the needed transportation improvements.

148 If a development’s traffic impacts cause a transportation facility (currently operating at the adopted
 149 LOS) to fail and the development’s proportionate share contribution is not sufficient to finance the
 150 needed improvements to achieve the adopted LOS, then the transportation facility will become deficient

³ 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).

151 if the state or local government is unable to provide the additional funding to finance the needed
 152 improvements. The implications of this scenario are:

- 153 • Since the roadway is deficient, the local governments cannot charge subsequent developments
 154 for the new trips added to this deficient roadway and pool contributions to help finance the
 155 needed improvements;⁴
- 156 • As a result, only the first development to cause a roadway to exceed the LOS standard must
 157 make a proportionate share payment, generally not the subsequent developments, which may
 158 be seen as inequitable; and
- 159 • The entity having maintenance responsibility for the facility will be responsible for mitigating the
 160 impacts from the subsequent developments and until the entity is able to finance the needed
 161 improvements, congestion will increase on the transportation facility.

162 Development community representatives said all applicants for development should contribute their
 163 fair share to mitigating their impacts on transportation facilities and have a “level playing field.” While
 164 acknowledging the inequities in the scenario outlined, some questioned how often this situation will
 165 actually occur. These representatives suggested the Legislature should wait until there has been
 166 experience with implementing the Act before making revisions to identify any other unanticipated
 167 consequences that may emerge and to clarify what, if any, changes to state law are needed.

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

170 Stakeholders identified several technical questions about the revised proportionate share calculation
 171 enacted by the Act:

- 172 • Application of the proportionate share calculation to sub-DRI developments;
- 173 • Timing of needed improvements; and
- 174 • Calculation of impact fee credits.

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

184 The Act eliminated this distinction and provided an applicant for all categories of development must be
 185 allowed to satisfy transportation concurrency through a proportionate share payment. The
 186 proportionate share contribution must be calculated using the former DRI formula based on the changes

⁴ 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 analysis and 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.

187 enacted by the Act. Some stakeholders observed the revised statutory language uses terminology
188 applicable to DRIs but not to smaller, sub-DRI developments.

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

197 Section 163.3180(5)(h)3.b, F.S., provides the proportionate share contribution needs to be sufficient to
198 accomplish one or more improvements benefitting a regionally significant transportation facility. DRI
199 developments often impact numerous local and regional transportation facilities. The practice has been
200 for DRI developments to satisfy transportation concurrency by making a proportionate share
201 contribution for improvements to a regionally significant facility, while the smaller sub-DRI
202 developments made a proportionate fair-share contribution to mitigate impacts to the affected local or
203 regional transportation facility. However, under current law, contributions made by sub-DRI
204 developments must be for improvements to a regionally significant transportation facility, not the
205 facility actually impacted by the development.

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

213 Calculation of impact fee credits. According to a 2010 survey, over 60 Florida local governments have
214 adopted impact fees, which are governed by local ordinances.⁵ A development's contribution to satisfy
215 transportation concurrency is generally required at the time of site plan approval or when the building
216 permit is issued. Generally, impact fees are collected later when the certificate of occupancy is issued.

217 Under prior law, proportionate fair-share mitigation was to be applied as a credit against impact fees.
218 However, under current law the situation is reversed. Pursuant to s. 163.3180(5)(h)3.c(II)(E), F.S., the
219 development applicant shall receive a credit on the proportionate share contribution for impact fees,
220 mobility fees, and other transportation concurrency mitigation requirements paid or made payable in
221 the future. Some stakeholders had questions about when this credit can be calculated given the
222 difference in the timing and application of proportionate share and impact fees.

223 ***Finding: Statutory guidance for use of alternatives to transportation concurrency may be needed.***

224 Representatives of the development community observed that if local governments do not like the
225 revised provisions for calculating proportionate share and other changes to concurrency established by
226 the Act, local governments may replace transportation concurrency with alternatives, such as a mobility
227 fee. Chapter 2009-96, Laws of Florida, directed the Florida Departments of Transportation and

⁵ National Impact Fee Survey prepared by Clancy, Mullen, Duncan Associates (Austin, Texas) on November 2, 2010.

228 Community Affairs to submit a joint report evaluating and considering the implementation of a mobility
229 fee as an alternative to transportation concurrency.⁶ The 2009 joint report observed concurrency has
230 created challenges for local governments and the development community:

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

236 In contrast, a mobility fee is a charge on all new development to provide mitigation for its impact on the
237 transportation system.

238 Several local governments have adopted alternative approaches to concurrency in their comprehensive
239 plans, which replace traditional transportation concurrency and, as a result, proportionate share
240 mitigation is not required under such programs. For example, Alachua County provides for a payment of
241 multimodal transportation fees in lieu of traditional concurrency and Pasco County has adopted a
242 mobility fee to replace impact fees and plans to eliminate transportation concurrency countywide.
243 (Appendix A includes a more detail description of the approach used in these counties.)⁷

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

252 As a result, statutory guidance and authorization for transportation concurrency alternatives would be
253 beneficial. While some stakeholders felt additional guidance is needed, they also stated local
254 governments should be provided some flexibility in designing mobility fee programs to address the
255 specific needs of their area.

⁶ Joint Report on the Mobility Fee Methodology Study was prepared by the Florida Department of Transportation and Florida Department of Community Affairs, 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 Community Renewal Act. 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.

⁷ Note: this appendix is still under development.