Florida Department of Community Affairs
2009 Policy Analysis

May 20, 2009

Bill Number: SB 360ER

Title: Growth Management

Prime Sponsor(s): Senator Bennett

Companion Bills: HB 1019; HB 7049; HB 7127; CS/CS/SB 362; CS/CS/SB 1306; CS/SB 2148

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Coordinated with:

I. Summary

1. Creates the "Community Renewal Act."

2. Amends various Florida Statutes, including:

    a. Chapter 159, F.S. - Private Activity Bonds - State Allocation Pool;

    b. Chapter 163, Part II, F.S. - Growth Policy, County and Municipal Planning, Land Development Regulation;

    c. Chapter 171, F.S. - Local Government Boundaries;

    d. Chapter 186, F.S. - State and Regional Planning;

    e. Chapter 193, F.S. - Assessments - General Provisions;

    f. Chapter 196, F.S. - Property Tax Exemptions;

    g. Chapter 212.055, F.S. - Discretionary Sales Surtaxes;

    h. Chapter 380, F.S. - Environmental Land and Water Management;

    i. Chapter 420, F.S. – Housing; and,

j. Chapter 1001, F.S. - School District Governance.

3. Addresses a number of issues relating to comprehensive planning and development, including:

   a. Revises a definition for “Urban service area”;

   b. Creates a definition for “Dense urban land area”;

   c. Requires that by July 1 of each year the Office of Economic and Demographic Research is to calculate the population and density criteria needed to determine which jurisdictions qualify as dense urban land areas and for the Department of Community Affairs to publish the list of jurisdictions on its internet site within 7 days;

   d. Provides that the annual update to the capital improvement element need not be financially feasible until December 1, 2011;

   e. Revises requirements for future land use map amendments within transportation concurrency exception areas;

   f. Requires that the intergovernmental coordination element provide for the dispute resolution process established pursuant to s. 186.509;

   g. Expands waivers to requirements for adoption of a public school facilities element;

   h. Eliminates a prohibition on adoption of future land use map amendments that increase residential density for failure to timely adopt a public school facilities element;

   i. Provides legislative intent for transportation concurrency exception areas;

   j. Provides for automatic creation of transportation concurrency exception areas within municipalities that qualify as dense urban land areas;

   k. Provides for creation of transportation concurrency exception areas within counties which qualify as dense urban land areas within areas which are designated as urban service areas;

   l. Provides for voluntary adoption of transportation concurrency exception areas within municipalities which do not qualify as dense urban land areas within areas designated for urban infill, community redevelopment, downtown revitalization, urban infill and redevelopment, urban service areas, or areas within a designed urban service boundary;

m. Provides for voluntary adoption of transportation concurrency exception areas within counties which do not qualify as dense urban land areas within areas designated for urban infill, urban infill and redevelopment, and urban service areas;

n. Requires adoption within 2 years of land use and transportation strategies to support and fund mobility including alternative modes of transportation within certain transportation concurrency exception areas;

o. Provides that transportation concurrency exception areas do not apply within designated transportation concurrency districts within a county with a population of at least 1.5 million residents which uses a transportation-related concurrency assessment to support alternative modes of transportation and does not levy transportation related impact fees within the concurrency district.

p. Provides that transportation concurrency exception areas do not apply in a county that has exempted more than 40% of the area inside the urban service area from transportation concurrency for the purpose of urban infill.

q. Revises requirements for transportation concurrency service areas that may be created elsewhere;

r. Provides that designation of a transportation concurrency exception areas does not limit a local government's Home Rule power to adopt ordinances or impose fees;

s. Requires the Office of Program Policy Analysis and Government Accountability to prepare a report on transportation concurrency exception areas by February 2015;

t. Provides that transportation concurrency may be waived by a local government when the Office of Tourism, Trade, and Economic Development concurs that the proposed development is for qualified job creation;

u. Requires that certain relocatable school facilities be considered as capacity for the purpose of public school facility elements and public school concurrency;

v. Provides that construction of a charter school is an appropriate mitigation option for a development to meet requirements for public school concurrency;

w. Revises the definition for “In compliance” to eliminate a previous drafting error;

x. Requires local governments at the request of an applicant to consider an application for a rezoning concurrent with a proposed comprehensive plan amendment;

y. Provides an exception from frequency limitations on adoption of comprehensive plan amendments for creation of urban service areas;

z. Provides for use of the alternative state review process pilot program when designating an urban service area;

aa. Requires that an change of a municipal boundary through annexation or contraction must be submitted to the Office of Economic and Demographic Research along with a statement specifying the population census effect and the affected land area;

bb. Provides that the levels of service required for a transportation methodology for a development of regional impact shall be the same levels of service used to evaluate concurrency in accordance with s. 163.3180;

cc. Creates an exemption from the development of regional impact process for proposed development within an urban service area which is not otherwise exempt;

dd. Creates an exemption from the development of regional impact process when there is a funding agreement with the Office of Tourism, Trade, and Economic Development under the Innovation Incentive Program and the agreement contemplated a state award of at least $50 million;

ee. Creates an exemption from the development of regional impact process for proposed development within a municipality that qualifies as a dense urban land area;

ff. Creates an exemption from the development of regional impact process for proposed development within a county that qualifies as a dense urban land area within those areas designated as an urban service area;

gg. Creates an exemption from the development of regional impact process for proposed development within a county including the municipalities therein which has a population of at least 900,000 which qualifies as a dense urban land area but which does not have an urban service area designated within its comprehensive plan;

hh. Creates an exemption from the development of regional impact process for proposed development within a municipality that does not qualify as a dense urban land area within areas designated by the comprehensive plan for urban infill, community redevelopment, downtown revitalization, urban infill and redevelopment, urban service areas or within a designated urban service boundary;

ii. Provides that a previously approved development of regional impact shall continue to be effective but the development has the option to be governed by s. 380.115(1);

jj. Requires that local governments submit development orders to the state land planning agency for projects that would be larger than 120% of applicable development of regional impact threshold which but for the exemptions created from the program would require development of regional impact review, and providing for appeal for inconsistency with the comprehensive plan;

kk. Provides that if a local government that qualifies as a dense urban land area which is subsequently found to be ineligible for designation that any development within the area which has a complete pending application for authorization to commence development may maintain the exemption from development or regional impact status if the developer is continuing in good faith or the development is approved;

ll. Provides that the exemptions from the development of regional impact process does not apply to areas within an area of critical state concern, the Wekiva Study Area, or within 2 miles of the boundary of the Everglades Protection Area;

mm. Requires that the state evaluate and consider the implementation of a mobility fee to replace the existing transportation concurrency system, objectives for the mobility fee to achieve, continuation of current mobility fee studies by the state land planning agency and the Department of Transportation, and submission of a final report with an economic impact statement and recommended legislation by December 2009;

nn. Provides a 2 year extension of any permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373 that has an expiration date of September 2008 through January 2012, and for any local government issued development order or building permit, and to build out dates for developments of regional impact including any build out date extension previously granted under s. 380.06(19)(c), and providing exceptions for the 2 year extension for certain permits;

oo. Requires that local governments adopt a land development regulation that maintains the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use, are located in unincorporated areas that have sufficient infrastructure, and are not located within a coastal high hazard area; and,

pp. Provides that within designated areas of critical state concern a school district may use portions of school sites for affordable housing for essential services personnel.

4. The Community Renewal Act raises substantial issues and concerns as identified in Section III, below.

II. Present Situation

The 2005 Legislature amended Chapter 163, Part II, to revise existing and establish new requirements for capital improvement elements, planning and concurrency for public schools and water supply, and transportation concurrency. Under transportation concurrency, use of proportionate share mitigation was authorized.

III. Effect of Proposed Change(s)

The Act is intended to direct future growth to urban areas, but its implementation will present significant issues and challenges, including the following:

1. Transportation concurrency and the DRI process are primary existing regulatory tools for mitigating the local and regional transportation impacts of development. The Act eliminates both tools in many local governments without providing any alternative methods of addressing local and regional transportation impacts. Although transportation concurrency needs reform and the DRI process may not be serving its original purpose, eliminating these tools without putting anything in their place will weaken the state's growth management process.

2. If the Act becomes law, an estimated 240 cities will automatically become transportation concurrency exception areas (TCEA) shortly after July 1, 2009. The Act does not provide any transition period for the 240-plus cities to adopt local replacements for transportation concurrency. The abrupt termination of transportation concurrency is likely to cause confusion and controversy and generate litigation over the power of local governments to adopt replacements for transportation concurrency. Already, there have been suggestions that local governments may need to adopt moratoria to give time to adopt new regulations. The lack of regulatory certainty and predictability may impede, rather than encourage, economic development.

3. The Act contemplates future adoption of a mobility fee to replace transportation concurrency, but there is no guarantee that the Legislature will adopt a mobility fee system. The Act requires that DCA and the Department of Transportation provide a report and recommendations to the Speaker of the House and President of the Senate on their ongoing mobility fee studies by December 2009. The report to the Legislature is to include recommended legislation. Even if the Legislature should adopt a mobility fee system in 2010, implementation may take a year or two.

4. The Act creates substantial new work loads for local governments and DCA without providing any new resources to accomplish the tasks. The local governments with automatic transportation concurrency exception areas are mandated to adopt land use and transportation strategies to support and fund mobility, including alternative modes of transportation such as transit, within two years. Additionally, other local governments are authorized to adopt urban service boundary amendments that would also trigger the requirement for land use and transportation strategies within two years. This will be a very onerous and expensive task. However, no financial support or new revenue sources have been provided for the local governments to undertake this planning.

5. The deferral of the financial feasibility requirement for capital improvement elements will impact more than transportation facilities. That is, until December 2011, local government commitments to provide potable water, wastewater, drainage, parks, solid waste, and public schools will not be subject to a demonstration that improvements adequate to achieve and maintain level of service standards will be supported by committed funding in the first 3 years of the capital improvement schedule. This issue is particularly noteworthy for water supply where the Legislature has required that water management districts maintain 20-year regional water supply plans and that local governments adopt 10-year water supply work plans the first five years of which must be in the capital improvement schedule.

6. The Act may create a stampede of plan amendments to take advantage of relaxed planning requirements. Over the past two years, the Department has experienced an increase in the volume and geographic scale of future land use map amendments proposed by counties and municipalities. There are many reasons for the increase, including concern about the proposed Hometown Democracy Constitutional Amendment which may be on the ballot in 2010. The Community Renewal Act will likely accelerate this trend as property interests scramble to achieve land use changes in the window of time after the transportation concurrency and development of regional impact exemptions go into effect but prior to adoption of the mandatory land use and transportation strategies and the new December 2011 effective date of the financial feasibility requirement.

7. The Act ties the hands of local governments in dealing with the density of residential properties. Under s. 163.3202(2)i., the Act requires that local governments adopt a land development regulation that maintains existing density on residential properties and recreational vehicle parks under certain circumstances: the uses must be in an unincorporated area, must have sufficient infrastructure, and must not be within the coastal high hazard area. Based on a plain reading of its language, this provision would prohibit a county from increasing or decreasing the density of residential properties or recreational vehicle parks; this prohibition is likely to result in litigation.

IV. Section-by-Section Analysis

Section 1. Provides a short title as "Community Renewal Act."

Section 2.

1. Amends s. 163.3164(29) by redefining "existing urban service area" as "urban service area" to include built-up areas where public facilities and services, including, but not limited to central water and sewer capacity and roads are currently in place or are committed in the first 3 years of the capital improvement schedule. For counties that qualify as dense urban land areas under subsection (34) [subsection (34) is also created in Section 2 of the bill], the nonrural area of a county which has adopted into the county charter a rural area designation or areas identified in the comprehensive plan as urban service areas or urban growth boundaries on or before July 1, 2009, are also urban service areas under this definition.

2. Creates s. 163.3164(34), and defines "dense urban land area" as:

   a. A municipality that has an average of at least 1,000 people per square mile Of land area and a minimum total population of at least 5,000;

   b. A county, including the municipalities located in the county, which has an Average of at least 1,000 people per square mile of land area; or,

   c. A county, including the municipalities within the county, which as a population of at least 1 million.

The Office of Economic and Demographic Research within the Legislature is required to annually calculate the population and density criteria to determine which jurisdictions qualify as dense urban land areas using the most recent land area data from the decennial census conducted by the Bureau of the Census and the latest available population estimates. If any local government has had an annexation, contraction, or new incorporation, the Office of Economic and Demographic Research must determine the population density using the new jurisdictional boundaries as recorded with the

Department of State. The Office of Economic and Demographic Research must submit a list of jurisdictions that meet the total population and density criteria necessary for designation as a dense urban land area to the state land planning agency by July 1, 2009 and every year thereafter. The state land planning agency must publish the list on the Agency Internet website within 7 days after the list is received. The designation of jurisdictions that qualify or do not qualify as a dense urban land area is effective upon publication on the state land planning agency's Internet website.

Section 3.

1. Amends s. 163.3177(3)(b)1, and changes the date by which the annual update to the capital improvements element of the comprehensive plan must comply with the financial feasibility requirements from December 1, 2008 to December 1, 2011.

2. Creates a new paragraph 163.3177(3)(b)3, which states that a local government's comprehensive plan and plan amendments for land uses within all transportation concurrency exception areas that are designated and maintained in accordance with s. 163.3180(5) are deemed to meet the requirement to achieve and maintain level-of-service standards for transportation.

3. Amends s. 163.3177(6)(h)1 to require an intergovernmental coordination element to provide for a dispute resolution process to timely close intergovernmental disputes.

4. Amends s. 163.3177(12)(a), to provide that the state land planning agency may allow for a projected 5-year capital outlay full-time equivalent student growth rate to exceed 10% when the projected 10-year capital outlay FTE student enrollment is less than 2,000 students and the capacity rate for all schools within the school district, in the 10th year, will not exceed the 100% limitation.

5. Subsection 163.3177(12)(j), [sanctions for failure to adopt a public school facilities element] is deleted and combined with the current subsection (k) to create a new s. 163.3177(12)(j), which provides that the state land planning agency may issue a notice to both the school board and the local government to show cause why sanctions should not be enforced for failure to enter into an approved interlocal agreement or for failure to implement the provisions relating to school concurrency. If the state land planning agency finds insufficient cause for either, it must submit its findings to the Administration Commission who can impose sanctions on the local government as contained in s. 163.3184(11)(a) and (b) and may impose any sanctions set forth in s. 1008.32(4) on the district school board.

Section 4. Amends subsections 163.3180(5) and (10) and paragraphs 163.3180(13)(b) and (e).

1. Amends s. 163.3180(5)(a), to find that in urban centers, transportation cannot be effectively managed and mobility cannot be improved solely through the expansion of roadway capacity nor is the expansion of roadway capacity always physically or feasibly

possible and that a range of transportation alternatives are essential to satisfy mobility needs, reduce congestion and achieve healthy, vibrant centers.

2. Amends s. 163.3180(5)(b)1., to provide that the following are transportation concurrency exception areas:

a. A municipality that qualifies as a dense urban land area under s. 163.3163(34);

b. An urban service area under s. 163.3164(29) which has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area under s. 163.3164(34); and

c. A county, including the municipalities within the county, which has a population of at least 900,000 and qualifies as a dense urban land area under s. 163.3164, but does not have an urban service area designated in the local comprehensive plan.

3. Amends s. 163.3180(5)(b)2, to provide that a municipality that does not qualify as a dense urban land area pursuant to s. 163.3164 may designate the following areas as transportation concurrency exception areas in its comprehensive plan:

a. Urban infill as defined in s. 163.3164;

b. Community redevelopment areas as defined in s. 163.340;

c. Downtown revitalization areas as defined in s. 163.3164;

d. Urban infill and redevelopment under s. 163.2517; or,

e. Urban service areas as defined in s. 163.3164 or areas within a designated urban service boundary under s. 163.3177(14).

4. Amends s. 163.3180(5)(b)3., to provide that a county that does not qualify as a dense urban land area under s. 163.3164 may designate the following areas as transportation concurrency exception areas in its comprehensive plan:

a. Urban infill as defined in s. 163.3164;

b. Urban infill and redevelopment under s. 163.2517; or

c. Urban service areas as defined in s. 163.3164.

5. Amends s. 163.3180(5)(b)4., to provide that a local government that has a transportation concurrency exception area designated pursuant to subparagraph 1., 2., or 3., shall adopt land use and transportation strategies to support and fund mobility

within the exception area, including alternative modes of transportation into the local comprehensive plan within 2 years after the designated area becomes exempt. In addition, local governments are encouraged to adopt complementary land use and transportation strategies that reflect the region's shared vision for the region's future. If the state land planning agency finds insufficient cause for the failure to adopt such plan amendments, it must submit the finding to the Administration Commission which may impose against the local government, any of the sanctions established in s. 163.3184(11)(a) and (b).

6. Amends s. 163.3180(5)(b)5., to provide that transportation concurrency exception areas designated pursuant to subparagraphs 1., 2., or 3., do not apply to designated transportation concurrency districts located in a county with a population of at least 1.5 million which has implemented and uses a transportation-related concurrency assessment to support alternative modes of transportation, including, but not limited to, mass transit, and does not levy transportation impact fees within the concurrency district.

7. Amends s. 163.3180(5)(b)6., to provide that transportation concurrency exception areas designated under subparagraphs 1., 2., or 3., do not apply in any county that has exempted more than 40% of the area inside the urban service area from transportation concurrency for the purpose of urban infill.

8. Amends s. 163.3180(5)(b)7., to provide that a local government that does not have a transportation concurrency exception area designated under subparagraphs 1., 2., or 3., may grant an exception from the concurrency requirements to transportation facilities if the proposed development is otherwise consistent with the adopted comprehensive plan and is a project that promotes public transportation or is located within an area designated in the plan for:

a. Urban infill development;

b. Urban redevelopment;

c. Downtown revitalization;

d. Urban infill and redevelopment under s. 163.2517; or,

e. An urban service area specifically designated as a transportation concurrency exception area which includes lands appropriate for compact, contiguous urban development, which does not exceed the amount of land needed to accommodate the projected population growth at densities consistent with the adopted comprehensive plan within the 10-year planning period, and which is served with public facilities and services as provided in the capital improvement element.

9. Amends s. 163.3180(5)(c), to provide an exemption for developments located within urban infill, urban redevelopment, urban service, or downtown revitalization areas or areas designated as urban infill and redevelopment areas under s. 163.2517 which pose only special part-time demands (one that does not have more than 200 scheduled events during any calendar year and does not affect the 100 highest traffic volume hours) from the concurrency requirements for transportation facilities.

10. Amends s. 163.3180(5)(d), to provide that except for transportation concurrency exception areas designated pursuant to subparagraphs (b)1., (b)2., or (b)3., the local government shall both adopt into the comprehensive plan and implement long-term strategies to support and fund mobility within the designated exception area, including alternative modes of transportation.

11. Amends s. 163.3180(5)(e), to provide that before designating a concurrency exception area pursuant to subparagraphs (b)6., (TCEAs designated under subparagraphs (b)1., (b)2., or (b)3., in a county that has exempted more than 40% of the area inside the urban service area from transportation concurrency for the purpose of urban infill), the local government must consult with the state land planning agency and the Department of Transportation to assess the impact the proposed exception area is expected to have on the adopted level-of-service standards established for regional transportation facilities including the Strategic Intermodal System and roadway facilities funded in accordance with the Small County Outreach Program. The local government must provide a plan for the mitigation of any impacts to the Strategic Intermodal System including access management, parallel reliever roads, transportation demand management, and other measures.

12. Amends s. 163.3180(5)(f), to provide that the designation of a transportation concurrency exception area does not limit a local government's home rule powers to adopt ordinances or impose fees nor does it affect any contract or agreement entered into or development order rendered before the creation of the transportation concurrency exception area except as provided in s. 380.06(29)(e) - [newly created subsection contained in this bill which provides exemptions for dense urban land areas].

13. Amends s. 163.3180(5)(g), to provide that by February 1, 2015, the Office of Program Policy Analysis and Government Accountability will submit a report on transportation concurrency exception areas to the President of the Senate and Speaker of the House. The report must address the methods that local governments have used to implement and fund transportation strategies to achieve the purposes of designated transportation concurrency exception areas, the effects of the strategies on mobility, congestion, urban design, the density and intensity of land use mixes, and network connectivity plans used to promote urban infill, redevelopment, or downtown revitalization.

14. Amends s. 163.3180(10), to provide that, except in transportation concurrency exception areas, a local government must adopt level-of-service standards established by the Department of Transportation by rule, for roadway facilities on the Strategic

Intermodal System, but if the Office of Tourism, Trade, and Economic Development concurs in writing with the local government that the proposed development is for a qualified job creation project under s. 288.0656 [Rural Economic Development Initiative] or s. 403.973 [expedited permitting for economic development], the local government, after consulting with the Department of Transportation, may provide for a waiver of transportation concurrency for the project.

15. Amends s. 163.3180(13)(b)4., to provide that when determining whether levels of service have been achieved for school concurrency, for the first 3 years of school concurrency implementation, a school district that includes relocatable facilities in its inventory of student stations shall include the capacity of the relocatable facilities provided the relocatable facilities were purchased after 1998 and meet standards for long-term use.

16. Amends s. 163.3180(13)(e)1., to provide that construction of a charter school that complies with the requirements of s. 1002.33(18) is an appropriate mitigation option for meeting school concurrency; and,

17. Amends s. 163.3180(13)(e)2., to provide that if the education facilities plan and the public educational facilities element authorize a contribution of land; the construction, expansion, or payment for land acquisition or portion there of as proportionate share mitigation, the construction of a charter school that complies with the requirements of s. 1002.33(18) shall also be authorized, and shall be credited by the local government on a dollar-for-dollar basis at fair market value.

Section 5. Amends s. 163.31801(3)(d), and requires that 90 days notice must be provided before the effective date of a county or municipal ordinance or special district resolution imposing a new or increased impact fee, but a county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.

Section 6. Preempts a county, municipality, or other entity of local government from adopting or maintaining an ordinance which establishes standards for security cameras that require a lawful business to expend funds to enhance the services or functions provided by a local government unless specifically provided by general law. This section does not limit the ability of a county, municipality, airport, seaport, or other local government entity from adopting standards for security cameras in publicly operated facilities, including standards for private businesses operating within such public facilities, pursuant to a lease or other contractual arrangement.

Section 7. Amends s. 163.3177(1)(b) and creates s. 163.3177(3).

1. Amends s. 163.3177(1)(b) and deletes redundant language contained elsewhere in Chapter 163, Part II [s. 163.3177(12)].

2. Creates s. 163.3177(3)(e), and allows, at the request of an applicant, for the local government to consider zoning changes that would be required to properly enact the

provisions of any proposed plan amendment transmitted to the state land planning agency at the same time the plan amendments are being considered. Zoning changes are contingent upon the plan or plan amendment becoming effective.

Section 8. Amends s. 163.3187(1)(b) and (f) and creates s. 163.3187(1)(q).

1. Amends ss. 163.3187(b) and (f), to clarify and remove redundant language with respect to the exemptions from the twice per year transmittal.

2. Creates s. 163.3187(q), to provide an exemption from the twice per year submission of plan amendments for a local government plan amendment to designate an urban service area as a transportation concurrency exception area under s. 163.3180(5)(b)2. or 3. or an area exempt from the development-of-regional-impact process under s. 380.06(29) - [newly created subsection contained in this bill which provides exemptions for dense urban land areas].

Section 9. Amends s. 163.32465(2) - Alternate State Review Process Pilot Program and provides that in addition to the pilot program jurisdictions, any local government may use the alternate state review process to designate an urban service area in its comprehensive plan.

Section 10. Amends s. 171.091 to require that any change in municipal boundaries through annexation or contraction must also be submitted to the Office of Economic and Demographic Research along with a statement specifying the population census effect and the affect land area.

Section 11. Amends s. 186.509 and requires each regional planning council to establish dispute resolution process. If voluntary meeting fail to resolve the dispute, mandatory mediation rather than voluntary mediation is required.

Section 12. Amends ss. 380.06(7)(a), (24), and (28), and creates s. 380.06(29).

1. Amends s. 380.06(7)(a), by providing that for developments of regional impact, the levels of service required in the transportation methodology be the same levels of service used to evaluate concurrency in accordance with s. 163.3180.

2. Amends s. 380.06(24)(l), by providing a statutory exemption to any proposed development within an urban service boundary established under s. 163.3177(14), which is not otherwise exempt pursuant to subsection (29) [newly created subsection contained in this bill which provides exemptions for dense urban land areas].

3. Amends s. 380.06(24)(n), relating to proposed development or redevelopment within an area designated as an urban infill and redevelopment area is deleted and subsections (o) through (u) are re-lettered as subsections (n) through (t).

4. S. 380.06(24), is further amended after subsection (t) to provide that if a use is exempt from review as a development of regional impact under paragraphs 380.06(24)(a) through (s), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless the exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Office of Tourism, Trade, and Economic Development under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

5. Amends s. 380.06(28), to delete references to the deleted subsection 380.06(24)(n) in ss. 380.06(28)(c) and (d).

6. Creates s. 380.06(29), which provides a list of developments that are exempt from the development of regional impact process contained in s. 380.06:

a. Any proposed development in a municipality that qualifies as a dense urban land area as defined in s. 163.3164;

b. Any proposed development within a county that qualifies as a dense urban land area as defined in s. 163.3164 and that is located within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan; or,

c. Any proposed development within a county, including the municipalities in the county, which has a population of at least 900,000, which qualifies as a dense urban land area under s. 163.3164, but does not have an urban service area designated in the comprehensive plan.

7. If a municipality that does not qualify as a dense urban land area pursuant to s. 163.3164 designates any of the following areas in its comprehensive plan, any proposed development within the designated area is also exempt from the development of regional impact process:

a. Urban infill as defined in s. 163.3164;

b. Community redevelopment areas as defined in s. 163.340;

c. Downtown revitalization areas as defined in s. 163.3164;

d. Urban infill and redevelopment under s. 163.2517; or,

e. Urban service areas as defined in s. 163.3164 or areas within a designated urban service boundary under s. 163.3177(14).

8. If a county that does not qualify as a dense urban land area pursuant to s. 163.3164 designates any of the following areas in its comprehensive plan, any proposed development within the designated area is exempt from the development of regional impact process:

a. Urban infill as defined in s. 163.3164;

b. Urban infill and redevelopment under s. 163.2517; or,

c. Urban service areas as defined in s. 163.3164.

9. A development that is located partially outside an area that is exempt from the development of regional impact program must undergo development of regional impact review pursuant to s. 380.06.

10. In an area that is exempt under s. 380.06(29)(a) to (c), any previously approved development of regional impact development orders continue to be effective, but the developer has the option to be governed by s. 380.115(1) [vested rights]. A pending application for development approval must be governed by s. 380.115(2) [governed by the development of regional impact development order]. A development that has a pending application for a comprehensive plan amendment and that elects not to continue development of regional impact review is exempt from the limitation on plan amendments established in s. 163.3187(1) [two times per calendar year submission] for the year following the effective date of the exemption.

11. Local governments must submit to the state land planning agency by mail, a development order for projects that would be larger than 120% of any applicable development of regional impact threshold and would require development of regional impact review but for the exemption from the program under s. 380.06(29)(a) to (c). For such development orders, the state land planning agency may appeal the development order pursuant to s. 380.07 for inconsistency with the comprehensive plan adopted under chapter 163.

12. If a local government that qualifies as a dense urban land area under this subsection [s. 380.06(29)] is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area that has a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the application in good faith or the development is approved.

13. Section 380.06(29), does not limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to chapter 380. Section 380.06(29) does not apply to:

a. Areas within the boundary of any area of critical state concern designated under s. 380.05;

b. Areas within the boundary of the Wekiva Study Area as described in s. 369.316; or,

c. Areas within 2 miles of the boundary of the Everglades Protection Area as described in s. 373.4592.

Section 13. Presents legislative finds on the existing transportation concurrency system and provides that the state will evaluate and consider the implementation of a mobility fee to replace the existing transportation concurrency system. The state land planning agency and the Department of Transportation are directed to continue their respective mobility fee studies and develop and submit a final joint report to the President of the Senate and Speaker of the House on the mobility fee methodology study, with recommended legislation and a plan to implement the mobility fee by December 1, 2009.

Section 14. In recognition of the 2009 real estate market conditions, any permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373 [Management and Storage of Surface Waters], that has an expiration date of September 1, 2008 through January 1, 2012, is extended and renewed for a period of 2 years following the date of expiration and includes any local government issued development order or building permit and applies to build out dates including any build out date extension previously granted under s. 380.06(19)(c).

Commencement and completion dates for any required mitigation associated with a phased construction project are extended so that mitigation takes place in the same timeframe relative to the phase as originally permitted.

The holder of a permit or other authorization eligible for the 2-year extension must notify the authorizing agency in writing no later than December 31, 2009, identifying the specific authorization for which the holder intends to use the extension and the anticipated timeframe for acting on the authorization.

The 2-year extension does not apply to:

a. A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.

b. A permit or other authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, initiation of formal enforcement, or other similar action by the authorizing agency.

c. A permit or other authorization that would delay or prevent compliance with a court order, if granted an extension.

Permits extended will be governed by the rules in effect at the time the permit was issued, unless it can be demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health, and applies to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification will not extend the time limit beyond 2 additional years.

This does not impair the county or municipality from requiring the owner of a property to maintain and secure the property in a safe and sanitary condition.

Section 15. Limits the Florida Housing Finance Corporation's access to the state allocation pool under s. 159.807.

Section 16. Creates s. 193.018 - Land owned by a community land trust used to provide affordable housing; assessment; structural improvements, condominium parcels, and cooperative parcels.

1. Defines the term "community land trust" as a nonprofit entity that is qualified as charitable under s. 501(c)(3) Internal Revenue Code and has, as one of its purposes, the acquisition of land to be held in perpetuity for the primary purpose of providing affordable home ownership".

2. Codifies the responsibility of a community land trust to convey structural improvements, condominium parcels, or cooperative parcels located on specific parcels of land to persons or families who qualify for affordable housing under the income limits of s. 420.0004, or for workforce housing under the income limits of s. 420.5095. The improvements or parcels are each subject to a ground lease of at least 99 years, and the ground lease contains a formula limiting the amount for which the improvement or parcel may be resold. The community land trust retains the first right to purchase at the time of resale.

3. Provides that in arriving at the just valuation of structural improvements or improved parcels conveyed by a community land trust, or land owned by the community land trust, the property appraiser must assess based on the resale restrictions or limited uses contained in the 99-year or longer ground lease. When recorded in the official public records of the county in which the property is located, the ground lease and amendments or supplements to the lease, or a memorandum documenting the restrictions contained in the ground lease, are deemed a land use regulation during the term of the lease.

Section 17. Creates s. 196.196(5), which provides that property owned by an exempt organization qualified as charitable under s. 501(3)(c) of the Internal Revenue Code is used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing to persons or families meeting the income restrictions for extremely-low, very-low, low, and moderate income families under s. 420.0004. The term "affirmative steps" means environmental or land use permitting

activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment of the property to providing affordable housing.

If property owned by an organization granted an exemption under this section is transferred for a purpose other than directly providing affordable homeownership or rental housing to persons or families who meet the extremely-low-income, very-low-income, low-income, or moderate-income limits, or is not in actual use to provide affordable housing within 5 years after the date the organization is granted the exemption, the property appraiser will notify the organization a notice of intent to record a notice of tax lien against the property. The organization owning the property is subject to the taxes otherwise due and owning as a result of not suing the property to provide affordable housing plus 15% per year and a penalty of 50% of the taxes owed. If the organization no longer owns the property, but owns property in another county in the state, the property appraiser shall record the notice in each other county. Prior to a lien being filed, the organization must be given 30 days to pay the taxes, penalties and interest due.

The 5-year limitation may be extended if the holder of the organization continues to take affirmative steps to develop the property for affordable housing.

Section 18. Amends s. 196.1978, to extend the affordable housing property tax ad valorem exemption to property that is held for the purpose of providing affordable housing to person and families meeting the income restrictions in s. 159.603(7) ["eligible persons"] and s. 420.0004. The property must be owned by a Florida-based limited partnership, the sole general partner of which is a not-for-profit corporation, or be owned by a nonprofit entity that is a not-for-profit corporation. The not-for-profit corporation must qualify as charitable under section 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 717, or a Florida-based limited partnership. It also provides that any property owned by a limited partnership which is disregarded as an entity for federal income tax purposes will be treated as if owned by its sole general partner.

Section 19. Amends s. 212.055, by clarifying language and providing that an expenditure to acquire land to be used for a residential housing project in which at least 30% of the units are affordable to individuals or families whose total annual household income does not exceed 120% of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or the special district may enter into a ground lease with any entity for the construction of the residential housing project on land acquired from the expenditure of local infrastructure surtax proceeds.

Section 20. Amends s. 163.3202 and creates a subsection (i), which provides that land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall as a minimum "(i)

maintain the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use and are located in the unincorporated areas that have sufficient infrastructure, as determined by the local government, and are not located in a coastal high hazard area under s. 163.3178".

Section 21. Amends s. 420.503 by creating a new subsection (25), which defines "moderate rehabilitation" as repair or restoration of a dwelling unit when the value of such repair or restoration is 40% or less of the value of the dwelling unit but not less than $10,000" and renumbers the present subsections (25) through (41) as (26) through (42).

Section 22. Amends s. 420.507 and creates subsection (47), as an additional power for the Florida Housing Finance Corporation to allow it by rule in any corporation competitive program to create criteria establishing a preference for developers and general contractors domiciled in Florida and for developers and general contractors, regardless of domicile, who have substantial experience in developing or building affordable housing through the corporation's programs.

In evaluating whether a developer or general contractor is domiciled in the state, the Housing Finance Corporation shall consider whether the developer's or general contractor's principal office is located in Florida and whether a majority of the developer's of general contractor's principals and financial beneficiaries reside in Florida.

In evaluating whether a developer or general contractor has substantial experience, the Housing Finance Corporation shall consider whether the developer or general contractor has completed at least five developments using funds either provided by or administered by the corporation.

Section 23. Amends s. 420.5087, to include projects that include green building principles, storm-resistant construction, or other elements to reduce long-term maintenance costs as projects eligible to apply for and receiving consideration for funding from the SAIL program. Also includes the preference for developers and general contractors domiciled in Florida and developers and general contractors, regardless of domicile, who have substantial experience in developing or building affordable housing as provided in s. 420.507(47).

Section 24. Amends s. 420.622(5) to allow money granted by the State Office on Homelessness to be used to acquire transitional or permanent housing for homeless persons.

Section 25. Creates s. 420.628, provides findings and directs the Florida Housing Finance Corporation, the agencies receiving funding under the State Housing Initiatives Partnership Program, local housing finance agencies, and public housing authorities to coordinate with the Department of Children and Family Services and their agents and community-based care providers to develop and implement strategies and procedures

to increase affordable housing opportunities for young adults who are leaving the child welfare system. Such young persons are deemed to have met the definitions for eligible persons for affordable housing purposes. In addition, students deemed to be eligible occupants under certain federal requirements are also considered eligible for purposes of affordable housing projects.

Section 26. Amends ss. 420.9071(4), (8), (16) and (25) and creates ss. 420.9071(29) and (30).

1. Amends s. 420.9071(4), and amends the definition of "annual gross income" to provide that "annual gross income" may be fined by the standard practices used in the lending industry as detailed in the local housing assistance plan and approved by the Florida Housing Finance Corporation.

2. Amends s. 420.9071(8), and amends the definition of "eligible housing" to include manufactured housing installed in accordance with the installation standards for mobile and manufactured homes contained in the rules of the Department of Highway Safety and Motor Vehicles.

3. Amends s. 420.9071(16), and amends the definition of "local housing incentive strategies" to allow the local affordable housing advisory committees to propose local housing incentive strategies in the triennial evaluation of how local governments are implement affordable housing.

4. Amends s. 420.9071(25), and amends the definition of "recaptured funds" to provide that local or grant funds for owner-occupied housing which may be recouped by a county or city include those funds which were not used to provide assistance and those funds which were part of a defaulted loan or grant program.

5. Creates s. 420.9071(29), and defines "assisted housing" and "assisted housing development" as a rental housing development, including rental housing in a mixed use development, that received or currently receives funding from any federal or state housing program.

6. Creates s. 420.9071(30), and defines "preservation" as efforts undertaken to keep rents in existing assisted housing or assisted housing development affordable for income-qualified persons while ensuring that the property stays in good physical and financial condition for an extended period.

Section 27. Amends ss. 420.9072(6) and (7). [State Housing Initiatives Partnership Program]

1. Section 420.9072(6) and deletes a cross reference to s. 420.9087 which is being repealed in the bill.

2. Creates a new s. 420.9072(7)(b), and provides that a county or eligible municipality may expend a portion of the local housing distribution to provide a one-time relocation grant to persons who meet the income requirements of the State Housing Initiatives Partnership Program and who are subject to eviction from rental property located in the county or eligible municipality due to the foreclosure of the rental property. In order to receive a grant, a person must provide the county or eligible municipality with proof of meeting the income requirements of a very-low income household, a low-income household, or a moderate-income household; a notice of eviction; and proof that the rent has been paid for at least 3 months before the date of eviction, including the month the notice of eviction was served. Relocation assistance is limited to a one-time grant of not more than $5,000 and is not limited to persons who are subject to eviction from projects funded under the State Housing Initiatives Partnership Program. This subsection expires July 1, 2010.

Section 28. Amends sections 420.9073(1) and (2) and creates subsections (5), (6) and (7).

1. Amends s. 420.9073(1) and (2) to allow the Florida Housing Finance Corporation to distribute Local Government Housing Trust Fund dollars on a quarterly basis, subject to the availability of funds.

2. Creates s. 420.9073(5) to allow the Florida Housing Finance Corporation to withhold up to $5 million in funds distributed from the Local Government Housing Trust Fund to provide additional funding to counties and cities declared by the Governor to be in a state of financial emergency.

3. Creates s. 420.9073(6) to allow the Florida Housing Finance Corporation to withhold up to $5 million in funds distributed from the Local Government Housing Trust Fund to provide funding to counties and cities to purchase property subject to a SHIP lien on which foreclosure proceedings have been instituted.

4. Creates s. 420.9073(7) requiring a county receiving local housing distributions or an eligible municipality receiving local housing distributions under an interlocal agreement to spend the funds in accordance with statutory requirements, corporation rules, and the local housing assistance program.

Section 29. Amends ss. 420.9075(1), (3), (5), (10)(a) and (h), and (13)(b) and creates subsection (14).

1. Amends s. 420.9075(1) to require that in the development and implementation of local housing assistance programs available to qualified persons, counties and cities must include persons with disabilities as persons with special housing needs and the program may include strategies to assist persons and households having annual incomes of not more than 140% of the area median income.

2. Amends s. 420.9075(3) and requires that each county and each eligible municipality shall describe initiatives in the local housing assistance plan to encourage or require innovative design, green building principles, storm resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance. Each county and each eligible municipality is encouraged to develop a strategy within its local housing assistance plan which provides program funds for the preservation of assisted housing.

3. Amends s. 420.9075(5) and provides that not more than 20% of the funds available from the local housing distribution may be used for manufactured housing.

4. Monroe County exemption from income-restrictions relating to the use of set-aside funds in the local government assistance trust fund is extended from July 1, 2008 to July 1, 2013, so that awards may be made to residents with incomes no higher than 120% of the area median income, and applied retroactively.

5. SHIP funds may be used for preconstruction activities. When preconstruction due diligence activities prove that preservation is not feasible, the costs for those activities are program costs and not administrative costs.

6. Counties and cities may award construction, rehabilitation, or repair grants as part of disaster recovery, emergency repairs, or to remedy access or health and safety issues.

7. Program funds expended for an ineligible activity must be repaid to the Local Housing Assistance Trust Fund and SHIP funds may not be used.

Section 30. Amends ss. 420.9076(2)(h), (5), (6) and (7)(a).

1. Section 420.9076(2)(h), is amended to state that if the local planning agency is comprised of the governing board of the county or municipality, the governing board may appoint a designee to the affordable housing advisory committee who is knowledgeable in the local planning process.

2. Section 420.9076(5), is amended to require the local advisory committee evaluation of the local housing assistance plan and its report on the evaluation must be submitted to the Housing Finance Corporation.

3. Section 420.9076(6), is amended to require the local government to adopt an amendment to its local housing assistance plan to incorporate the local housing strategies it will implement within its jurisdiction within 90 days of receipt of the evaluation and local housing incentive strategy recommendations from the advisory committee.

4. Section 420.9076(7)(a) is amended to delete a cross-reference.

Section 31. Repeals s. 420.9078.

Section 32. Amends s. 420.9079 to correct cross-references.

Section 33. Amends s. 1001.43(12), to expand the purposes for which a district school board in an area of critical state concern may use specified properties and surplus lands to include affordable housing for essential services personnel, as defined by local affordable housing eligibility requirements.

Section 34. Finds that this act fulfills an important state interest.

Section 35. Provides an effective of upon becoming law.

V. Affected Areas (Agencies and Groups)

1. Department of Community Affairs
2. Department of Environmental Protection
3. Department of Transportation
4. Department of State
5. Department of Children and Family Services
6. Legislative Office of Economic and Demographic Research
7. Office of Tourism, Trade, and Economic Development
8. Office of Program Policy Analysis and Government Accountability
9. Water Management Districts
10. Regional Planning Councils
11. Municipal Governments
12. County Governments
13. School Districts
14. Florida Housing Finance Corporation
15. Local Affordable Housing Advisory Councils

16. Developers and Contractors

17. General Public

VI. Fiscal Impact (recurring, non-recurring and long-run effects)

Effects	Amount Year 1	Amount Year 2	Amount Year 3
Non-Recurring	0	0	0
Recurring	0	0	0
Long-Run other than normal growth	0	0	0
Total Revenues and Expenditures	0	0	0

1. Local Government

The fiscal impact on local governments is extensive but the full effects are indeterminate.

The local governments with automatic transportation concurrency exception areas are mandated to adopt land use and transportation strategies to support and fund mobility including alternative modes of transportation within 2 years. Additionally, other local governments are authorized to adopt urban service boundary amendments that would also trigger the requirement for land use and transportation strategies within 2 years. This will be an extensive task and serve as a critical planning complement to support the transportation concurrency exceptions. However, financial support has not been provided for the local governments to undertake the planning. Local governments, particularly smaller municipalities with as few as 5,000 residents, will be challenged to accomplish the mandatory land use and transportation strategies.

The automatic or voluntary elimination of transportation concurrency within municipalities and counties, and for certain development types, coupled with the exemption from the development of regional impact process, will result in a reduction of control over the timing of development and loss of large amounts of transportation mitigation from development. The reduced control of the timing of development, loss of transportation mitigation, and reduction in other sources of revenue to support transportation facilities will have a serious impact on local governments and ultimately force choices between severe transportation congestion and increased taxes.

2. State Government

The fiscal impact on state government is substantial but the full effects are indeterminate.

As SB 360 was revised through the legislative process implemental demands on the state land planning agency grew. However, no additional financial support has been provided to provide technical assistance to local governments.

The requirements for the mobility fee report add a new, unfunded burden on the state land planning agency.

3. Private Sector

Development interests will be relieved of transportation mitigation and development of regional impact requirements in many areas of the state. However, increased transportation congestion and the potential for a patchwork of Home Rule alternatives to transportation concurrency will degrade quality of life and the attractiveness and predictability of the development process in the state.

VII. Limited Government Checklist

1. Report and/or studies required?

Yes

2. Commission, Council, Task Force or Board created or revised?

No

3. Rule Authorization?

No

4. Rule Reductions?

No

5. Does the bill reduce government?

No

6. Does the bill increase fees or taxes?

No

7. Does the bill impose an additional burden on or restrict local government?

Yes

8. Does the legislation link to the agency's strategic plan and/or to its budget?

No

9. Does the bill create more regulation of an activity by a profession or business?

No

10. Does the bill limit or expand commercial or individual freedom?

Expand

VIII. Legal Issues

1. Does the proposed legislation conflict with existing state laws or rules? Yes or No? If so, what laws and/or rules?

2. Does the proposed legislation conflict with existing federal law or regulations? Yes or No? If so, what laws and/or regulations?

3. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g., separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contract)?

4. Is the proposed legislation likely to affect the interests of the Florida Bar, Judiciary or State Attorneys/Public Defenders?

5. Is the proposed legislation likely to generate litigation, and if so, from what interest groups or parties?

IX. Proposed amendments (If recommended)