HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1177 Land Development
SPONSOR(S): Ways & Means Committee, Local Administration, Federal Affairs & Special Districts Subcommittee, Duggan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1110

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	13 Y, 1 N, As CS	Mwakyanjala	Darden
2) Ways & Means Committee	22 Y, 0 N, As CS	Rexford	Aldridge
3) State Affairs Committee		Mwakyanjala	Williamson

SUMMARY ANALYSIS

Each county and municipality must plan for future development and growth by adopting, implementing, and amending, as necessary, a comprehensive plan. All elements of a plan or plan amendment must be based on relevant, appropriate data and an analysis by the local government, and must include a transportation element.

Certain public facilities and services must be in place and available to serve new development no later than the issuance of a certificate of occupancy or its functional equivalent by a local government. Local governments may extend this concurrency requirement to additional public facilities such as transportation. Local governments electing to repeal transportation concurrency are encouraged to adopt an alternative mobility funding system. One method of funding local government transportation concurrency requirements is through the imposition of impact fees. Local governments may increase impact fees only under limited circumstances, including upon a showing of extraordinary circumstances.

A Development of Regional Impact (DRI) is a development that, because of its character, magnitude, or location, has a substantial effect on the health, safety, or welfare of citizens of more than one county. Any proposed change to a previously approved DRI must be reviewed by the local government. An adopted local comprehensive plan or adopted land development regulations to the contrary, an adopted change to a development order for an approved DRI does not diminish or otherwise alter any credits for a development order exaction or fee.

The bill:

- Revises powers and responsibilities of counties and municipalities under the Community Planning Act.
- Requires local governments implementing transportation concurrency to credit the fair market value of any land dedicated and prohibits fees based on cumulative analysis of trips between project stages and phases.
- Revises application of credits against local impacts for DRIs.
- Revises review requirements for changes to DRIs and clarifies the application of vested rights in DRIs.
- Provides counties with the power to hear final decisions made by municipal historic preservation boards.
- Prohibits local governments from requiring certain approvals or fees before allowing the alteration or removal of a tree on property used for the construction of a healthcare facility for veterans.

The Revenue Estimating Conference met on February 2, 2024, and determined the bill would have a negative, indeterminate impact on local government revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Comprehensive Planning

Every local government, defined as any county or municipality,[1] is required to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan.[2] All elements of a plan or plan amendment must be based on relevant, appropriate data[3] and an analysis by the local government that may include surveys, studies, aspirational goals, and other data available at the time of adopting the plan or amendment.[4] The data supporting a plan or amendment must be taken from professionally accepted sources[5] and must be based on permanent and seasonal population estimates and projections.[6]

Each comprehensive plan must include a transportation element, the purpose of which is to plan for a multimodal transportation system emphasizing feasible public transportation, addressing mobility issues pertinent to the size and character of the local government, and designed to support all other elements of the comprehensive plan.[7] The transportation element must address traffic circulation, including the types, locations, and extent of existing and proposed major thoroughfares and transportation routes, including bicycle and pedestrian ways.[8] The plan of a local government with a population exceeding 50,000 that is not within the planning area of a metropolitan planning organization (MPO)[9] also must address mass transit, ports, and aviation[10] and related facilities.[11] The transportation planning element for a local government with a population exceeding 50,000 located within the area of an MPO specifically must address the following:

- All alternative modes of travel, including public transportation, pedestrian, and bicycle.
- Aviation, rail, and seaport facilities, access to those facilities, and intermodal transportation.
- Capability to evacuate coastal population prior to a natural disaster.
- Airports, projected airport and aviation development, and land use around airports.
- Identification of land use densities, building intensities, and transportation management programs to promote public transportation.[12]

[1] S. 163.3164(29), F.S. For the purpose of the Community Planning Act, the Central Florida Tourism Oversight District may exercise the powers of a municipality for the area under its jurisdiction. S. 163.3167(6), F.S. *See also* ch. 2023-5, Laws of Fla. (renaming the Reedy Creek Improvement District to the Central Florida Tourism Oversight District).
[2] Ss. 163.3167(2), 163.3177(2), F.S.
[3] "To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." S. 163.3177(1)(f), F.S.
[4] S. 163.3177(1)(f), F.S.
[5] S. 163.3177(1)(f)2., F.S. The statute does not further define "professionally accepted sources."
[6] S. 163.3177(1)(f)3., F.S. Population estimates may be those published by the Office of Economic and Demographic Research or may be generated by the local government based upon a professionally acceptable methodology. *Id.*
[7] S. 163.3177(6)(b), F.S.
[8] S. 163.3177(6)(b)1., F.S.
[9] An MPO must be designated as provided in 23 U.S.C. s. 450.310(a) for each urbanized area with a population of more than 50,000. S. 339.175(2), F.S. Florida MPOs are intended specifically to develop plans and programs in metropolitan areas for the development and management of transportation systems and facilities, including pedestrian walkways and bicycle transportation facilities to function as an intermodal transportation system. S. 339.175(1), F.S.
[10] All local governments have the option to include within the transportation element an airport master plan, incorporated into the plan through the comprehensive plan amendment process. S. 163.3177(6)(b)4., F.S.
[11] S. 163.3177(6)(b), F.S.
[12] S. 163.3177(6)(b)2., F.S.

The transportation planning element for a municipality with a population exceeding 50,000, or a county with a population exceeding 75,000, must provide for moving people by mass transit, including:

- Providing efficient, safe, and convenient public transit, including accommodation for the transportation disadvantaged.
- Plans for port, aviation, and related facilities.
- Plans for circulation of recreational traffic, including bicycle and riding facilities and exercise trails.[13]

In addition to the general requirements for data supporting a comprehensive plan or plan amendment, the transportation planning element must include one or more maps showing the general location of existing and proposed transportation system features and data, analyses, and associated principles pertaining to:

- Existing transportation system levels of service and system needs and availability of transportation facilities and services.
- Growth trends and travel patterns, as well as interactions between land use and transportation;
- Current and projected intermodal[14] deficiencies and needs.
- Projected transportation system levels of service and system needs.
- How the local government will correct existing facility deficiencies, meet the needs of the projected transportation system, and advance the transportation purposes of the plan.[15]

Generally, local government transportation and mobility planning should address providing mobility options, such as automobile, bicycle, pedestrian, or mass transit, that minimize environmental impacts, expand transportation options, and increase connectivity between destinations.[16]

Transportation Concurrency

Certain public facilities and services must be in place and available to serve new development no later than the issuance of a certificate of occupancy or its functional equivalent by a local government.[17] Local governments may extend this concurrency requirement to additional public facilities such as transportation.[18] Where concurrency is applied to transportation, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service, to guide its application.[19] The plan must show that the included levels of service may reasonably be met.[20] Local governments utilizing transportation concurrency must use professionally accepted studies to evaluate levels of service and professionally accepted techniques to measure such levels of service when evaluating potential impacts of proposed developments.[21] While local governments implementing a transportation concurrency system are encouraged to develop and use certain tools and guidelines, such as addressing potential negative impacts on urban infill and redevelopment[22] and adopting long-term multimodal strategies,[23] such local governments must follow specific concurrency requirements. Such requirements include consulting with the Florida Department

[13] S. 163.3177(6)(b)3., F.S.
[14] "Intermodal transportation" is not defined in the statute but generally means the transportation by or involving more than one form of carrier in a single journey, particularly for moving cargo. *See* "intermodal," https://www.merriam-webster.com/dictionary/intermodal (last visited Feb. 2, 2024); "intermodal transport," https://www.ups.com/us/en/supplychain/insights/knowledge/glossary-term/intermodal-transport.page (last visited Feb. 2, 2024). Part of the intent in creating the Florida Strategic Intermodal System is to address the increased demands placed on the entire statewide transportation system by economic and population growth and projected increases in freight movement, international trade, and tourism designing and operating a strategic intermodal system to meet the mobility needs of the state. *See* s. 339.61(2), F.S.
[15] S. 163.3177(6)(b)1., F.S.
[16] Dept. of Commerce, *Transportation Planning*, https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/transportation-planning (last visited Feb. 2, 2024), herein Commerce Transportation Planning.
[17] S. 163.1380(2), F.S. The only such services for which concurrency is mandatory are sanitary sewer, solid waste, drainage, and potable water supplies.
[18] S. 163.3180(1), F.S.
[19] Ss. 163.3180(1)(a), 163.3180(5)(a), F.S. *See* Commerce Transportation Planning, *supra* n. 16.
[20] S. 163.3180(1)(b), F.S.
[21] S. 163.3180(5)(b)-(c), F.S.
[22] S. 163.3180(5)(e), F.S.
[23] S. 163.3180(f), F.S.

of Transportation if proposed plan amendments affect the Strategic Intermodal System, exempting public transit facilities from concurrency requirements, and allowing a developer to contribute a proportionate share to mitigate transportation impacts for a specific development.[24]

An applicant for a development-of-regional-impact development order, development agreement, rezoning, or other land use development permit satisfies the requirements for transportation concurrency if the applicant in good faith offers to enter into a binding agreement to pay for or construct its proportionate share of transportation improvements required to mitigate the impact of the proposed development and the proffered proportionate share contribution or construction is sufficient to accomplish one or more mobility improvements benefitting a regionally significant transportation facility.[25] The plan for transportation concurrency must provide the basis on which landowners will be assessed a proportionate share,[26] including a compliant formula for calculating the proportionate share.[27] The proportionate share may not include additional costs to reduce or eliminate existing transportation deficiencies.[28] However, a local government may cumulatively analyze the trips from a previous stage or phase of a development for which mitigation was not required or provided when determining the mitigation required for a subsequent stage of development.[29]

Local governments electing to repeal transportation concurrency are encouraged to adopt an alternative mobility funding system. Such an alternative system may not be used to restrict or deny certain development approval applications provided the developer agrees to pay for the development's transportation impacts using the funding mechanism implemented by the local government. Local government mobility fee systems must comply with all requirements for adopting and implementing impact fees. An alternative funding system that is not mobility fee based may not impose on new development any responsibility for funding existing transportation deficiencies.[30]

Impact Fees

One method of funding local government transportation concurrency requirements is through the adoption and imposition of impact fees on new development. Local governments impose impact fees to fund infrastructure[31] needed to expand local services to meet the demands of population growth caused by new growth.[32] Impact fees must meet the following minimum criteria when adopted:

- The fee must be calculated using the most recent and localized data.[33]
- The local government adopting the impact fee must account for and report impact fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.[34]
- Charges imposed for the collection of impact fees must be limited to the actual costs.[35]
- All local governments must give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect, but need not wait 90 days before decreasing, suspending, or eliminating an impact fee. Unless the result reduces total mitigation costs or impact fees on

[24] S. 163.3180(5)(h), F.S. *See* Commerce Transportation Planning, *supra* note 16.
[25] S. 163.3180(5)(h)1.c., F.S.
[26] S. 163.3180(5)(h)1.d., F.S.
[27] S. 163.3180(5(h)2.a.-d., F.S.
[28] S. 163.3180(5)(h)2., F.S. For purposes of s. 163.3180(5), F.S., "transportation deficiency" means a facility or facilities on which the level of service standard adopted in the comprehensive plan is exceeded by the number of existing, projected, or vested trips together with additional trips originating from any source other than the development project under review, and trips forecast by established traffic standards. S. 163.3180(5)(h)4., F.S. Local governments may resolve existing transportation deficiencies within an identified transportation deficiency area by creating a transportation development authority with specific powers to implement a transportation sufficiency plan funded through a formula of tax increment funding. Adopting a transportation sufficiency plan is deemed as meeting transportation level of service standards, and proportionate fair-share mitigation is limited to ensure developments within the transportation deficiency area are not responsible for additional costs to eliminate deficiencies. S. 163.3182, F.S.
[29] S. 163.3180(5)(h)2.c., F.S.
[30] S. 163.3180(5)(i), F.S.
[31] "Infrastructure" means the fixed capital expenditure or outlay for the construction, reconstruction, or improvement of public facilities with a life expectancy of five or more years, together with specific other costs required to bring the public facility into service but excluding the costs of repairs or maintenance. The term also includes specific equipment. S. 163.31801(3), F.S.
[32] S. 163.31801(2), F.S. Water and sewer connection fees are not impact fees. S. 163.31801(12), F.S.
[33] S. 163.31801(4)(a), F.S.
[34] S. 163.31801(4)(b), F.S.
[35] S. 163.31801(4)(c), F.S.

an applicant, new or increased impact fees may not apply to current or pending applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.[36]
- A local government may not require payment of the impact fee before the date of issuing a building permit for the property that is subject to the fee.[37]
- The impact fee must be reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.[38]
- The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction.[39]
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.[40]
- The local government may not use revenues generated by the impact fee to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.[41]

The types of impact fees charged and the timing of their collection after issuing a building permit are within the discretion of the local government or special district authorities choosing to impose the fees.[42] In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.[43] A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[44] Local governments providing an exception or waiver of impact fees for the development or construction of affordable housing are not required to use any revenues to offset the impact of such development.[45]

Local governments must credit against impact fee collections any contribution related to public facilities or infrastructure on a dollar-for-dollar basis at fair market value for the general category or class of public facilities or infrastructure for which the contribution was made. If no impact fee is collected for that category of public facility or infrastructure for which the contribution is made, no credit may be applied.[46] Credits for impact fees may be assigned or transferred at any time once established, from one development or parcel to another within the same impact fee zone or district or within an adjoining impact fee zone or district within the same local government jurisdiction.[47]

Local governments may increase impact fees only under limited circumstances. A fee may be increased no more than once every four years, may not be increased retroactively, the increase may not exceed 50 percent of the current impact fee amount, and any increase must be consistent with a statutorily-compliant plan for the imposition, collection, and use of the fees. An increase not exceeding 25 percent of the current fee amount must be implemented in two equal annual increments, while an increase greater than 25 percent but not exceeding 50 percent of the current amount must be

[36] S. 163.31801(4)(d), F.S.
[37] S. 163.31801(4)(e), F.S.
[38] S. 163.31801(4)(f), F.S.
[39] S. 163.31801(4)(g), F.S.
[40] S. 163.31801(4)(h), F.S.
[41] S. 163.31801(4)(i), F.S.
[42] *See* s. 163.31801(2), F.S.
[43] S. 553.79, F.S.
[44] S. 163.3164(16), F.S.
[45] S. 163.31801(11), F.S.
[46] S. 163.31801(5), F.S.
[47] S. 163.31801(10), F.S. In an action challenging an impact fee or a failure to provide proper credits, the local government has the burden of proof to establish the imposition of the fee or the credit complies with the statute, and the court may not defer to the decision or expertise of the government. S. 163.31801(9), F.S.

implemented in four equal annual installments. However, a local government may increase a fee more than once in four years or for more than 50 percent of a current impact fee amount if it has:

- Prepared a demonstrated-need study within 12 months before adopting the increase showing extraordinary circumstances necessitating the need for the increase.
- Conducted at least two publicly noticed workshops on the extraordinary circumstances justifying the increase.
- Approved the increase by at least a two-thirds vote of the governing body.[48]

A local government that increases an impact fee must still provide the holder of any impact fee credit the full benefit of the density and intensity prepaid by the credit balance.[49]

With each annual financial report or audit filed[50] a local government must report specific information on impact fees imposed, including the specific purpose of the fee, the impact fee schedule describing the method of calculating the fee, the amount assessed for each purpose and for each type of dwelling, the total amount of fees charged by type of dwelling, and each exception or waiver to the imposition of impact fees provided for construction of affordable housing.[51] Additionally, the chief financial officer or executive officer (if there is no chief financial officer) must submit with the annual financial report an affidavit attesting that all impact fees were collected and expended by the local government, or on its behalf, in full compliance with the spending period provisions in the local ordinance and that funds expended from each impact fee account were used to acquire, construct, or improve those specific infrastructure needs.[52]

Developments of Regional Impact (DRIs)

A DRI is "any development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county."[53] The DRI statutes were created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting laws.[54] The program provided a process to identify regional impacts stemming from large developments and appropriate provisions to mitigate impacts on state and regional resources.[55]

The process to review or amend a DRI agreement and its implementing development orders went through several revisions[56] until repeal of the requirements for state and regional reviews in 2018.[57] Affected local governments are responsible for the implementation and amendment of existing DRI agreements and development orders.[58] An amendment to a development order for an approved DRI may not amend to an earlier date until the local government agrees not to impose downzoning, unit density reduction, or intensity reduction, unless:

- The local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred;
- The development order was based on substantially inaccurate information provided by the developer; or

[48] S. 163.31801(6), F.S.
[49] S. 163.31801(7), F.S.
[50] *See* ss. 218.32, 218.39, F.S.
[51] S. 163.31801(13), F.S.
[52] S. 163.31801(8), F.S.
[53] S. 380.06(1), F.S.
[54] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in *Growth Management in Florida: Planning for Paradise*, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T. Higgins eds. 2005), https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-114ca.pdf (last visited Feb. 2, 2024)
[55] Ch. 72-317, s. 6, Laws of Fla.
[56] *See* ch. 2015-30, Laws of Fla. (requiring that new DRI-sized developments proposed after July 1, 2015, must be approved by a comprehensive plan amendment in lieu of the state review process provided for in s. 380.06, F.S.) and ch. 2016-148, Laws of Fla. (requiring DRI reviews to follow the state coordinated review process if the development, or an amendment to the development, required an amendment to the comprehensive plan).
[57] Ch. 2018-158, Laws of Fla.
[58] S. 380.06(4)(a) and (7), F.S.

- The change is clearly established by the local government to be essential to the public health, safety, or welfare.[59]

Any proposed change to a previously approved DRI must be reviewed by the local government based on the standards and procedures in its adopted local comprehensive plan and local land development regulations.[60] However, a proposed change reducing the originally approved height, density, or intensity of the development must be reviewed by the local government based on the standards in the local comprehensive plan at the time the development was originally approved.[61] If the proposed change would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change.[62] Any new conditions contained in the amendment to the development order must address impact directly created by the proposed change and must be consistent with the local government's adopted comprehensive plan, land development regulations, and transportation concurrency.[63]

Current provisions concerning DRIs do not limit or modify the rights of any person to complete any development that was authorized by:

- Registration of a subdivision pursuant to former ch. 498, F.S.;
- Recordation pursuant to local subdivision plat law; or
- A building permit or other authorization to commence development on which there has been reliance and a change of position and which registration or recordation was accomplished, or which permit or authorization was issued, prior to July 1, 1973.[64]

If a developer has obtained vested, or other legal rights in reliance on prior regulations that would have prevented the local government from changing those regulations in a way that is adverse to the developer's interest, those rights may not be abridged by any governmental agency.[65]

If a development has conveyed, or agreed to convey, property to a state or local government as a prerequisite for a zoning change approval, such change is considered an act of reliance to vest rights, provided the zoning change is actually granted by the government.[66]

Impact Fee Credits

Notwithstanding any provision of an adopted local comprehensive plan or adopted land development regulations to the contrary, an adopted change to a development order for an approved DRI does not diminish or otherwise alter any credits for a development order exaction or fee as against impact fees, mobility fees, or exactions if the credits are based upon the developer's contribution of land, a public facility, or the construction, expansion, or payment for land acquisition or construction or expansion of a public facility or portion of a public facility.[67]

If a local government imposes or increases impact fees, mobility fees, or exactions by local ordinance, developers may petition the local government to modify the affected provisions of the developer's development order to give the developer credit for any contribution required by the development owner toward an impact fee or exaction for the same need.[68]

[59] S. 380.06(4)(a), F.S.
[60] S. 380.06(7)(a), F.S. These procedures must include notice to the applicant and public about the issuance of development orders.
[61] *Id*.
[62] *Id.*
[63] S. 380.06(7)(b), F.S.
[64] S. 380.06(8), F.S.
[65] *Id*. "Governmental agency" means the United States government, state government, any county, municipality, joint airport zoning board when relevant or any department, commission, agency, or other instrumentality thereof, and any school board or other special district, authority, or other governmental entity. S. 380.031(6), F.S.
[66] S. 380.06(8)(b), F.S.
[67] S. 380.06(5)(a), F.S.
[68] S. 380.06(5)(b), F.S.

These provisions relating to local impact fee credits and DRIs do not apply to internal, onsite facilities required by local regulations and any offsite facilities necessary to provide safe and adequate services to the development. [69]

Historic Preservation

Some local governments have created historic preservation boards to preserve and protect historic properties and resources. Historic preservation boards can make certain decisions relating to the protection and use of historic property and historic resources. For example, the City of Miami Beach has created a historic preservation board in order to identify and protect historic sites and districts,[70] and the City of Orlando has a historic preservation board that reviews all changes to structures within historic preservation districts within the city.[71]

Current law defines a "historic property" or "historic resource" to mean any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archaeological value, and folklife resources. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, and culture of the state.[72]

Local Tree Pruning, Trimming, and Removal Regulation

Current law limits the ability of local governments to regulate tree pruning, trimming, or removal on residential property when the property owner obtains documentation from a certified arborist[73] or a Florida-licensed landscape architect that the tree poses an unacceptable risk to persons or property.[74] Specifically, the law prohibits a local government from requiring a notice, application, approval, permit, fee, or mitigation in such instance.[75] Additionally, a local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with the section.[76]

Effect of Proposed Changes

Comprehensive Planning

The bill revises the scope of the Community Planning Act to clarify that incorporated municipalities and counties have the power and responsibility to evaluate transportation impacts, apply concurrency, and assess any fee related to transportation improvements. The bill also provides that, notwithstanding any other provision of general law except any law pertaining to the protection and restoration of the Everglades, counties and municipalities, exclusively hold the powers and responsibilities assigned to those units of government under the Community Planning Act.

The bill provides that a local government that continues to implement a transportation concurrency system must comply with existing statutory requirements notwithstanding any provision in a

[69] S. 380.06(5)(d), F.S.

[70] Miami Beach's historic preservation board issues or denies certificates of appropriateness and prescribes conditions and safeguards relating to the certificates and violation of the conditions and safeguards constitutes a violation of the city's land development regulations. [*See* City of Miami Beach, Fla., Code of Ordinances, ss. 118-502 and 118.561(a); *see also* City of Miami Beach, *Historic Preservation Board*, https://www.miamibeachfl.gov/city-hall/city-clerk/boards-and-committees/historic-preservation-board/ (last visited Feb. 16, 2024)].

[71] After an area is designated as a historic district, no exterior portion of any building or structure, above ground utility structure, or any outdoor advertising sign may be erected, altered, restored, or moved within the historic district until after an application for a certificate of appropriateness is approved by the city's historic preservation board. [*See* City of Orlando, *Historic Preservation Board*, https://www.orlando.gov/Our-Government/Records-and-Documents/Citizen-Advisory-Boards/Historic-Preservation-Board (last visited Feb. 16, 2024); *see also* City of Orlando, Fla., Code of Ordinances, s. 58.402].

[72] S. 267.021(4), F.S.

[73] The arborist must be certified by the International Society of Arboriculture. S. 163.045(1)(a), F.S.

[74] S. 163.045(2), F.S.

[75] *Id.*

[76] S. 163.045(3), F.S.

development order, an agreement, a local comprehensive plan, or a local land development regulation. The bill revises those requirements by:

- Requiring local governments that implement a transportation concurrency system to credit the fair market value of any land dedicated to a governmental entity for transportation facilities against the total proportionate share payments computed pursuant to general law.
- Removing the authority for local governments to cumulatively analyze trips from a previous stage or phase of development that did not result in impacts for which mitigation was required when determining whether mitigation for a subsequent stage or phase of development is required.

Impact Fees

The bill clarifies that a special district may only levy impact fees if authorized to do so by special act. The bill requires local governments to provide credit against the collection of the impact fee for any contributions related to public facilities or infrastructure, notwithstanding the provisions of any agreement.

Developments of Regional Impact

The bill revises the exceptions pertaining to credits against local impact fees when amendments are made to a development order to only apply to:

- Internal, private, onsite facilities required by local regulations; and
- Offsite facilities necessary to provide safe and adequate services solely to the development and not the general public.

The bill removes the requirement that a local government review a proposed change to a DRI based on the local comprehensive plan at the time the development was originally approved. The bill provides that a change to a DRI that has the effect of reducing the originally approved height, density, or intensity of the development or that changes only the location or acreage of uses and infrastructure or exchanges permitted uses must be administratively approved and is not subject to review by the local government.

The bill provides that any local government review of any proposed change to a DRI and of any development order required to construct developments in the DRI must abide by any prior agreements or other actions vesting the laws and policies governing the development.

The bill removes the requirement that any new condition in an amendment to a development order approving or denying an application for a proposed change to a DRI must be consistent with the local government's comprehensive plan and land development regulations.

The bill requires any proposed change to a DRI that includes a dedicated multimodal pathway suitable for bicycles, pedestrians, and low-speed vehicles[77] along any internal roadway be approved if the right-of-way remains sufficient for the ultimate number of lanes of the internal road. The bill requires approval of any proposed change to a DRI substituting a multimodal pathway suitable for bicycles, pedestrians, and low-speed vehicles in lieu of an internal road if the change does not result in any road within or adjacent to the DRI falling below the local government's adopted level of service and does not increase the original distribution of trips on any road analyzed as part of the DRI by more than 20 percent. The local government must return any interest it may have in the right-of-way to the developer if the developer has dedicated the right-of-way to the local government for proposed internal road ways as part of the approval process for the amendment.

The bill clarifies that comprehensive plans and land development regulations adopted after a DRI has vested do not apply to proposed changes to an approved DRI or to development orders required to implement the DRI.

[77] Low-speed vehicle means any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour. S. 320.01(41), F.S.

The bill provides that the conveyance of, or any agreement to convey, property or compensation to the state or local government is an act of reliance to vest rights, removing the requirement that the conveyance be part of a zoning change.

Historic Preservation

The bill allows final orders and decisions made by municipal historic preservation boards to be appealed to the board of county commissioners, notwithstanding any local charter, ordinance, or regulation to the contrary. The board of county commissioners must hold a public meeting on the appeal within 30 days of receiving the appeal. After the public meeting, the board of county commissioners may approve or reject the final order or decision of the historic preservation board. Decisions by a board of county commissioners are final and appeals to the board of county commissioners are supplemental to other available remedies in law.

Local Tree Pruning, Trimming, and Removal Regulation

The bill prohibits a local government from requiring a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on property being used for the construction or development of a veterans healthcare facility, as approved by the United States Department of Veterans Affairs. A local government may not require a property owner to replant a tree that was pruned, trimmed, or removed for the construction or development of a veterans healthcare facility.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.01, F.S., relating to powers and duties.

Section 2: Creates s. 163.046, F.S., relating to tree pruning, trimming, or removal; property used for veterans health care facilities.

Section 3: Amends s. 163.3167, F.S., relating to scope of the Community Planning Act.

Section 4: Amends s. 163.3180, F.S., relating to concurrency.

Section 5: Amends s. 163.31801, F.S., relating to impact fees; short title; intent; minimum requirements; audits; challenges.

Section 6: Creates s. 166.04152, F.S., relating to final orders and decisions of municipal historic preservation boards.

Section 7: Amends s. 380.06, F.S., relating to DRIs.

Section 8: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference met on February 2, 2024, and determined the bill would have a negative, indeterminate impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill makes various changes regarding impact fees and impact fee credits that could result in a reduction in authority to raise revenue; however, an exemption may apply because the bill may have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as committee substitute. The amendment provided that a DRI change must be approved administratively when it changes only the location or acreage of uses and infrastructure or exchanges permitted uses.

On February 14, 2024, the Ways & Means Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the deletion of the water and sewer impact fee exception in current law.
- Added language giving counties the power to hear appeals of final orders and decisions made by municipal historic preservation boards and prescribing procedures for hearing those appeals.
- Added language prohibiting local governments from requiring a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on property being used for the construction or development of a veterans healthcare facility, as approved by the United States Department of Veterans Affairs.
- Added language prohibiting a local government from requiring a property owner to replant a tree that was pruned, trimmed, or removed for the construction or development of a veterans healthcare facility.

- Provided that the Community Planning Act does not apply to the protection and restoration of the Everglades.

The analysis is drafted to the committee substitute as passed by the Ways & Means Committee.