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ANALYSIS OF THE 2005 GROWTH MANAGEMENT LEGISLATION (SB 360)

Overview

The bill makes many changes to the “Growth Management Act”, mostly related to the provision of infrastructure to support future growth. There are few changes to the law related to the second major aspect of growth management - the protection of ecosystems and rural areas. The changes that were made in this regard make it easier to approve plan amendments and Developments of Regional Impact in rural areas. The bill continues a recent trend towards a reduction in the state’s role in managing growth, yet requires all local governments to make specific revisions to their plans over the next few years. It also continues a trend towards providing strong legislative support for excellent land use planning (except for the parts that limit local government’s ability to strictly apply school and road concurrency), but making such planning essentially optional. It also continues a trend of encouraging and allowing both urban infill and rural development. All in all, the bill represents an approach that seeks to ensure that there is adequate infrastructure in place to accommodate growth but which makes no clear decisions about where that growth must and cannot occur. The bill can be viewed as a “work in progress”, leaving several issues unresolved - potentially to be addressed next session, and establishing task several forces to make recommendations for subsequent legislation. Its major specific provisions are described below.

Public Facilities and Services

The biggest changes relate to concurrency for schools and roads. School concurrency is now mandatory, whereas it was previously discretionary. By December 1, 2008, local governments must adopt a public school facilities element and an updated interlocal agreement

to implement school concurrency. If not, they can not adopt plan amendments which increase residential density, and will be subject to monetary sanctions. Initially, school concurrency must be established on a district-wide basis, but, within five years, must be applied within attendance zones or other localized areas. Local government can not deny development approval on the basis of school concurrency if schools are available in a contiguous service area, or will be available within 3 years after the issuance of final development approval, or where the developer commits to pay “proportionate share” mitigation.

Water supply is now elevated to an issue that is important to the setting of basic land uses and intensities. Water supply concurrency has always been required for development order approval. The bill now requires *consideration* of the availability of water supply at the plan amendment stage, as one of the several [sometimes competing] factors upon which future land use decisions must be “based upon.”

The bill does add “adequate water supplies” to the list of mandatory concurrency items to be available when development orders are issued, although it is unclear how this differs from the existing concurrency requirement for “potable water.”

Local governments are required to adopt water supply and alternative water supply development plans, consistent with the water supply projections and plans of the Water Management Districts. During each 5 year review of the comprehensive plan by the Department of Community Affairs, DCA must evaluate the extent to which the local government has identified traditional and alternative (such as conservation and reuse) water supply projects.

Finally, the bill encourages all relevant agencies to “cooperatively plan for the development of multi-jurisdictional water supply facilities” to help meet the bill’s intent of providing enough water supply to accommodate growth. This may be a potential pre-cursor to the controversial concept of water transfers between regions.

Concurrency for parks and recreation facilities may be met by dedication, acquisition or fair share commitment no later than “approval to commence construction.”

Transportation facilities must be in place or under actual construction within 3 years of the approval of a building permit . Transportation concurrency exception areas (TCEAs) must support and fund mobility, including alternative modes of transportation, and must address urban design, appropriate land use mixes, network connectivity plans, and impacts to the Strategic Intermodal System (SIS). Local governments must demonstrate that de minimis transportation impacts may not exceed 110 percent of maximum volume at adopted LOS. Transportation concurrency management areas (TCMAs) must assess impacts on the adopted LOS standards established for SIS facilities and develop a plan to mitigate any impacts. Existing TCEAs and TCMAs have until July 1, 2006 to meet the new criteria.

Proportionate Share Funding For Roads & Schools

Developments may meet school concurrency by entering into a legally binding commitments to provide mitigation proportionate to the demand for school facilities created by the development. Mitigation options include payment of money, contribution of land, or payment for or construction of a school facility in exchange for the right to sell capacity credits. In determining the amount of mitigation, the local government must consider the residential density allowed on the property prior to the plan amendment that increases overall residential density.

Transportation concurrency may or may not have been weakened, depending on how the bill is implemented. The bill's "proportionate fair-share mitigation" provision deems that a developer's traffic concurrency requirement is fulfilled if they pay a fee that is to be based on a model ordinance to be drafted by the Florida Department of Transportation. This "pay and go" fee will allow that development to proceed whether or not the roadways affected by the development will actually maintain their adopted levels of service as a result of any actual improvements to offset the development's impacts.

A developer may also satisfy concurrency requirements through proportionate fair-share mitigation if the facilities needed for mitigation of the development impacts are identified for funding in the 5-year CIE, or in a long-term concurrency management system, or if the contributions are reflected in the next update of the CIE. Mitigation for impacts to SIS facilities require the concurrence of DOT. Updates to the 5-year CIE which reflect proportionate fair-share contributions must show that additional funding sources or payments are reasonably anticipated during the next 5 to 10 years which fully mitigate impacts on the transportation facilities. The requirement that LOS standards be met can be waived if a development pays its proportionate share for transportation facilities if the payment is sufficient to pay for one or more improvements which will significantly benefit the impacted system. The concurrency requirement is also waived for multi-use DRIs which pay a proportionate share of funding for transportation improvements. Each local government must adopt a methodology for assessing proportionate fair-share mitigation options by December 1, 2006. By December 1, 2005, FDOT must develop a model transportation concurrency management ordinance.

Financial Feasibility

By December 1, 2007, each local government must demonstrate that the 5-year schedule for financing capital improvements in its Capital Improvements Element (CIE) is "financially feasible", meaning that sufficient revenues are adequate to achieve and maintain the adopted level-of-service (LOS) standards. After December 1, 2007, no plan amendments may be adopted until the annual update to the CIE is adopted. If the annual update is not adopted or is found not in compliance, the local government is subject to sanctions by the Administration Commission (Governor and Cabinet). Local "affected persons" can challenge these CIE updates.

Urban Service Boundaries:

The bill encourages local governments to designate urban service boundaries, which must be appropriate for compact, contiguous urban development comprised to accommodate projected development over a 10 years planning time frame, with adequate public facilities and services in place or planned.

Given the liberal approach DCA has taken in recent years to the existing requirement that future land uses be “based upon” the amount of land necessary to accommodate projected growth and development, and given the sometimes extensive list of roadway and water and sewer projects included in long-range (but currently unfunded) facility plans, it is an open question as to how strict or liberal DCA will be in the drawing of USB boundaries. This is particularly true given that the USB’s must only “substantially comply” with the bill’s criteria. However, the bill does include language requiring the local government to demonstrate that the amount of land within the USB does not exceed the amount of land needed during the 10 year time frame. A literal reading of this language would negate a concern that the USB’s will be over-inclusive - thus allowing ecosystems and farmlands to be developed under the guise of compact urban development. On the other hand, it is not clear that this would preclude the long-standing practice of allowing at least a 25% overage or “market factor”, and the bill expressly is not intended to prohibit development outside of the USB. So, it is not clear whether the USB must accommodate the entire jurisdiction-wide growth projection (perhaps with the overage or market factor to be accommodated outside of the USB), or some “urban” share of the overall jurisdiction-wide projection.

While all development is not limited to the USB, where such boundaries are adopted, local governments are “encouraged” to perform “full-cost accounting” analysis of development outside of the boundaries and to “consider” such information when adopting plan amendments.

DCA’s approval of USBs are not subject to citizen challenges.

Local governments that have adopted a community vision and an urban service boundary are not subject to state and regional agency review of Future Land Use map amendments within the boundary, and are exempt from the DRI process if there is a binding agreement with adjacent jurisdictions and DOT regarding mitigation of impacts on state and regional transportation facilities and there is an adopted proportionate share methodology. Locally affected persons will still retain their ability to challenge amendments within USBs, but will no longer have the benefit of DCA ORC reports or outside agency comments.

Local Visioning Process

The bill encourages a “Visioning” process, that requires consideration of the types of issues that are already relevant to planning under the existing law. If the resulting comprehensive plan changes “substantially accomplish” the goals of the bill, the local government is exempt from plan amendment and DRI reviews within the designated Urban Service Boundary.

The law previously encouraged “visioning” in rural land stewardship areas.

DRI exemptions

In addition to urban service areas, projects within rural land stewardship areas and within areas designated as urban infill and redevelopment areas are exempt from the DRI process if there is a binding agreement with adjacent jurisdictions and DOT regarding mitigation of impacts on state and regional transportation facilities and there is an adopted proportionate share methodology.

Infrastructure Financing

The bill allocates additional documentary stamp taxes as a recurring source of funding for education, transportation, water supply, DCA technical assistance and other things. It also includes non-recurring funding funds for Fiscal Year 05/06 to the State Transportation Trust Fund, Water Protection and Sustainability Trust Fund, Public Education Capital Outlay Fund, Local Government Technical Assistance, and funding for the Commissions created by the bill.

Rural Areas

The bill increases from 10 to 20 acres the maximum size of “small scale” amendments to comprehensive plans that are not subject to DCA compliance review within counties designated as “Rural Areas of Economic Concern” by the Governor. Language was added to the sections governing the establishment of development “receiving areas” in rural land stewardship areas that requires a listed species survey, and an analysis of the adequacy of existing programs to protect such species. The language evidences a certain intent to deem existing regulations (local, state or regional) and protected lands adequate to protect the species that are found in the development area.

Long-Term Growth Policy / Studies & Commissions

The Legislation sets up four processes, as follows:

1. A “Century Commission for a Sustainable Florida” is created as a permanent body, tasked with issuing reports concerning a variety of big - picture growth management issues in 2007.
2. A “School Concurrency Task Force” is set up, to make recommendations to the Legislature by December 2005.
3. An “Impact Fee Review Task Force” is created to make recommendations by February 2006. The language of the bill suggests a future intent to limit the ability of local governments to assess impact fees.
4. OPPAGA to perform a study on adjustments to boundaries of RPCs, WMDs, and DOT Districts by December 31, 2005 to make them more coterminous.