

To: Mayors
Through PPC Representatives
From: David P. Healey, AICP, Executive Director
Date: July 2, 2007
Subject: Analysis of House Bill 7203

On Tuesday June 19, 2007, Governor Crist approved House Bill 7203 that takes effect on July 1, 2007. It creates some new growth management legislation and addresses some implementation issues associated with Senate Bill 360 that was approved in 2005. A complete analysis of HB 7203 will not be attempted in this memorandum. Rather, those provisions of the bill that have the greatest potential to impact Pinellas County and its municipalities will be the focus. These provisions include those related to comprehensive plan capital improvements elements; transportation backlogs; and the streamlined process for amendment of comprehensive plans.

A complete copy of HB 7203 is attached for your reference.

HB 7203 Content Overview

- Modifies definition of financial feasibility
- Clarifies the use of proportionate fair share funds
- Extends deadline for governments to submit annual financially feasible capital improvements elements from December 1, 2007 to December 1, 2008
- Expands areas eligible for transportation concurrency exception areas to include urban service areas
- Creates the “Transportation Concurrency Backlog Act”
- Creates a streamlined comprehensive plan amendment process pilot program that includes Pinellas County
- Extends the duration of development agreements from 10 to 20 years
- Expands allowable cumulative acres for small-scale amendments

Analysis of Selected Bill Provisions

Capital Improvements Element (CIE)

Section 163.3177(3)(b)1., Florida Statutes, requires each local government to update its CIE schedule of capital improvements to demonstrate that the schedule is financially feasible. SB 360 required that the updates were to take place by December 1, 2007. HB 7203 extends the deadline by one year to December 1, 2008.

Note that SB 360 initially defined and HB 7203 amends the term “financial feasibility” to mean

that sufficient revenues are currently available or will be available from committed funding sources for the first 3 years, or will be available from committed or planned funding sources for years 4 and 5, of a 5-year capital improvement schedule for financing capital improvements, such as ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and developer contributions, which are adequate to fund the projected costs of the capital improvements identified in the comprehensive plan necessary to ensure that adopted level-of-service standards are achieved and maintained within the period covered by the 5-year schedule of capital improvements. A comprehensive plan shall be deemed financially feasible for transportation and school facilities throughout the planning period addressed by the capital improvements schedule if it can be demonstrated that the level-of-service standards will be achieved and maintained by the end of the planning period even if in a particular year such improvements are not concurrent as required by s. 163.3180. The requirement that level-of-service standards be achieved and maintained shall not apply if the proportionate share process set forth in s. 163.3180(12) and (16) is used.

There are two parts to the HB 7203 amendments to the definition of financial feasibility. First, a capital improvements schedule will now be considered financially feasible for transportation and school facilities purposes even if levels of service are not achieved in one or more years, if, by the end of the planning period, the LOS is achieved and maintained. By distinguishing between transportation and schools and other levels of service, e.g., those for sanitary sewer, solid waste, or potable water, those services still must meet adopted LOS standards each year. Second, the proportionate share level of service linkage established in SB 360 is deleted.

Transportation Backlog

Many communities have transportation facility backlogs because needed improvements were not made or maintenance was postponed on facilities that were impacted by past development. The Florida Department of Transportation estimates that statewide, the current backlog in transportation funding is approximately \$2.7 billion annually to simply maintain current transportation conditions. To actually improve conditions and increase capacity will cost about \$4.9 billion annually. Like FDOT, local governments in Pinellas County also may have transportation backlogs. HB 7203 addresses this issue by creating the *Transportation Concurrency Backlog Act*.

HB 7203 defines a transportation concurrency backlog as “an identified deficiency where the existing extent of traffic volume exceeds the level of service standard adopted in a local government comprehensive plan for a transportation facility.” If such a transportation concurrency backlog exists, the legislation provides for the creation of a “Transportation Concurrency Backlog Authority” which is “the governing body of a county or municipality within which an authority is created.” Upon creation of the

authority by the governing body, it “shall adopt and implement a plan to eliminate all identified transportation concurrency backlogs within the authority’s jurisdiction....”

The authority has “the powers necessary or convenient” to achieve the purposes of the Act. These powers include the ability to enter into contracts; implement projects that “may include transportation facilities that provide for alternative modes of travel including sidewalks, bikeways, and mass transit which are related to a backlogged transportation facility”; borrow money; appropriate funds, and make expenditures. In order to fulfill its financial obligations, the authority is required to establish a local trust fund. The legislation also exempts certain entities from the provisions of the Act.

The required transportation concurrency backlog plan is to be adopted within 6 months after creation of the authority. The plan is to identify deficient facilities and require the expenditure of funds to bring them up to standard; prioritize the facility projects; and establish a schedule for financing and construction of the projects.

Alternative State Review Process Pilot Program

HB 7203 creates Section 163.32465, F.S., “State review of local comprehensive plans in urban areas.” This new section begins by making a number of findings about comprehensive planning in urban areas like Pinellas County including:

- The needs and resources of urban areas are different than other parts of the state.
- State oversight of growth management should reflect the differences.
- Reduced state oversight of local comprehensive planning is justified for some governments in urban areas because of their planning capabilities and resources.
- An alternative state review process should be implemented for some urban areas that is adequate to protect issues of regional or statewide importance.
- Streamlining and recognizing local responsibility and accountability are the objectives of the alternative review process.
- A pilot program will be beneficial in evaluating an alternative, expedited plan amendment adoption and review process for local governments that represent highly developed counties, municipalities within those counties, and several individual municipalities.

Jurisdictions that “shall follow an alternative state review process” include Pinellas and Broward counties, their municipalities, and Jacksonville, Miami, Tampa, and Hialeah. While the two counties are required to follow the alternative process, their municipalities can opt out by a “super majority vote of the local governing body.” Notwithstanding the requirement for named jurisdictions to follow the alternative process, there are two exceptions including:

- Small-scale amendments “may” continue to follow the current process described under Section 163.3187(1)(c) and (3), F.S.

- Plan amendments dealing with rural land stewardship areas of which Pinellas County has none.

Pilot program jurisdictions are still subject to the twice-per-year comprehensive plan amendment restrictions except in a few instances as described in Sections 163.3187 and 163.3191, F.S. (see attached)

Local governments included within the pilot program are required to adopt comprehensive plan amendments using the process described below.

Please note, however, that the PPC administrative consistency review of text amendments and the legislative map amendment processes are still in effect notwithstanding the expedited state review process. The PPC and state processes are further described in the table on the last page of this memo.

First Public Hearing

- Held on a weekday at least seven days after the day the first advertisement is published pursuant to Chapters 125 (counties) or 166 (municipalities), F.S., as applicable
- After an affirmative majority vote on the amendment(s) by the members of the governing body present, “the local government shall immediately transmit” it together with supporting data and analyses to the:
 - Department of Community Affairs (DCA)
 - Tampa Bay Regional Planning Council (TBRPC)
 - Southwest Florida Water Management District (SWFWMD)
 - Department of Environmental Protection (DEP)
 - Department of State (DOS)
 - Department of Transportation (FDOT)
 - Pinellas County (for municipalities in the county)
 - Fish and Wildlife Conservation Commission
 - Department of Agriculture and Consumer Services
 - Office of Educational Facilities of the Commissioner of Education (if the amendment would impact the public school facilities element)
 - Other local governments or agencies that have filed a written request with the local government
- The departments, local governments, and agencies listed above “may provide comments” regarding the amendment(s).
 - TBRPC comments “shall be limited to effects on regional resources or facilities identified in the strategic regional policy plan and extrajurisdictional impacts that would be inconsistent with the comprehensive plan of the affected local government.”
 - Pinellas County comments “shall be primarily in the context of the relationship and effect of the proposed plan amendments on the county plan.”

- Municipal comments on county plan amendments shall be primarily in the context of the relationship and effect of the amendments on the municipal plan.”
- State agency comments “may include technical guidance on issues of agency jurisdiction.” The comments “shall clearly identify issues that, if not resolved, may result in an agency challenge to the plan amendment.” State agencies are encouraged, for the purposes of the pilot program, “to focus potential challenges on issues of regional or statewide importance.”
- The department, local government, and agency comments “must transmit their comments” to the government proposing the amendment within 30 days of receiving the amendment for review. Note there are no objections, recommendations, and comments (ORC) report with the streamlined process. The review agencies provide only comments.

Second (Adoption) Public Hearing

- Held on a weekday at least five days after the day the second advertisement is published pursuant to Chapters 125 (counties) or 166, (municipalities) F.S., as applicable
- Adoption must be by ordinance and requires an affirmative majority vote of the governing body present at the hearing.
- All adoption ordinances are to be transmitted within 10 days of the second public hearing to the DCA and “any other agency or local government that provided timely comments....”

Challenges

- Within 30 days after amendment adoption, any affected person [see Section 163.3184(1)(a), F.S.] may file a petition with the Division of Administrative Hearings (DAH) to “request a formal hearing to challenge whether the amendment(s) are in compliance as defined in Section 163.3184(1)(b).”
- The DCA may also petition the DAH with a copy of the petition served on an affected local government to request a formal hearing within 30 days after DCA notifies a local government that the plan amendment package is complete.
 - An amendment package is complete if it:
 - > Contains a full, executed copy of the adoption ordinance or ordinances
 - > In the case of a text amendment, a full copy of the amended language in legislative format, i.e., underlined and struck through
 - > In the case of a future land use map amendment, a copy of the map “clearly depicting the parcel, its existing future land use designation, and its adopted designation”
 - > A “copy of any data and analyses the local government deems appropriate”
 - Within 5 working days after receipt of the amendment package, the DCA “shall notify the local government of any deficiencies”
- The DCA challenge is limited to the issues raised by the reviewing agencies.

- The DCA may also challenge if the amendment “has substantially changed from the version on which the agencies provided comments.”
- The “Legislature strongly encourages” the DCA “to focus any challenge on issues of regional or statewide importance.”
- When challenged, an administrative law judge will hold a hearing in the affected jurisdiction. If the local government has made a determination that the amendment is in compliance, that determination “is presumed to be correct and shall be sustained unless it is shown by a preponderance of the evidence that the amendment is not in compliance.”
- If the judge determines that the amendment is not in compliance, he will submit a recommended order to the Administration Commission (the Cabinet) for final agency action and the Commission is to enter a final order within 45 days after receipt of the recommended order.
- If, on the other hand, the judge determines that the amendment is in compliance, he will submit the recommended order to the DCA.
- If DCA disagrees with the judge, it can, within 30 days, notify the Commission of its determination. If the Commission agrees with DCA that the amendment is not in compliance, “it may sanction the local government....”
- If, on the other hand DCA determines that the amendment should be found in compliance, it has 30 days from receipt of the judge’s recommended order to enter its final order.
- Amendments adopted under the provisions of the pilot program are not effective until 31 days after adoption.
 - If challenged, an amendment is not effective until DCA or the Commission enters a final order that determines the amendment is in compliance.

OPPAGA Report

The Office of Program Policy Analysis and Government Accountability is charged with presenting a report by December 1, 2008, to the Governor, President of the Senate, and Speaker of the House of Representatives. The report is to:

- Contain recommendations for implementing a statewide program that address the legislative findings in areas that meet urban criteria. Note that there is no sunseting of the “pilot program.”
- The OPPAGA report will be developed in consultation with DCA, regional planning councils, other state agencies, local governments, and interest groups.
- OPPAGA will identify issues of process and substance in recommending changes to the pilot program. As mentioned previously, there is no provision in the legislation to end or sunset the pilot program. The report is to address issues, but the legislation is silent regarding whether ending the entire program is one of the issues to be discussed. Until this issue is clarified, it can be assumed that the pilot program will be ongoing.
- At minimum, the report is to include:

- Identification of other local governments that should be included in the alternative expedited state review process.
- Likewise, OPPAGA may recommend that some local governments that were initially included in the pilot program should be dropped from the alternative process.
- Changes that should be made to the alternative process.
- Criteria for determining issues of regional or statewide importance that are to be protected in the alternative process.

In conclusion, while not as extensive as Senate Bill 360, HB 7203 does contain a significant number of changes to the state growth management legislation that will have direct impacts on local governments in Pinellas County. Like all other legislation of this type, it will take some time to appreciate all of the affects and implications that will result from it. What can be said is that the legislation does not appear to be harmful to local governments even though it does contain some new requirements and mandates. The deadline for capital improvements schedules to be determined financially feasible has been extended by a year. A new method to address transportation backlogs has been put in place. And, for Pinellas County and some other highly urbanized jurisdictions, a streamlined alternative comprehensive plan amendment process has been provided that recognizes the capabilities and expertise of those jurisdictions.

**HB 7203 Alternative Comprehensive Plan Amendment
Review & Adoption Process Timeline**

Process/Procedure	Timing
Proposed text amendments sent to PPC for administrative consistency review	21 days prior to 1 st ordinance reading
1 st amendment advertisement	As required by Ch. 125 (counties) or 166, (municipalities) F.S.
1 st public hearing	On a weekday 7 days after the 1 st advertisement is published pursuant to Ch. 125 or 166, F.S.
Proposed Future Land Use Plan Map amendments transmitted to the PPC for processing pursuant to the <i>Countywide Plan Rules</i>	Immediately after affirmative vote
Upon affirmative amendment vote of the governing body, amendment is “immediately” transmitted together with data & analysis to agencies for review	Immediately after affirmative vote
Agency review comments received by local government	30 days after agency receipt of the amendment for review [NOTE: Review agencies really have fewer than 30 days to provide comments because not only do they have to perform the review, but their comments have to be received by the local government within the 30 days.]
2 nd amendment advertisement	As required by Ch. 125 (counties) or 166, (municipalities) F.S.
2 nd (Adoption) public hearing	On a weekday at least 5 days after the 2 nd advertisement is published pursuant to Ch. 125 or 166, F.S.
Amendment transmittal	Within 10 days of an affirmative vote at the 2 nd public hearing
Normal amendment effective date	31 days after adoption
Challenges	Required to be filed within 30 days after amendment adoption
Challenged amendment effective date	After DCA or the Administration Commission enters a final order that determines the amendment is in compliance