

2017 Florida Statutes

Chapter 163 — INTERGOVERNMENTAL PROGRAMS

163.3180 Concurrency.

- (1) Sanitary sewer, solid waste, drainage, and potable water are the only public facilities and services subject to the concurrency requirement on a statewide basis. Additional public facilities and services may not be made subject to concurrency on a statewide basis without approval by the Legislature; however, any local government may extend the concurrency requirement so that it applies to additional public facilities within its jurisdiction.
 - (a) If concurrency is applied to other public facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service, to guide its application. In order for a local government to rescind any optional concurrency provisions, a comprehensive plan amendment is required. An amendment rescinding optional concurrency issues shall be processed under the expedited state review process in s. 163.3184(3), but the amendment is not subject to state review and is not required to be transmitted to the reviewing agencies for comments, except that the local government shall transmit the amendment to any local government or government agency that has filed a request with the governing body and, for municipal amendments, the amendment shall be transmitted to the county in which the municipality is located. For informational purposes only, a copy of the adopted amendment shall be provided to the state land planning agency. A copy of the adopted amendment shall also be provided to the Department of Transportation if the amendment rescinds transportation concurrency and to the Department of Education if the amendment rescinds school concurrency.
 - (b) The local government comprehensive plan must demonstrate, for required or optional concurrency requirements, that the levels of service adopted can be reasonably met. Infrastructure needed to ensure that adopted level-of-service standards are achieved and maintained for the 5-year period of the capital improvement schedule must be identified pursuant to the requirements of s. 163.3177(3). The comprehensive plan must include principles, guidelines, standards, and strategies for the establishment of a concurrency management system.
- (2) Consistent with public health and safety, sanitary sewer, solid waste, drainage, adequate water supplies, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. Prior to approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve the new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent. A local government may meet the concurrency requirement for sanitary sewer through the use of onsite sewage treatment and disposal systems approved by the Department of Health to serve new development.
- (3) Governmental entities that are not responsible for providing, financing, operating, or regulating public facilities needed to serve development may not establish binding level-of-service standards on governmental entities that do bear those responsibilities.
- (4) The concurrency requirement as implemented in local comprehensive plans applies to state and other public facilities and development to the same extent that it applies to all other facilities and development, as provided by law.

(5)

- (a)** If concurrency is applied to transportation facilities, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service to guide its application.
- (b)** Local governments shall use professionally accepted studies to evaluate the appropriate levels of service. Local governments should consider the number of facilities that will be necessary to meet level-of-service demands when determining the appropriate levels of service. The schedule of facilities that are necessary to meet the adopted level of service shall be reflected in the capital improvement element.
- (c)** Local governments shall use professionally accepted techniques for measuring levels of service when evaluating potential impacts of a proposed development.
- (d)** The premise of concurrency is that the public facilities will be provided in order to achieve and maintain the adopted level of service standard. A comprehensive plan that imposes transportation concurrency shall contain appropriate amendments to the capital improvements element of the comprehensive plan, consistent with the requirements of s. 163.3177(3). The capital improvements element shall identify facilities necessary to meet adopted levels of service during a 5-year period.
- (e)** If a local government applies transportation concurrency in its jurisdiction, it is encouraged to develop policy guidelines and techniques to address potential negative impacts on future development:
1. In urban infill and redevelopment, and urban service areas.
 2. With special part-time demands on the transportation system.
 3. With de minimis impacts.
 4. On community desired types of development, such as redevelopment, or job creation projects.
- (f)** Local governments are encouraged to develop tools and techniques to complement the application of transportation concurrency such as:
1. Adoption of long-term strategies to facilitate development patterns that support multimodal solutions, including urban design, and appropriate land use mixes, including intensity and density.
 2. Adoption of an areawide level of service not dependent on any single road segment function.
 3. Exempting or discounting impacts of locally desired development, such as development in urban areas, redevelopment, job creation, and mixed use on the transportation system.
 4. Assigning secondary priority to vehicle mobility and primary priority to ensuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit.
 5. Establishing multimodal level of service standards that rely primarily on nonvehicular modes of transportation where existing or planned community design will provide adequate level of mobility.
 6. Reducing impact fees or local access fees to promote development within urban areas, multimodal transportation districts, and a balance of mixed-use development in certain areas or districts, or for affordable or workforce housing.
- (g)** Local governments are encouraged to coordinate with adjacent local governments for the purpose of using common methodologies for measuring impacts on transportation facilities.

(h)

1. Local governments that continue to implement a transportation concurrency system, whether in the form adopted into the comprehensive plan before the effective date of the Community Planning Act, chapter 2011-139, Laws of Florida, or as subsequently modified, must:
 - a. Consult with the Department of Transportation when proposed plan amendments affect facilities on the strategic intermodal system.
 - b. Exempt public transit facilities from concurrency. For the purposes of this sub-subparagraph, public transit facilities include transit stations and terminals; transit station parking; park-and-ride lots; intermodal public transit connection or transfer facilities; fixed bus, guideway, and rail stations; and airport passenger terminals and concourses, air cargo facilities, and hangars for the assembly, manufacture, maintenance, or storage of aircraft. As used in this sub-subparagraph, the terms “terminals” and “transit facilities” do not include seaports or commercial or residential development constructed in conjunction with a public transit facility.
 - c. Allow an applicant for a development-of-regional-impact development order, development agreement, rezoning, or other land use development permit to satisfy the transportation concurrency requirements of the local comprehensive plan, the local government’s concurrency management system, and s. 380.06, when applicable, if:
 - (I) The applicant in good faith offers to enter into a binding agreement to pay for or construct its proportionate share of required improvements in a manner consistent with this subsection.
 - (II) The proportionate-share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility. A local government may accept contributions from multiple applicants for a planned improvement if it maintains contributions in a separate account designated for that purpose.
 - d. Provide the basis upon which the landowners will be assessed a proportionate share of the cost addressing the transportation impacts resulting from a proposed development.
2. An applicant shall not be held responsible for the additional cost of reducing or eliminating deficiencies. **When an applicant contributes or constructs its proportionate share** pursuant to this paragraph, a local government may not require payment or construction of transportation facilities whose costs would be greater than a development’s proportionate share of the improvements necessary to mitigate the development’s impacts.
 - a. The proportionate-share contribution shall be calculated based upon the number of trips from the proposed development expected to reach roadways during the peak hour from the stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain or achieve the adopted level of service, multiplied by the construction cost, at the time of development payment, of the improvement necessary to maintain or achieve the adopted level of service.
 - b. In using the proportionate-share formula provided in this subparagraph, the applicant, in its traffic analysis, shall identify those roads or facilities that have a transportation deficiency in accordance with the transportation deficiency as defined in subparagraph 4. The proportionate-share formula provided in this subparagraph shall be applied only to those facilities that are determined to be significantly impacted by the project traffic under review. If any road is determined to be transportation deficient without the project traffic under review, the costs of correcting that deficiency shall be removed from the project’s proportionate-share calculation and the necessary transportation improvements to correct that deficiency shall be considered to be in place for purposes of the proportionate-share calculation.

The improvement necessary to correct the transportation deficiency is the funding responsibility of the entity that has maintenance responsibility for the facility. The development's proportionate share shall be calculated only for the needed transportation improvements that are greater than the identified deficiency.

- c. When the provisions of subparagraph 1. and this subparagraph have been satisfied for a particular stage or phase of development, all transportation impacts from that stage or phase for which mitigation was required and provided shall be deemed fully mitigated in any transportation analysis for a subsequent stage or phase of development. Trips from a previous stage or phase that did not result in impacts for which mitigation was required or provided may be cumulatively analyzed with trips from a subsequent stage or phase to determine whether an impact requires mitigation for the subsequent stage or phase.
 - d. In projecting the number of trips to be generated by the development under review, any trips assigned to a toll-financed facility shall be eliminated from the analysis.
 - e. The applicant shall receive a credit on a dollar-for-dollar basis for impact fees, mobility fees, and other transportation concurrency mitigation requirements paid or payable in the future for the project. The credit shall be reduced up to 20 percent by the percentage share that the project's traffic represents of the added capacity of the selected improvement, or by the amount specified by local ordinance, whichever yields the greater credit.
3. This subsection does not require a local government to approve a development that, for reasons other than transportation impacts, is not qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.
 4. As used in this subsection, the term "transportation deficiency" means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing, committed, and vested trips, plus additional projected background trips from any source other than the development project under review, and trips that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida's Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.
- (i) If a local government elects to repeal transportation concurrency, it is encouraged to adopt an alternative mobility funding system that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. A mobility fee-based funding system must comply with the dual rational nexus test applicable to impact fees. An alternative system that is not mobility fee-based shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).

(6) [continued]