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Statewide

School Concurrency

for

Florida

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Introduction

The Growth Management Reform Act of 2005 introduced numerous changes to Florida's growth management laws. These changes occurred primarily in three areas: transportation, public water supplies, and public schools.

This report focuses exclusively on the changes affecting public schools. More specifically, it zeros in on changes to the laws governing school concurrency in Florida.

The report contains three parts. The first part is a summary of the changes affecting public schools and school concurrency in the Growth Management Reform Act of 2005 (hereafter called the Reform Act). It also contains a brief history of school concurrency in Florida and a discussion of the possible impacts of the changes in the school concurrency laws. This part should be useful to those looking for a quick overview of these changes and a brief description of the context in which they occurred.

The second part is a detailed listing of the changes in the Reform Act affecting public schools and school concurrency. This section is intended for those who need more specific information about the state statutes affected by the changes.

The third part contains references composed of hyperlinks to the Reform Act itself as well as to the state statutes discussed in this report as they were prior to passage of the Reform Act.

The author recommends that the reader also visit the Alachua County School Concurrency Project's website at www.acscp.org to find ready access to the online references as well as to other useful information about school concurrency.

I. Summary

1. A Brief History of School Concurrency in Florida

Definition

In Florida, concurrency is the basic tool of growth management. It means that public services and facilities must be planned and built such that they will be available in sufficient quantity when new developments come on line and make new demands on those services and facilities.

Applied to schools, concurrency means that new or expanded school facilities must be built at the same time as new residential developments are being built in order to handle the additional students that will come from those developments.

The force of school concurrency comes from the fact that new residential developments cannot be approved unless sufficient capacity to handle their impacts on public schools already exists or will be in place when they are completed.

History

School concurrency was first added to Florida's growth management laws in 1985 and was highly controversial right from the start. State, regional, and local groups representing builders, realtors, and chambers of commerce fought to keep school concurrency out of the growth management laws. Failing that, they succeeded in limiting it to a local option.

Local option school concurrency meant that each county in Florida had to decide whether or not to implement it within their boundaries. However, even attempts to establish it as a local option were fiercely resisted by its opponents.

Ongoing battles between supporters of school concurrency, principally local governments, and its opponents lead to the creation of blue ribbon panels in 1992, 1997, and 2000 to study the problem. Major changes were made to the laws governing it as a result of these studies. Other major changes were made by the state legislature in 1995.

The net result of all this activity was to make implementation of school concurrency so difficult that only one county, Palm Beach County, ever succeeded in implementing it. Frustration with this situation led Orange County to try a different tactic, a decision that would lead to a landmark court decision and help propel a county commissioner to the U.S. Senate.

Mel Martinez was chairman of the Orange County board of county commissioners when, in 1999, he circulated a memo to his fellow commissioners suggesting they establish a policy of denying land rezonings for new developments in cases where the developments would cause local schools to become overcrowded. They agreed with his suggestion and began to apply this policy in late 1999.

Under this policy, known as the Martinez Doctrine, a rezoning request by a local landowner and developer named Betty Jean Mann was denied in early 2000. She took the county commission to court which resulted in a landmark ruling by the Florida supreme court in 2003. Called the Mann decision, this ruling empowered all local governments in Florida to follow Orange County's example. (Martinez would go on to be elected to the U.S. Senate in 2004.)

Meanwhile, in 2002, the state legislature passed a law requiring school boards throughout Florida to enter into interlocal agreements with their local governments. These agreements required school boards and local governments to begin sharing information about their plans for new school facilities and new residential developments. Under threat of financial penalties, most of these interlocal agreements were signed by summer 2004.

Finally, in May 2005, the state legislature passed a landmark bill overhauling Florida's growth management laws. As part of this overhaul, they made school concurrency mandatory statewide rather than a local option. A change that couldn't be made by three blue ribbon panels, supreme court rulings, and 20 years of expensive legal battles was implemented overnight virtually without comment.

As of this writing (May 2005) it is impossible to predict with certainty what changes will be wrought by this historic amendment. But it is safe to say that they will be substantial and long lasting. Only time will tell if they will be sufficient to reverse the decades old decline of Florida's public school system.

2. A Summary of Changes Affecting Public Schools

Note

The following discussion assumes the reader has a basic knowledge of school concurrency as it is applied in Florida. The author recommends that those who need more information on the subject visit the Alachua County School Concurrency Project's website www.acscp.org and click on the button labeled Background Info.

Major Impacts on School Concurrency

The following is a list of the major impacts of the changes in the Reform Act on school concurrency.

- School Concurrency is now mandatory statewide.
- Non-exempt local governments must enter into a school concurrency interlocal agreement with their district school board.
- Non-exempt local governments must update their comprehensive plans to include a Public School Facilities Element.
- Each public school facilities element must be consistent with the interlocal agreement
- The public school facilities element must include objectives and policies which address the provision of infrastructure for new schools, colocation of new schools with other public facilities, location of new schools near residential areas, and the use of schools as emergency shelters.
- The public school facilities element must include maps which show the location of school improvements as well as new schools.
- Interlocal agreements and comprehensive plan updates must be completed no later than December 1, 2008.

- School boards which fail to enter into an interlocal agreement on school concurrency can face withholding of school construction funds by the Department of Education.

- Non-exempt local governments which fail to enter into an interlocal agreement on school concurrency or which fail to add a public school facilities element to their comprehensive plan will be prohibited from adopting comprehensive plan amendments which would increase residential density.

- A local government may create a long-term school concurrency management system in areas where there is a substantial backlog of school construction projects. These systems must include 10 year and may include 15 year capital improvement schedules.

- Long-term school concurrency management systems must be financially feasible, work towards meeting level of service standards, and must be consistent with other elements of the local government's comprehensive plan.

- The long-term school concurrency management system must be part of the local government's comprehensive plan and must be approved by the Department of Community Affairs. The system must be evaluated periodically for progress in meeting level of service standards.

- A local government may approve developments that don't meet concurrency standards within areas covered by a long-term school concurrency management system. However, such approvals must be based on the local government's schedule of capital improvements.

- Developers may pay a proportionate share of the cost of school facilities improvements to meet a school concurrency requirement. This payment may be in the form of land, construction of facilities, public school facilities mitigation banking credits, or money.

- Developers must execute binding agreements with the local government to meet concurrency requirements with proportionate share payments. The school board must be a party to the agreement and must direct the proportionate share payment to construction of facilities that satisfy the demand created by the development.

- Mitigation payments made under proportionate share agreements must be credited to school impact fees if they exist.

- School concurrency cannot be waived for urban infill or redevelopment.

- School districts are encouraged to use districtwide concurrency service areas initially. However, all school districts must use less than districtwide service areas 5 years after the implementation of school concurrency. Less than districtwide service area boundaries must be included in the data and analysis of the local governments' comprehensive plans.

- Counties without overcrowded schools can apply for an exemption from the statewide school concurrency requirement.

Other Changes Impacting School Concurrency

- Three million dollars is appropriated to provide technical assistance to local governments and school boards to help understand the requirements and implementation of the Reform Act.

- A state level School Concurrency Task Force is created to make recommendations for streamlining the process of establishing school concurrency. It will also examine the methods of funding public school construction and recommend revisions to state laws to help ensure the timely construction of school facilities to meet new demand.

Other Changes Impacting Public Schools

- The Reform Act creates a new program called the High Growth District Capital Outlay Assistance Grant Program to help school districts that are experiencing unusually rapid growth in their student population. A one-time appropriation of $30 million is authorized for the program.

- An additional one-time appropriation of $41.65 million is authorized to fund the Classrooms for Kids Program.

Changes That May Impact Schools or School Concurrency in the Future

- The Reform Act creates the Century Commission for a Sustainable Florida. The Century Commission is a permanent commission created to study and report on growth management issues with 25 and 50 year time horizons. The Commission is expected to create a statewide vision for future growth and recommend strategies for attaining the goals in that vision. It will also develop strategies to deal with future population growth within the context of the vision for future growth. Finally, it will create an annual report with recommendations for specific changes to growth management legislation.

- The Reform Act creates the Florida Impact Fee Review Task Force. The Impact Fee Task Force will study the question of whether and how impact fees should be governed by state law rather than by local ordinance.

3. A Discussion of Possible Impacts

The changes to the school concurrency laws listed above are both substantial and substantive but it can be fairly said that they affect only a small percentage of the language in the state statutes dealing with school concurrency. In truth, the school concurrency laws survived the Reform Act largely intact.

Many features such as financial feasibility, student generation multipliers, and de minimus requirements remain unchanged from their pre-Reform Act state. A considerable number of the changes in the statutes are relatively minor and are largely related to the change in school concurrency's status from a local option to a statewide requirement. Another significant part of the changes consists of moving language from one state statute to another.

As a consequence, it is possible to focus on just a few of the more significant changes when attempting to gauge the impact of the Reform Act on schools and school concurrency.

Obviously the most significant impact comes from the new statewide school concurrency requirement. For the last twenty years local governments in 66 out of 67 counties in Florida have been able to ignore the impact of new developments on schools during the permitting process. Likewise, the school boards in those 66 counties have been able maintain a hands-off attitude towards residential development permitting. Now elected officials on both sides of the fence will have to learn to work together to cope with this brave new world of growth management.

Beyond the statewide requirement, the two changes that will likely have the most impact are the proportionate share mitigation payment system and the long-term school concurrency management system. Since both include provisions for exempting a new development from a school concurrency requirement, there is a potential for either or both to become the basis for a significant loophole in the school concurrency law.

Of the two, proportionate share mitigation is the most confusing. The new language implementing it was added to the statute describing availability. In fact, it begins directly after the sentence that requires local governments to exempt a development from school concurrency requirements if adequate capacity will be available or under construction within 3 years from the development's permit date.

It is not at all clear what, if any, connection may exist between availability and proportionate share mitigation. It is also not clear what, if any, connection exists between financial feasibility and proportionate share mitigation. It is possible that the new language could be interpreted to mean that proportionate share mitigation could be applied to any overcrowded school whether or not it was included in the financially feasible 5 year capital construction plan.

Even if that should turn out to be the case, it is not apparent that developers would be any more eager to make use of proportionate share mitigation than they would have been to make use of regular mitigation under the old rules. Except in the few cases whether the actual impact would amount to only a few students, mitigating a school concurrency requirement will still be an expensive proposition. It is not at all clear that developers would be willing to pay that much and not end up new school facilities to show for it.

The long-term school concurrency management system is somewhat easier to understand. It is clearly meant to apply to areas where substantial overcrowding exists and where funds have not been available to make significant headway in correcting the problem. There is language in this case to tie the system to a financial feasibility standard and to condition the granting of waivers on a schedule of capital improvements that is included in the local government's comprehensive plan.

And by its very definition, the long-term concurrency management system is limited to specific geographic areas. It thus appears that the legislature did not intend the system to create broad concurrency exception areas where concurrency requirements could be ignored without limit. Whether or not it will work out that way in practice remains to be seen.

Finally, one of the most serious impacts of the Reform Act comes from something that was left out rather than something that was added. In the original Senate bill, there was a provision to allow the school board to impose a half-cent increase in the local sales tax by a majority vote of the board members. This provision did not survive into the final version of the Reform Act.

As a result, local authorities still do not have the ability to raise funds necessary to build additional school facilities to fulfill the real intent of school concurrency to build adequate school capacity concurrent with new growth. And in this legislative session, the state did not provide anywhere near the additional funding necessary to fill this gap. This leaves school districts with the traditional means of raising funds through borrowing or by sales tax referenda, uncertain sources at best.

It is in this context that the issue of potential loopholes discussed above becomes significant. If developers cannot get the school facilities built that are needed to avoid school concurrency requirements, they will be more likely to probe for loopholes in the new legal structure in order to secure approval for their developments.

II. Details

In this chapter, underlined headings refer to sections in the Reform Act. Below each underlined heading is a designation of the state statute covered by that section followed by a brief description of its original purpose. If the statute was added or repealed, the word Added or the word Repealed will appear in parentheses immediately following the statute's designation.

Below the statute's description each subsection, paragraph, and subparagraph affected by the Reform Act will be listed with a description of the specific changes made to it.

Where a section does not refer to a specific statute, a brief description of purpose will be given immediately below the underlined heading followed by a summary of the contents of the section.

The expressions 'interlocal agreement' and 'interlocal agreements' in this chapter mean school concurrency interlocal agreement(s) unless otherwise specified.

1. Sections Affecting School Concurrency Directly

Section 2

FS 163.3177 - Governs the intergovernmental coordination element (ICE) of the comprehensive plans of local governments, requires the ICE to contain instructions for setting up interlocal agreements between the school board and non-exempt local governments, requires non-exempt local governments to add a public educational facilities element to their comprehensive plan and to execute an interlocal agreement. Specifies goals and policies which must be included in the public educational facilities element.

163.3177 (6) (a) –	Language is deleted which refers to obsolete deadlines and to FS 163.31776 (repealed – see below).
163.3177 (6) (h) (4) (a) -	Language is deleted which refers to FS 163.31776 and to FS 163.3777 (2). Language is added which requires the interlocal agreement to executed pursuant to FS 163.3777
163.3177 (12) -	Language is added to require that all public school facilities elements within a county must be consistent with one another.

163.3177 (12) (a) -	Added. Creates a waiver from the statewide school concurrency requirement and establishes minimum conditions for granting the waiver. The conditions are that no school in the school district exceeds 100 percent of its capacity and the projected growth of the student population is not greater than 10 percent for the next 5 years. An exception may be made for one school to reach no more than 105 percent of its capacity. The Department of Community Affairs is given the authority to grant the waiver.
163.3177 (12) (b) -	Added. Creates the de minimus requirements for an exempt municipality in a nonexempt county. The requirements are repeated exactly from 163.3180 (13) (f).
163.3177 (12) (c) -	Formerly 163.3177 (12) (a). Language is added to require that the data and analyses for the public school facilities element include the interlocal agreement as well as an educational plant survey. The survey must be prepared pursuant to FS 1013.31.
163.3177 (12) (g) -	Formerly 163.3177 (12) (e). Language regarding objectives and policies of the public school facilities element is added that was formerly in FS 163.31776. Paragraph 4 is modified to address provision of infrastructure to support new schools. This includes potable water, wastewater, drainage, solid waste, transportation, and safe access. Paragraph 5 is added to address colocation of new schools with other public facilities including parks, libraries, and community centers. Paragraph 6 is modified to address location of new schools near residential developments and to complement development patterns. Paragraph 8 is modified to address the use of public schools as emergency shelters.
163.3177 (12) (h) -	Formerly 163.3177 (12) (f). Language is added to provide for the location of school improvements on future conditions maps. Additional language is added to prohibit future conditions maps from prescribing a land use on particular parcels of land.
163.3177 (12) (i) -	Added. Provides for phased adoption of public school facilities elements and of interlocal agreements. Provides a deadline of December 1, 2008 for the adoption of all elements and agreements.
163.3177 (12) (j) -	Added. Provides penalties to local governments which fail to adopt interlocal agreements and public school facilities elements by the deadline in (i). Such failure will result in the local government being prohibited from adopting comprehensive plan amendments that increase residential density.

163.3177 (12) (k) - Added. Provides penalties to school boards which fail to enter into an interlocal agreement or otherwise fail to implement the school concurrency provisions of the Reform Act. Such failure will result in the Department of Education withholding of funds for school construction from the school district.

Section 3

FS 163.31776 (Repealed) - Governs the public educational facilities element of the comprehensive plans of the local governments. Specifies the criteria for exemption from the requirement to adopt the public educational facilities element, lists needs that the element must address, requires changes to the future land use map to identify school sites, and requires that the element be reviewed.

This statute was specific to adopting local option school concurrency. It also referred to state agencies that no longer exist. As noted above, its primary requirements for the public school facilities element were moved to FS 163.3177(12) (g).

Section 4

FS 163.31777 - Requires school boards and units of local government to create an interlocal agreement on school planning or else face reductions in state funding. It specifies additional criteria for the interlocal agreement.

This statute was added in 2002 for the specific purpose of forcing counties to create the school planning interlocal agreement. It has now been upgraded to be the primary statute on the school concurrency interlocal agreement.

163.31777 (2) – Language is added to increase the minimum requirements for the interlocal agreement. Specific reference is made to requirements in FS 163.3180 (13) (g) and in FS 163.3177 (12).

163.31777 (2) (e) – Language is added to specify that the interlocal agreement must include a process for the school board to inform local governments of the affect of their comprehensive plan amendments on school capacity.

163.31777 (interpolated) – Language that was interpolated between subsections 2 and 3 allowing exemptions from the requirements in 2 (e) has been deleted.

163.31777 (5) – Language is added to allow existing public school facilities elements to remain in effect until a county conducts an evaluation and appraisal report which identifies changes needed to make the elements conform to the requirements of this section of the Reform Act.

163.31777 (6) – Language is added to exempt municipalities meeting the de minimus requirements in FS 163.3177(12) from signing the interlocal agreement.

163.31777 (6) (a) & (b) – Both paragraphs are deleted. Contained language addressing obsolete conditions for exemption from signing the interlocal agreement.

163.31777 (7) – Language is added to refer to the de minimus conditions in FS 163.3177 (12). Language is deleted that refers to subsection 6 and to verification by the school board that no new schools will be needed for the next 10 years in an exempt municipality.

Section 5

FS 163.3180 (13) - Establishes the ground rules for school concurrency. Requires school concurrency to be established on a districtwide basis and to include all public schools in the district. Requires school concurrency to be based upon comprehensive plans and interlocal agreements.

163.3180 (1) (a) - Language is added to include schools in the list of public facilities subject to concurrency requirements on a statewide basis.

163.3180 (2) (c) - Language is added to exempt public schools from waivers for urban infill and redevelopment.

163.3180 (9) (a) - Language is added to allow the creation of long-term school concurrency management systems with 10 year planning periods in designated areas that have significant backlogs of existing capacity deficits. Language is added to change the expression 'development permits' to 'orders that authorize commencement of construction'.

163.3180 (9) (b) - Language is added that allows the Department of Community Affairs to approve 15 year planning periods for long-term school concurrency management systems.

163.3180 (9) (c) - Added. Local governments may approve developments that don't meet concurrency requirements in areas covered by long-term school concurrency management systems.

163.3180 (9) (d) - Added. Requires periodic review of concurrency management systems and establishes minimum standards for assessing them.

163.3180 (13) - Language is deleted that refers to school concurrency as a local option. Language is added referring to the de minimus requirements in 163.3177 (12).

163.3180 (13) (c) (1) - Language is added encouraging local governments to initially create districtwide concurrency service areas. Additional language is added requiring less than districtwide concurrency service areas within 5 years of adopting school concurrency.

163.3180 (13) (c) (2) - Language is added to include the concurrency service area boundaries in the comprehensive plan's data and analysis. Language is deleted which refers to changing service area boundaries by amendment of the comprehensive plan.

163.3180 (13) (c) (3) - Language is added prohibiting local governments from denying development permits on the basis of school concurrency if the county uses less than districtwide service areas and if there is capacity available in a contiguous service area. In such cases, the impact of the development will be shifted to the contiguous service area. Language is deleted that prohibited mitigation measures in such cases.

163.3180 (13) (e) - Language is added to the availability standard to expand the concept of development permit to include site plan applications, final subdivision approvals, or their functional equivalents. Language is deleted that refers to local option school concurrency and language is added that refers to local school concurrency management systems.

Language is added to create the concept of proportionate share mitigation. School concurrency shall be satisfied if a developer executes a legally binding proportionate share mitigation commitment. Proportionate share mitigation shall be limited to the actual demand created by the development for new school facilities. Options for payment of proportionate share mitigation must be included in the interlocal agreement and in the public school facilities elements.

163.3180 (13) (e) (1) - Added. Allows payment of proportionate share mitigation in money, land, construction of new facilities by the developer, or mitigation banking of capacity credits based on construction of public school facilities. The school board must be a party to the developer agreement. The local government may require continuing renewal of the agreement upon its expiration.

163.3180 (13) (e) (2) - Added. If payment for proportionate share mitigation is allowed in the form of money, land, or construction of facilities, the payment (or its fair market value) must be credited to school impact fees or similar fees if they exist.

163.3180 (13) (e) (3) - Added. Any proportionate share mitigation payment must be used by the school board to create school capacity that satisfies the demand created by the development for which payment was made.

163.3180 (13) (e) (4) - Added. The exemption from a school concurrency requirement created by the new proportionate share mitigation language does not limit a local government from denying development permits for other legal requirements within its power.

163.3180 (13) (f) (1) - Language is added referring to the interlocal agreement exemptions in FS 163.31777 (6).

163.3180 (13) (f) (2) - Language is added referring to the interlocal agreement exemptions in FS 163.31777 (6) and to the interlocal agreement requirements in FS 163.31777.

163.3180 (13) (g) - Language is added referring to the interlocal agreement requirements in FS 163.31777.

163.3180 (13) (g) (1) - Deleted. Referred to projections of population growth and sharing information between the school board and local governments on new schools and new developments.

163.3180 (13) (g) (6) (a) - Added language to include information from the school board on affected schools, impact on levels of service, and plans or options for capacity improvements for affected schools when evaluating development applications.

Section 8

F.S. 163.3191 – Provides for the evaluation and appraisal of the comprehensive plan on an ongoing basis. Requires an evaluation and appraisal report every 7 years.

163.3191 (2) (k) - Language is added to require the assessment to determine whether exempt municipalities continue to meet the de minimus requirements in FS 163.3177 (12). If the municipality no longer meets de minimus, it must add a public school facilities element to its comprehensive plan and enter into the interlocal agreement.

Section 18

F.S. 1013.33 – Provides for the coordination of planning between school boards and local governments with regards to providing new schools for new residential developments. Largely identical to FS 163.31777.

1013.33 (3) - Language is added to upgrade the school planning interlocal agreement to include requirements in FS 163.3180 (13) (g). Additional language is added to provide for the de minimus exemption in 163.3177 (12).

1013.33 (3) (e) - Language is added to allow the school board to inform local governments of the effect of comprehensive plan amendments on school capacity.

1013.33 (interpolated) – Language that was interpolated between subsections 3 and 4 allowing exemptions from the requirements in 3 (e) has been deleted.

1013.33 (7) -	Language is added to exempt municipalities meeting the de minimus requirements in FS 163.3177(12) from signing the interlocal agreement.
1013.33 (7) (a) & (b) -	Both paragraphs are deleted. Contained language addressing obsolete conditions for exemption from signing the interlocal agreement.
1013.33 (8) -	Language is added to refer to the de minimus conditions in FS 163.3177 (12). Language is deleted that refers to subsection 7 and to verification by the school board that no new schools will be needed for the next 10 years in an exempt municipality.

Section 27

Technical assistance funding for school boards and funding for the School Concurrency Task Force.

Section 27 (2) (d) (1) provides for the appropriation of $3 million to the Department of Community Affairs to provide technical assistance to local governments and school boards on the requirements and implementation of the Reform Act. The DCA shall report to the Governor, the Senate President, and the Speaker of the House by February 1, 2006 on how much progress has been made on complying with the Reform Act and whether supplementary appropriations are needed for additional technical assistance.

Section 27 (2) (d) (3) provides for the appropriation of $50 thousand to support the School Concurrency Task Force (see below).

Section 30

The School Concurrency Task Force.

Section 30 creates a state level task force on school concurrency. The task force has a twofold mission. First is a legal review of school concurrency with an eye to streamlining the process and procedures for implementing it. Second is an examination of the methods and processes of funding school construction with the goal of making recommendations to revise laws and rules to help ensure that schools are built to accommodate the demands of new growth.

The task force will have 11 members representing local governments, school boards, developers, the business community, the agriculture community, environmentalists, and other stakeholders. Members will be appointed by the Governor, the President of the Senate, the Speaker of the House, the Florida School Boards Association, the Florida Association of Counties, and the Florida League of Cities.

The task force will report to the Governor, Senate President, and Speaker of the House no later than December 1, 2005. The report is expected to include specific recommendations to revise provisions of laws and rules.

2. Sections Affecting School Concurrency Indirectly

Section 11

163.3247 (Created). The Century Commission for a Sustainable Florida.

The Legislature expects the population of Florida to double in the next 100 years with proportionate impacts on natural resources and public infrastructure. To ensure that these impacts are anticipated and provided for in a timely manner, the Century Commission is created as a standing body to envision and plan for Florida's future over 25 and 50 year time horizons.

The commission will have 15 members, five each appointed by the Governor, the Senate President, and the Speaker of the House. The members will represent local governments, school boards, developers, the business community, the agriculture community, environmentalists, and other stakeholders. The Governor will appoint the chair of the commission. Appointments will be made no later than October 1, 2005.

The commission is expected to be nonpartisan, to focus on essential state interests, to develop a vision and shared image of the state, to constantly review laws, regulations, processes and trends affecting the impacts of population growth, and to make an annual report with recommendations for addressing growth management in Florida.

Beginning in 2007, the Senate President and the Speaker of the House will create a joint committee to review the findings of the commission with an eye to taking action on those findings.

Section 31

The Florida Impact Fee Review Task Force.

The Legislature is contemplating taking control of impact fees away from local governments. Before doing so, they created the Impact Fee Review Task Force to study the way local governments collect and use impact fees, the manner in which they are used, the burden they put on developers, the percentage of total capital costs paid for by impact fees, the ways in which they are collected and accounted for, ways in which they are shared between counties and cities, ways in which local governments relieve their effect on affordable housing, and their importance in raising funds to pay for infrastructure needed to relieve concurrency requirements.

The commission will have 15 members, two appointed by the Governor, five each appointed by the Senate President and the Speaker of the House and two non-voting members comprised of one member of the Senate appointed by the Senate President and one member of the House appointed by the Speaker of the House. The origin of the 15th member is not specified.

Two voting members shall be members of county commissions, two shall be city commissioners, two shall be school board members, two shall be developers, and two shall be homebuilders. The Governor shall appoint the chair of the task force.

The task force will report to the Governor, Senate President, and Speaker of the House by February 1, 2006 on whether or not there is a need for state regulation of impact fees.

3. Sections Affecting Public School Funding

Section 25

F.S. 1013.65 - PECO funds for the Classrooms for Kids Program and for the High Growth County District Capital Outlay Assistance Grant Program.

1013.65 (2) (a) (4) (a) - Added. Funds will be paid pursuant to FS 201.15 (1) (d).

1013.65 (2) (a) (4) (b) - Added. Appropriates $41.75 million annually to fund the Classrooms for Kids Program created in FS 1013.735 to be distributed as directed in that section.

1013.65 (2) (a) (4) (c) - Added. Appropriates $30 million annually to fund the High Growth County District Capital Outlay Assistance Grant Program created in FS 1013.738 to be distributed as directed in that section.

Section 26

F.S. 201.15 - Distribution of taxes collected. PECO funds for the Classrooms for Kids Program and the High Growth County District Capital Outlay Assistance Grant Program.

2015.15 (3) - Added. Distributes $105 million annually to the Public Education Capital Outlay and Debt Service Trust Fund with $75 million for the Classrooms for Kids Program and $30 million for the High Growth County District Capital Outlay Assistance Grant Program.

Section 27

Appropriations for PECO from general revenue funds. Nonrecurring appropriations from PECO funds for the Classrooms for Kids Program and the High Growth County District Capital Outlay Assistance Grant Program.

Section 27 (1) (c) - Appropriates $71.65 million to the Public Education Capital Outlay and Debt Service Trust Fund on a nonrecurring basis.

Section 27 (2) (c) - Appropriates $71.65 million from the Public Education Capital Outlay and Debt Service Trust Fund on a nonrecurring basis with $41.65 million for the Classrooms for Kids Program and $30 million for the High Growth County District Capital Outlay Assistance Grant Program.

4. Conclusion

The changes wrought to the school concurrency laws by the Growth Management Reform Act of 2005 are clearly the most profound since school concurrency was added to the growth management laws in 1985. The change to a statewide requirement alone is of historic significance.

That single change will forever alter the way local governments handle residential development permits. Given that, it is deeply disappointing that the legislature did not see fit to provide the level of funding needed by local governments and school boards to provide the school facilities that this new circumstance requires.

Section 9 of the original senate bill would have allowed school boards to enact a local option sales tax for school construction by majority vote rather than by voter referendum. Unfortunately, that provision did not survive in the final version of the bill.

And from an alleged annual appropriation of $105 million for the Classrooms for Kids program and the High Growth County District Capital Outlay Assistance Grant program, this legislature provided only $71.65 million in this session. Total new funding for schools from the 2005 legislative session is reported to be about $200 million.

Given this lack of financial support for school concurrency requirements, it should come as no surprise that the new proportionate share mitigation standard may be seen as a loophole for developers to get around school concurrency requirements. In the original bill, it was part of a public/private cost sharing system. As it stands now, it is a kind of odd duck dangling out of the Reform Act by itself.

Likewise, the new long-term school concurrency management system may draw suspicious glances as an attempt to carve out concurrency exception areas. In the absence of adequate funding, it would be hard to quell these suspicions.

One can only hope that the new state level school concurrency task force will dun the legislature for additional funding for new schools. Whether from state or local sources, adequate funding for school capital construction costs associated with the new concurrency requirement is absolutely vital to its success as a growth management tool. Without it, we will see the same parade of attorneys dedicated to finding ways around the new law for their developer clients.

Finally, it should be noted that the legislature tried to provide some relief to school boards and local governments by allowing them to use existing interlocal agreements on school planning as a basis for new interlocal agreements for school concurrency. Hopefully the recent cutbacks at DCA will not nullify this advantage by creating a backlog of comp plan amendments from local governments trying to add public school facilities elements.

III. References

The following hyperlinks are to the statutes affecting school concurrency directly as they were before the Reform Act.

A. S 0360ER – The Reform Act. The final version of senate bill SB 360 became the Growth Management Reform Act of 2005.

B. FS 163.3180 (13) – The main statute governing school concurrency.

C. FS 163.3177 – Subsection 6(h) covers the requirement to amend the ICE to require an interlocal agreement.

D. FS 163.31776 – Covers details of the public school facilities element. This statute was repealed by the Reform Act.

E. FS 163.31777 – Covers the new requirements for the interlocal agreement.

F. F.S. 163.3191 – Provides for the evaluation and appraisal of the comprehensive plan on an ongoing basis. Requires an evaluation and appraisal report every 7 years.

G. FS 1013.33 – Provides for the coordination of planning between school boards and local governments with regards to providing new schools for new residential developments. Largely identical to FS 163.31777.