

Senate Bill 360 Challenges

Capital Improvements Element

Discuss current events with nearly any local government official involved in comprehensive planning or development review, and the topic of Florida Senate Bill 360 and adopting a proportionate fair share ordinance by December 1, 2006, will likely become a discussion topic. Discussions of proportionate fair share ordinances have been filled with a great deal of concern and anxiousness, but the real challenge will come in 2007. Florida Senate Bill 360 added the requirement that local governments demonstrate that the capital improvements element (CIE) contain improvements that are financially feasible and that will meet the local government adopted level of service standards. This will be a significant challenge for many local governments in Florida.

Specifically, Senate Bill 360 included the following requirements as it relates to the adoption of capital improvement elements:

1. Include a minimum of a 5-year timeframe.
2. Include guiding "Policies" on the selection and programming of capital facilities.
3. For public facility improvements: How much will they cost? How they will be funded? When they will be needed? Where will they be generally located?

Options for Achieving LOS Standards:

- Increase funding:
 - ◆ Impact fees
 - ◆ Fuel taxes
 - ◆ Sales taxes
 - ◆ Other revenue sources
- Proportionate share agreement
- Change LOS standards
- TCEA, TMD, etc.
- 10-year long term CMS
- 15-year long term CMS

Cost Feasibility: The Next Real Challenge

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SB 360 requires local governments to demonstrate that their CIE meets the adopted level of service standards, including existing deficient roadways.

4. What are the level of service standards and how are they met?
5. Describe the local government standards for managing debt.

Tindale-Oliver & Associates, Inc., is assisting clients throughout the State of Florida to confront the challenges presented by Senate Bill 360. TOAs services include:

- Proportionate fair share ordinances
- Traffic impact studies and procedures
- Concurrency management systems
- Revenue forecasts
- CIE evaluation and development assistance

Additional information on the CIE development requirements of Senate Bill 360 can be found at TOAs Website at www.tindaleoliver.com

For those unfamiliar with either proportionate share assessments or consumption-based transportation impact fees (CBTIF), their relationship is difficult to embrace.

Proportionate share assessments address the immediate lack of facilities needed to accommodate the impacts of a proposed development. These assessments have been described as a “premium payment that allows a development to proceed in a congested road network.” The assessment is based on the development’s share of costs required to improve road segments that the development significantly and adversely impacts. Factors that contribute to higher proportionate share amounts include policies set in local land development regulations, the amount of congestion already in the existing road network, and the size of the development.

CBTIFs are based on the amount of road network consumed by the travel associated with a proposed development. They are computed using data similar to the proportionate share—the number of trips generated, the lengths of those trips, and the cost to provide capacity. But the input variables are averages that measure consumption of all roads rather than only the specifically impacted road segments. The impact fee recognizes that some of the revenues generated by the development are used to fund transportation capacity, and shares the cost of providing for a trip between the developments at each end of the trip. Thus, the impact fee’s magnitude is not influenced

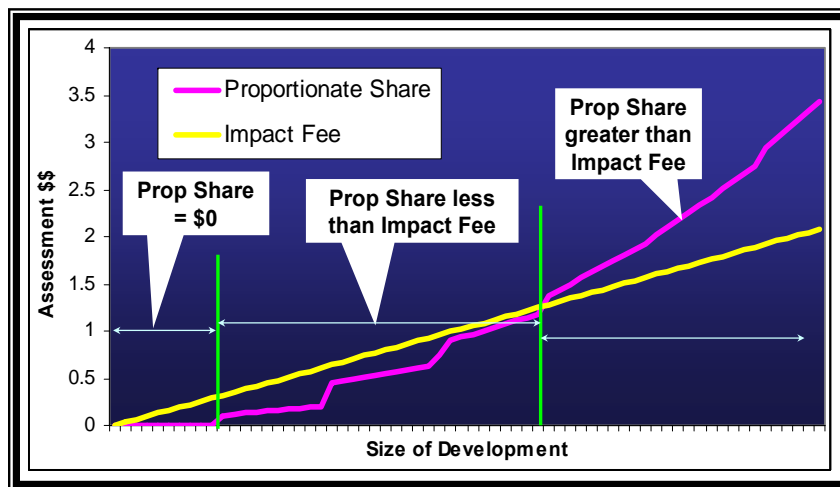
by congestion in the road network surrounding the development—it charges developments consistently on a per-unit or per-square-foot basis.

Impact fees are an important component of an agency’s transportation finance program. But, because of backlogs of deficiency and local decisions regarding road improvement priorities, impact fees do not always address the concurrency requirement that level of service standards be met concurrent with development.

As illustrated in the graph below, the CBTIF assessment (yellow line) increases uniformly as the size of a development increases, but the proportionate share assessment (purple line) starts at a low level and increases

in a stair-step, exponential manner as the size of a development increases. Developments that are small, or are located where road capacity is plentiful, would have no proportionate share assessment. Developments having some significant and adverse impacts may trigger proportionate share assessments, but they remain below the

impact fee assessments. When developments are large enough, are located in more congested road networks, or are in areas where unusually expensive road improvements are needed, the proportionate share assessment can exceed transportation impact fees. If the transportation impact fee is set at the “full” fee that reflects current costs to provide capacity, the proportionate share assessment can exceed the impact fees by as much as 2.5 to 3 times; however few agencies set their impact fees at the full cost so greater overages are not uncommon.



General Relationship of Impact Fees and Proportionate Share



Proportionate share ordinances required by the SB 360 amendments to Florida's Growth Management laws are being developed and presented to many city and county governments for adoption to meet the December 1, 2006, adoption deadline. These ordinances are the first of a series of requirements that local governments re-evaluate their comprehensive plans and transportation financing programs over the coming year.

The proportionate share transportation mitigation option allows a development to satisfy concurrency through a financial contribution towards its "significant" impacts on the road network. But, to accept this mitigation, other funds that will cure all congestion and meet the adopted level of service standard must be "reasonably foreseeable" over a 10-year period. This requirement removes the often-used "equal mitigation" transportation impact mitigation strategy that allows a development to proceed by demonstrating that its impacts are offset through developer-committed improvements *without the 10-year requirement to ultimately cure pre-existing background congestion*. In high-growth communities and in communities with substantial backlogs of congestion, the requirement to cure congestion within ten years will make it difficult for many developments to take advantage of proportionate share mitigation. Local governments will not be able to fund all of the "remainders" of the improvements needed to maintain level of service standards.

Financial Feasibility According to Senate Bill 360

"Financial feasibility" means 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. 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." (Source: Florida Senate Bill 360)

SB 360 also requires local governments to demonstrate funding of their adopted level of service standards within a 5, 10, or perhaps even 15-year horizon. This must be demonstrated annually in the capital improvements element of the comprehensive plan beginning December 1, 2007. Most communities have not been able to fund capacity at a rate that keeps pace with growth. Road congestion is likely to worsen with recent dramatic increases in road construction costs and static transportation funding sources. To meet SB 360 requirements, most communities will need to:

- Make substantial adjustments to their transportation funding programs,
- Modify the type and quality of transportation service they intend to provide in the future, or
- Restrict or modify the location and character of development that occurs in the future.

Combinations of the above options would be most likely and each community will be considering their situations over the coming year.

SB 360 "tightens the noose" on development considerably by requiring that even a two- or three-car impact on failing roads be considered significant. Where capacity is not being built at a rate that keeps up with growth, more and more roads will become deficient in the future. If the current interpretations of SB 360 remain intact, developments may be required to cure congestion by implementing improvements that cost many times their impact fees or proportionate shares, with unsure reimbursement schedules for contributions in excess of impact fees. See *Proportionate Share page 4*

Transportation concurrency exception and management areas and other strategies that are provided for in State law may provide some flexibility for concurrency to be determined. Yet to be embraced is the concept of demonstrating “reasonable further progress” – a “middle-of-the-road” concept where concurrency could be approved where it is demonstrated that congestion is being improved, even if a large backlog is not totally cured. What appears certain, however, is that more attention will be focused on local government progress in delivering the quality of service that they promise in their comprehensive plans. That involves adopting a realistic plan and securing the financial backing for that plan. It should be an interesting year!

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