

Planning and Development Department
Joint Planning Committee
June 15, 2018

In 2005, the Florida Legislature enacted Senate Bill 360, which required local governments and the Duval County Public Schools (DCPS) to collectively plan and coordinate residential growth and availability of school capacity through development of a school concurrency system. According to the law, Duval County, DCPS and municipalities within the County had to work together to adopt school concurrency and create a Public School Facilities Element (PSFE) for inclusion in the Comprehensive Plan by January 1, 2008. Within Duval County, the local governments participating in school concurrency are the City of Jacksonville, the City of Jacksonville Beach, the City of Neptune Beach, the City of Atlantic Beach, and the Town of Baldwin (The Cities). The Cities and DCPS adopted School Concurrency through an Interlocal Agreement (ILA) in 2007 through Ordinance 2017-1183.

In 2011, the Florida Legislature rescinded the requirement for School Concurrency and the PSFE, but allowed for optional implementation subject to established standards (F.S. 163.3180). The JPC has been reviewing the existing school concurrency program to evaluate its effectiveness and recommend appropriate changes.

On November 6, 2017 the JPC approved a motion to remove school concurrency from the ILA. This decision was based upon the recommendation of DCPS staff, who believe that the existing school concurrency program has not been effective in addressing school capacity issues related to development. Following this motion, City and DCPS staff (ILA Team) began to draft options to replace school concurrency that would allow DCPS to comment and make recommendations on proposed rezonings and land use map amendments that impact school capacity.

While the JPC has asked the ILA Team to draft a replacement for school concurrency that facilitates information sharing and comments by DCPS, there are three options, including the ILA Team proposal, that can be considered. Regardless of which option the JPC chooses to recommend, the ILA must maintain the minimum requirements set forth in the F.S. 163.31777 (see attached). The options are as follows:

1. Keep the existing school concurrency program, as adopted by the 2007 ILA.
2. Replace school concurrency with an information sharing system that allows DCPS to review and comment on proposed rezonings and land use map amendments that impact school capacity.
3. Replace the school concurrency system with a pay and go system, similar to the mobility system.

The 2018 Florida Statutes

163.31777 Public schools interlocal agreement.—

- (1) The county and municipalities located within the geographic area of a school district shall enter into an interlocal agreement with the district school board which jointly establishes the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated. Local governments and the district school board in each school district are encouraged to adopt a single interlocal agreement to which all join as parties.
- (2) At a minimum, the interlocal agreement must address the following issues:
 - (a) A process by which each local government and the district school board agree and base their plans on consistent projections of the amount, type, and distribution of population growth and student enrollment. The geographic distribution of jurisdiction-wide growth forecasts is a major objective of the process.
 - (b) A process to coordinate and share information relating to existing and planned public school facilities, including school renovations and closures, and local government plans for development and redevelopment.
 - (c) Participation by affected local governments with the district school board in the process of evaluating potential school closures, significant renovations to existing schools, and new school site selection before land acquisition. Local governments shall advise the district school board as to the consistency of the proposed closure, renovation, or new site with the local comprehensive plan, including appropriate circumstances and criteria under which a district school board may request an amendment to the comprehensive plan for school siting.
 - (d) A process for determining the need for and timing of onsite and offsite improvements to support new, proposed expansion, or redevelopment of existing schools. The process must address identification of the party or parties responsible for the improvements.
 - (e) A process for the school board to inform the local government regarding the effect of comprehensive plan amendments on school capacity. The capacity reporting must be consistent with laws and rules relating to measurement of school facility capacity and must also identify how the district school board will meet the public school demand based on the facilities work program adopted pursuant to s. 1013.35.
 - (f) Participation of the local governments in the preparation of the annual update to the district school board's 5-year district facilities work program and educational plant survey prepared pursuant to s. 1013.35.
 - (g) A process for determining where and how joint use of either school board or local government facilities can be shared for mutual benefit and efficiency.

(h) A procedure for the resolution of disputes between the district school board and local governments, which may include the dispute resolution processes contained in chapters 164 and 186.

(i) An oversight process, including an opportunity for public participation, for the implementation of the interlocal agreement.

(3) A municipality is exempt from the requirements of subsections (1) and (2) if the municipality meets all of the following criteria for having no significant impact on school attendance:

(a) The municipality has issued development orders for fewer than 50 residential dwelling units during the preceding 5 years, or the municipality has generated fewer than 25 additional public school students during the preceding 5 years.

(b) The municipality has not annexed new land during the preceding 5 years in land use categories that permit residential uses that will affect school attendance rates.

(c) The municipality has no public schools located within its boundaries.

(d) At least 80 percent of the developable land within the boundaries of the municipality has been built upon.

(4) At the time of the evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191, each exempt municipality shall assess the extent to which it continues to meet the criteria for exemption under subsection (3). If the municipality continues to meet the criteria for exemption under subsection (3), the municipality shall continue to be exempt from the interlocal agreement requirement. Each municipality exempt under subsection (3) must comply with this section within 1 year after the district school board proposes, in its 5-year district facilities work program, a new school within the municipality's jurisdiction.

History.—s. 5, ch. 2002-296; s. 15, ch. 2003-1; s. 4, ch. 2005-290; s. 11, ch. 2010-70; s. 13, ch. 2011-139; s. 5, ch. 2012-99.

The 2017 Florida Statutes - Chapter 163

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.

* * *

(6)(a) Local governments that apply concurrency to public education facilities shall include principles, guidelines, standards, and strategies, including adopted levels of service, in their comprehensive plans and interlocal agreements. The choice of one or more municipalities to not adopt school concurrency and enter into the interlocal agreement does not preclude implementation of school concurrency within other jurisdictions of the school district if the county and one or more municipalities have adopted school concurrency into their comprehensive plan and interlocal agreement that represents at least 80 percent of the total countywide population. All local government provisions included in comprehensive plans regarding school concurrency within a county must be consistent with each other and the requirements of this part.

- (b) Local governments and school boards imposing school concurrency shall exercise authority in conjunction with each other to establish jointly adequate level-of-service standards necessary to implement the adopted local government comprehensive plan, based on data and analysis.
- (c) Public school level-of-service standards shall be included and adopted into the capital improvements element of the local comprehensive plan and shall apply districtwide to all schools of the same type. Types of schools may include elementary, middle, and high schools as well as special purpose facilities such as magnet schools.
- (d) Local governments and school boards may utilize tiered level-of-service standards to allow time to achieve an adequate and desirable level of service as circumstances warrant.
- (e) A school district that includes relocatable facilities in its inventory of student stations shall include the capacity of such relocatable facilities as provided in s. 1013.35(2)(b)2.f., provided the relocatable facilities were purchased after 1998 and the relocatable facilities meet the standards for long-term use pursuant to s. 1013.20.
- (f)1. In order to balance competing interests, preserve the constitutional concept of uniformity, and avoid disruption of existing educational and growth management processes, local governments are encouraged, if they elect to adopt school concurrency, to apply school concurrency to development on a districtwide basis so that a concurrency determination for a specific development will be based upon the availability of school capacity districtwide.
2. If a local government elects to apply school concurrency on a less than districtwide basis, by using school attendance zones or concurrency service areas:
- a. Local governments and school boards shall have the burden to demonstrate that the utilization of school capacity is maximized to the greatest extent possible in the comprehensive plan and amendment, taking into account transportation costs and court-approved desegregation plans, as well as other factors. In addition, in order to achieve concurrency within the service area boundaries selected by local governments and school boards, the service area boundaries, together with the standards for establishing those boundaries, shall be identified and included as supporting data and analysis for the comprehensive plan.
- b. Where school capacity is available on a districtwide basis but school concurrency is applied on a less than districtwide basis in the form of concurrency service areas, if the adopted level-of-service standard cannot be met in a particular service area as applied to an application for a development permit and if the needed capacity for the particular service area is available in one or more contiguous service areas, as adopted by the local government, then the local government may not deny an application for site plan or final subdivision approval or the functional equivalent for a development or phase of a development on the basis of school concurrency, and if issued, development impacts shall be subtracted from the contiguous service area's capacity totals. Students from the development may not be required

to go to the adjacent service area unless the school board rezones the area in which the development occurs.

(g) 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 school 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 consistent with the school board's educational facilities plan.

(h)1. In order to limit the liability of local governments, a local government may allow a landowner to proceed with development of a specific parcel of land notwithstanding a failure of the development to satisfy school concurrency, if all the following factors are shown to exist:

a. The proposed development would be consistent with the future land use designation for the specific property and with pertinent portions of the adopted local plan, as determined by the local government.

b. The local government's capital improvements element and the school board's educational facilities plan provide for school facilities adequate to serve the proposed development, and the local government or school board has not implemented that element or the project includes a plan that demonstrates that the capital facilities needed as a result of the project can be reasonably provided.

c. The local government and school board have provided a means by which the landowner will be assessed a proportionate share of the cost of providing the school facilities necessary to serve the proposed development.

2. If a local government applies school concurrency, it may not deny an application for site plan, final subdivision approval, or the functional equivalent for a development or phase of a development authorizing residential development for failure to achieve and maintain the level-of-service standard for public school capacity in a local school concurrency management system where adequate school facilities will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. School concurrency is satisfied if the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by actual development of the property, including, but not limited to, the options described in sub-subparagraph a. Options for proportionate-share mitigation of impacts on public school facilities must be established in the comprehensive plan and the interlocal agreement pursuant to s. 163.31777.

a. Appropriate mitigation options include the contribution of land; the construction, expansion, or payment for land acquisition or construction of a public school facility; the construction of a charter school that complies with the requirements of s. 1002.33(18); or the creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits. Such options must include execution by the applicant and the local government of a development

agreement that constitutes a legally binding commitment to pay proportionate-share mitigation for the additional residential units approved by the local government in a development order and actually developed on the property, taking into account residential density allowed on the property prior to the plan amendment that increased the overall residential density. The district school board must be a party to such an agreement. As a condition of its entry into such a development agreement, the local government may require the landowner to agree to continuing renewal of the agreement upon its expiration.

b. If the interlocal agreement and the local government comprehensive plan authorize a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a charter school that complies with the requirements of s. 1002.33(18), as proportionate-share mitigation, the local government shall credit such a contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis at fair market value.

c. Any proportionate-share mitigation must be directed by the school board toward a school capacity improvement identified in the 5-year school board educational facilities plan that satisfies the demands created by the development in accordance with a binding developer's agreement.

3. This paragraph does not limit the authority of a local government to deny a development permit or its functional equivalent pursuant to its home rule regulatory powers, except as provided in this part.

(i) When establishing concurrency requirements for public schools, a local government must enter into an interlocal agreement that satisfies the requirements in ss. 163.3177(6)(h)1. and 2. and 163.31777 and the requirements of this subsection. The interlocal agreement shall acknowledge both the school board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis, and the land use authority of local governments, including their authority to approve or deny comprehensive plan amendments and development orders. The interlocal agreement shall meet the following requirements:

1. Establish the mechanisms for coordinating the development, adoption, and amendment of each local government's school concurrency related provisions of the comprehensive plan with each other and the plans of the school board to ensure a uniform districtwide school concurrency system.

2. Specify uniform, districtwide level-of-service standards for public schools of the same type and the process for modifying the adopted level-of-service standards.

3. Define the geographic application of school concurrency. If school concurrency is to be applied on a less than districtwide basis in the form of concurrency service areas, the agreement shall establish criteria and standards for the establishment and modification of school concurrency service areas. The agreement shall ensure maximum utilization of school capacity, taking into account transportation costs and court-approved desegregation plans, as well as other factors.

4. Establish a uniform districtwide procedure for implementing school concurrency which provides for:
 - a. The evaluation of development applications for compliance with school concurrency requirements, including information provided by the school board on affected schools, impact on levels of service, and programmed improvements for affected schools and any options to provide sufficient capacity;
 - b. An opportunity for the school board to review and comment on the effect of comprehensive plan amendments and rezonings on the public school facilities plan; and
 - c. The monitoring and evaluation of the school concurrency system.
5. A process and uniform methodology for determining proportionate-share mitigation pursuant to paragraph (h).
 - (j) This subsection does not limit the authority of a local government to grant or deny a development permit or its functional equivalent prior to the implementation of school concurrency.

(Current ILA)

2.4.1 The Cities shall coordinate and share data with the DCPS as follows:

2.4.1.1 On or about ~~May 30th~~ June 1st of each year, City of Jacksonville Planning and Development Department will provide the DCPS with copies of the Annual Statistical Package, which includes information on population, residential building and demolition permits by type and general location, and economic statistics. The data will be current as of December of the previous year. This package will cover the cities of Jacksonville, Jacksonville Beach, Neptune Beach, Atlantic Beach, and the Town of Baldwin. Jacksonville Beach, Neptune Beach, Atlantic Beach, and Baldwin will provide information to the City of Jacksonville Planning and Development Department on development permits as required by the City of Jacksonville Comprehensive Plan.

Section 6. Comprehensive Plan Amendments, Rezoning, and Development Approvals – School Concurrency Availability Determination (SCAD) *(Based on 2003 ILA)*

- 6.1 The School Board will designate and appoint a representative to serve as a non-voting member on each of the local planning agencies (LPA) of the Cities. The representative will be noticed, provided an agenda, and invited to attend and/or provide comments to the LPA's for Jacksonville, Atlantic Beach, Baldwin, Jacksonville Beach, and Neptune Beach.
- 6.2 The Cities will provide the School Board's LPA representative with copies of all land use amendments and rezoning proposals that may affect student enrollment projections or school facilities. Such notice will be provided pursuant to local notice procedures and shall include the publication date of the local government staff report or equivalent document. This notice requirement applies to amendments to the Future Land Use Map of each Cities' comprehensive plan and rezoning applications. The Cities will also forward to the DCPS all residential subdivision reviews as part of the commenting agency review.
- 6.3 After notification by the Cities, the DCPS representative will advise the chief planning official for the appropriate City of the school enrollment impacts anticipated to result from the proposed land use amendment or zoning application. The comments will include whether sufficient permanent capacity exists or is planned to accommodate the impacts at the attendance zone school by school type pursuant to Sections 6.3.1 and 6.3.2. DCPS comments will be disclosed as supplemental information in the local government staff report or equivalent document. Failure by the DCPS to provide comments prior to the local government staff report or equivalent document publication date shall not result in a delay of the scheduled public hearings.

- 6.3.1 Sufficient permanent capacity shall be calculated as 100% of permanent FISH and no relocatables. If the student generation rate exceeds sufficient permanent capacity and the Five-Year District Facilities Work Program does not include plans to serve the development at the time of impact, the DCPS may recommend reasonable conditions to mitigate such impacts. The local government, at its sole discretion, may incorporate the conditions as it deems appropriate.

The student generation rate shall be calculated for each school type by dividing the total number non-charter public school students actually enrolled in that school type in Duval County, based on the October FTE count, by the number of total housing units for the same year. Total housing units is calculated by taking the most recent decennial census figures and adding the number of new residential units permitted since the last decennial census, and subtracting the number of demolitions permitted since the last decennial census. Should an applicant believe special circumstances apply; the applicant may provide a site or use specific Student Generation Rate study acceptable to DCPS and request approval of DCPS and the city for a project-specific Student Generation Rate. On or about October 31st, the student generation rate shall be recalculated, using the most recent count for actual student enrollment as reported by DCPS to the FDOE, and the most recent copy of JPDD's Annual Statistical Package for the number of total housing units in Duval County as of December 31st for the same year.

- 6.3.2 In reviewing and approving land use amendment and rezoning proposals, which may affect student enrollment or school facilities, the Cities will consider the following issues where applicable and appropriate in the context of a development application:
- A. Reservations for school sites and facilities within planned neighborhoods.
 - B. Compatibility of land uses adjacent to existing schools and reserved school sites.
 - C. The co-location of parks, recreation, and community facilities in conjunction with existing and proposed school sites.
 - D. The linkage of schools, parks, libraries, and other public facilities with bikeways, trails, and sidewalks.
 - E. Targeting community development improvements in older and distressed neighborhoods near schools.

- F. The development of traffic circulation plans to serve schools and the surrounding neighborhood, including any needed access improvements, sidewalks to schools, off-site signalization, or safety-related signage.
- G. The location of school bus and mass transit stops and turnarounds in new developments.
- H. Private sector identification and/or implementation of creative solutions to developing adequate school facilities in residential developments.
- I. Use of a school building and/or site as a part of the emergency management plan, e.g., as shelter bed space.
- J. Available permanent school capacity or planned improvements to increase school capacity.
- K. Results of the Population Projection Model developed by Jacksonville and DCPS staff.
- L. DCPS comments on comprehensive plan amendments and other land-use decisions.
- M. Whether the proposed development location is consistent with any local government's school design and planning policies.

6.1 Jacksonville will invite the DCPS staff to participate in the development of any Neighborhood Action Plans, District Vision Plans, or any other broader planning activities as may occur in the future. The DCPS staff will be extended the same invitation by Atlantic Beach, Baldwin, Jacksonville Beach, and Neptune Beach when undertaking such planning activities within their respective boundaries.

Definitions

FDOE – Florida Department of Education

FISH – Florida Inventory of School Houses

COFTE – Capital Outlay Fulltime Equivalent

Attendance Zone - Outline where students in a particular neighborhood or area will attend public elementary, middle and/or high school

School type:

Elementary – Kindergarten through Grade 5

Middle – Grades 6 through 8

High – Grades 9 through 12

Permanent – A structure with a fixed foundation that has permanently attached walls, roof, and floor that cannot be moved or transported either as a unit or in sections.

Relocatable – (Also known as Portable) a building or portion of a building made up of prefabricated units that may be disassembled and reassembled frequently, or a single unit of construction consisting of walls, roof, and floor that is movable as a unit either on wheels or by truck. Mobile, demountable, dividable, modular, and portable buildings are types of relocatable units.

Sufficient Permanent Capacity – Calculated as 100% of permanent FISH and no relocatables.