

“Frequently Asked Questions” About Public School Concurrency

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What is public school concurrency?

The statutory requirement that local governments assure that public school facilities will be in place at the time that residential development creates impacts on the school system. Private school facilities are not part of school concurrency, because they are not provided by the School District. All School Districts base their projections of student population and planning on the public school student population, rather than on the entire population of school-aged children.

Why was this requirement not part of the 1985 Growth Management Act?

The issue was considered in the 1985 Legislative Session, but the Legislature was unable to achieve a consensus to address schools along with the other concurrency public facilities and services (drainage, roads, solid waste, water and sewer, parks and recreation).

Is school concurrency unique to Florida?

Adequate public facilities requirements for schools are not a new thing, and have been used by local governments in other states for many years. However, Florida is one of the first states to make school concurrency a statewide mandate.

Has school concurrency been tried before in Florida?

In Florida, since the early 1990s, many urban school districts have had very significant problems with school overcrowding. The state legislature first created an option for school concurrency, which was then refined with several legislative changes in the late 1990s. Broward County attempted to adopt optional school concurrency in the mid-1990s and, faced with repeated challenges from the local Economic Development Council and the statewide associations of builders and realtors, ultimately was forced to abandon its efforts. See, e.g., *Economic Development Council of Broward County, Inc. v. Broward County Board of County Commissioners*, Case No. 96-006138GM, filed Dec. 31, 1996 (ALJ L.J. Sartin). The optional school concurrency option was only implemented by Palm Beach County. It was not challenged, perhaps because it incorporated an escape clause that required that, if concurrency ever led to a potential denial of development, the concurrency requirement would be suspended.

Have other types of regulations attempted to address the issue of school overcrowding?

Yes. In Florida, school impact fees have been collected for the last twenty-five years, as a funding source for construction of additional school facilities. Such fees were upheld by the Florida Supreme Court in *St Johns County v. Northeast Florida Builders Association, Inc.*, 583 So. 2d 635 (Fla. 1991).

Developments of Regional Impact (DRIs) have always been required to consider their impacts on public schools as a part of the DRI process. Developments that are not DRIs have also been asked to or volunteered to donate school sites to address their public school impacts, usually on an ad hoc basis or pursuant to local ordinances.

Orange County, Miami-Dade County and Broward County all recently developed some form of a requirement to review school impacts at the time of rezoning and comprehensive plan amendment, and to seek a voluntary or mandatory mitigation commitment from applicants whose impacts would increase overcrowding at affected schools. These programs were not intended to be “concurrency” and did not follow the statutory requirements for a voluntary school concurrency program. Orange County’s program was challenged and, in a decision upheld by Florida’s Fifth District Court of Appeals, was validated as distinct from school concurrency because it looked at school impacts at the time of rezoning rather than at the time of development. See *Orange County v. Mann*, 830 So. 2d 144 (Fla. 5th DCA 2002).

The difference between these programs and public school concurrency is that these programs usually were not tied to the timing of development. For example, a DRI might have been required to donate public school sites when it was originally approved in the 1970s. Today, development may proceed under that DRI Development Order, regardless of whether the local schools are currently overcrowded.

When was the school concurrency requirement adopted?

The 2005 Florida Legislature adopted what the Bush administration referred to as a “Pay as You Grow” set of changes to the 1985 Growth Management Act. Senate Bill 360 contained a large number of these changes, including the requirement for school concurrency to be implemented by the end of 2008. “Pay as You Grow” was designed to place a new emphasis on ensuring that all kinds of public facilities and services would be in place at the time of development impact. It authorized DCA to establish a schedule of deadlines, and DCA has published such a schedule to ensure that all counties come into compliance, with deadlines ranging from January 1, 2008 to December 1, 2008. All local governments in a county have the same deadline. Please see attached.

Are there models that local communities can look to in designing their own school concurrency systems?

Yes, Palm Beach County’s efforts provided a useful laboratory for better long range planning for school facilities and coordination of development decisions with school facilities. Also, the Florida Department of Community Affairs used some of the money given to it for implementation of Senate Bill 360 to provide grants to six pilot communities around the state, who agreed to develop draft Public School Facilities Elements and draft revised School Interlocal Agreements early for the benefit of the rest of the state. These pilot communities represented a wide range of communities, small and large, urban and rural, with few and with many local governments: Hillsborough County, Indian River County, Lake County, St. Johns County, Sarasota County, and Walton County.

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The pilot community documents, a model school concurrency management system ordinance, a model proportionate share mitigation agreement for school facilities, a best practices guide, and other technical assistance is available at the DCA website at the following link: <http://www.dca.state.fl.us/fdcp/DCP/SchoolPlanning/index.cfm>.

Were changes made to the school concurrency statutes in the 2007 Legislative Session?

Yes. The most significant change was made to the definition of financial feasibility applicable to both transportation and school concurrency at Section 163.3164(32), F.S., by House Bill 7203, signed into law by Governor Crist on June 19, 2007. This change makes it clear that a failure to meet the adopted Level of Service standard in any one year does not make the concurrency program not financially feasible, as long as the LOS Standard is achieved and maintained by the end of the capital facilities planning period (usually five years).

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SCHEDULE OF DEADLINES FOR SCHOOL CONCURRENCY					
County	Date	County	Date	County	Date
Alachua	7/1/08	Hamilton	5/1/08	Nassau	6/1/08
Baker	6/1/08	Hardee	1/1/08	Okaloosa	4/1/08
Bay	8/1/08	Hendry	2/1/08	Okeechobee	7/1/08
Bradford	3/1/08	Hernando	1/1/08	Orange	4/1/08
Brevard	3/1/08	Highlands	5/1/08	Osceola	5/1/08
Broward	2/1/08	Hillsborough	7/1/08	Palm Beach	EAR
Calhoun	2/1/08	Holmes	12/1/08	Pasco	2/1/08
Charlotte	11/1/08	Indian River	3/1/08	Pinellas	3/1/08
Citrus	6/1/08	Jackson	11/1/08	Polk	3/1/08
Clay	5/1/08	Jefferson	1/1/08	Putnam	4/1/08
Collier	3/1/08	Lafayette	10/1/08	St. Johns	8/1/08
Columbia	12/1/08	Lake	6/1/08	St. Lucie	5/1/08
Dixie	10/1/08	Lee	4/1/08	Santa Rosa	6/1/08
De Soto	12/1/08	Leon	9/1/08	Sarasota	10/1/08
Duval	1/1/08	Levy	8/1/08	Seminole	1/1/08
Escambia	11/1/08	Liberty	8/1/08	Sumter	9/1/08
Flagler	2/1/08	Madison	7/1/08	Suwannee	5/1/08
Franklin	9/1/08	Manatee	4/1/08	Taylor	5/1/08
Gadsden	2/1/08	Marion	5/1/08	Union	3/1/08
Gilchrist	2/1/08	Martin	6/1/08	Volusia	2/1/08
Glades	9/1/08	Miami-Dade	1/1/08	Wakulla	1/1/08
Gulf	1/1/08	Monroe	4/1/08	Walton	4/1/08
				Washington	3/1/08