

# Mark Bentley, P.A.

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## ATTORNEYS AT LAW

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#### Transportation Mobility Fee Update Hillsborough, Pinellas and Pasco Counties

The following is an update of the transportation mobility fee development status for Hillsborough, Pinellas and Pasco Counties after the City of Weston v. Crist case, which ruled that Senate Bill 360 was unconstitutional.

#### I. Background

On August 26, 2010, in the case of City of Weston v. Crist, the Leon County Circuit Court declared that Senate Bill 360 (“The Community Renewal Act”) was unconstitutional. The Court determined that the Act was an unfunded mandate in violation of Florida’s Constitution because it required all counties and cities to spend or take an action requiring the expenditure of funds without providing state funding for the expenditures. Consequently, the Court ordered the Secretary of State to strike the law from the State’s records.



Among several things, Senate Bill 360 required local governments having Transportation Concurrency Exception Areas (“TCEAs”) to adopt into their comprehensive plans within two years, strategies to support and fund “mobility” within their Exception Areas. In the event these local governments failed to amend their comprehensive plans, the state could impose sanctions against the local government. Notably, 246 counties and cities were designated TCEAs at the time of the Court’s ruling. The case has been appealed to the First District Court of Appeal and the appeal stays the effect of the Court’s decision. Notably, following news of the Court’s decision, Senator Bennett, who sponsored Senate Bill 360, indicated that he would work with legislators to revise the language of the bill during the 2011 legislative session.

## II. The Mobility Fee



The goals of a mobility fee are, generally, to:

1. Replace concurrency requirements;
2. Fund mobility improvements such as roads, mass transit, sidewalks, trails and bicycle paths;
3. Pay for the impacts of new development;
4. Promote infill development; and
5. Discourage sprawl in rural areas in order to focus limited infrastructure resources inside the Urban Service Boundary.

Notwithstanding the decision in the *Weston* case holding that Senate Bill 360 is unconstitutional, jurisdictions such as Hillsborough and Pasco Counties have continued their efforts to develop mobility fees. Pinellas County, however, has placed the mobility fee process on hold pending further direction from the Florida Legislature.

## III. Hillsborough County

Hillsborough County is currently studying the mobility fee concept and gathering comments via committee meetings and workshops relating to the creation and implementation of a mobility fee that would be applied on a countywide basis. The fee is based on the concept that new development will be assessed a fee for the consumption of units of capacity and the amount of vehicles traveled per trip on the County's transportation system.

Under Hillsborough County's present system, new development is required to pay impact fees along with additional concurrency payments. These funds, however, must be used exclusively for road improvements and cannot be used for operations or maintenance. Alternatively, a mobility fee provides flexibility to spend revenue not just on roads but also on multi-modal travel options, such as bicycle and pedestrian facilities, and mass transit. According to Hillsborough County, all new development would be subject to a mobility fee; however, developers who have relied on existing transportation concurrency approvals may, with the consent of Hillsborough County, retain their current approvals or opt in under the new mobility fee system.

Based upon numerous documents, including the MPO's 2035 LRTP (Long Range Transportation Plan), Hillsborough County has developed a total of 45 Mobility Fee Zones in nine districts. The trip lengths for each zone are the primary factor in establishing the fee. Hillsborough County has developed a 2025 Future Land Use and Initial Mobility Fee Zone Overlay Map, which identifies the future land use, mobility zone and average trip length for a proposed development. The mobility fee would be assessed by zone.

The calculation of the mobility fee involves a four-step process:

1. Dividing Hillsborough County into 45 Mobility Fee Zones;
2. Developing an average trip length for each zone;
3. Developing the cost for vehicle miles traveled; and
4. Calculating mobility fees using trip rates from ITE

The formula for determining the mobility fee is therefore as follows:

$$\text{Mobility Fee} = \text{trip rate} \times \text{trip length} \times \text{percentage of new trips} \\ \times \text{vehicle miles traveled}/2$$

On September 24, 2010, Hillsborough County published a document containing its suggested methodology and fees entitled "Hillsborough County Mobility Fee Collaboration Engagement" (the "Document"). As an example, Hillsborough County is suggesting the following fees:

	Total Current Fee (Impact Fees & Concurrency Payment)	Fee Inside Urban Service Boundary	Fee Outside Urban Service Boundary
Shopping Center Retail per 1,000 s.f.	\$47,354	\$25,440	\$110,787
Multi-Family per unit	\$7,680	\$13,260	\$13,260

The Document also proposes a summary of four Alternative Fee Schedules for consideration by the Board of County Commissioners.

Hillsborough County has conducted several public meetings to receive input from the various stakeholders, with the last forum conducted on September 24, 2010. Hillsborough County has indicated that because it has invested a significant amount of time and resources in developing its mobility fee plan, and notwithstanding the Court's ruling on SB 360, it will continue with the process, but at a much slower pace. Hillsborough County has targeted the implementation of its mobility fee program for the third quarter of 2011.

Hillsborough County indicates that the next step in the process will be to prepare a draft report that will be presented to the various stakeholders for discussion at several public meetings.

#### IV. Pinellas County

Pinellas County established a Mobility Plan Task Force in October 2009 to develop a countywide mobility plan and mobility fee. The main objective of the Task Force was to develop a mobility fee along with supporting comprehensive plan policies and land development standards and design criteria. The fee would be applied on a countywide basis, and replace existing transportation impact fees. The methodology proposed for the mobility fee is an improvement-based fee. The formula for the improvement-based methodology requires identification of a targeting funding level based on transportation improvement needs. Trip ends rather than trip lengths would

be the primary variable in determining the impact of future development on the County's traffic circulation system.

The Mobility Fee Task Force's efforts were suspended in September 2010 due to the Court's ruling in the Weston case that Senate Bill 360 was unconstitutional. The Task Force will be reestablished following the 2011 legislative session to develop a program in accordance with any amendments to Chapter 163, Florida Statutes.

## V. Pasco County

Pasco County has proposed a countywide three-part Mobility Plan process, which includes the following:

- Phase I – the development of a prototype of the mobility fee for certain land Uses;
- Phase II – (if authorized) to advance the concepts by further quantifying and exploring issues identified during the initial phase, and considering development review issues and alternative strategies for regulating growth; and
- Phase III – developing and finalizing mobility fee schedules, modifying other administrative procedures and responding to DCA comments.

Notably, Pasco County is also considering imposing a new "mobility tax" mandating that every property owner would share the financial burden for transportation improvements through a \$50 per year tax assessment. Pasco County is also considering a five cents per gallon local option gasoline tax increase to be used for operation and maintenance of future mass transit.

Pasco County's mobility fee would replace impact fees. Most development projects would be assessed a standardized mobility fee based on their mobility impacts. The current recommendation is to establish fees according to the land use, location or market area wherein the property is located (these areas are divided into the West and South, Central and East, and Northern areas of Pasco County). Furthermore, to encourage economic development, Pasco County is suggesting reduced mobility fees for favored land uses -- those that provide industrial and/or office employment centers or those that are transit oriented.

Pasco County's Stakeholders Committee most recently met on November 9, 2010. There are no additional scheduled meetings at this time. No action has been taken on this proposal and it is likely that this issue will be evaluated by the County Commission in the near future. Pasco County, however, has indicated that it intends to identify a mobility fee process and implement it in the latter part of 2011.

We will continue to monitor the ongoing efforts of these counties to develop and implement their respective mobility fee programs. If you have any questions or desire to obtain additional information, please contact us at (813) 223-5050 or [mbentley@bentleylawfirm.net](mailto:mbentley@bentleylawfirm.net).