

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 697 Impact Fees  
**SPONSOR(S):** Local, Federal & Veterans Affairs Subcommittee, Miller  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N, As CS	Miller	Miller
2) Ways & Means Committee			
3) Government Accountability Committee			

### SUMMARY ANALYSIS

Impact fees are amounts imposed by local governments to fund local infrastructure needed to expand local services to meet the demands of population growth caused by development. The impact fee ordinances enacted by a county, municipal, or special district must meet certain minimum statutory criteria, but the various types of impact fees for different infrastructure needs, the calculation of the amount due, and the timing of collecting these fees currently is at the discretion of each local government.

The bill prohibits any local government from collecting impact fees any time prior to issuing a building certificate. The bill codifies the requirement for impact fees to bear a rational nexus both to the need for additional capital facilities and to the expenditure of funds collected and the benefits accruing to the new construction. Local governments will be required to designate the funds collected by the impact fees for acquiring the capital facilities to benefit the new residents. Impact fees collected by a local government may not be used to pay existing debt or pay for prior approved projects unless such expenditure has a rational nexus to the impact generated by the new construction.

The bill restricts the timing of collecting impact fees but not the amount, thus does not restrict the amount of revenue local governments may raise nor require they expend additional amounts.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Impact fees are amounts imposed by local governments to fund local infrastructure required to provide for increased local services needs caused by new growth.<sup>1</sup> Adopted by ordinance of a county, municipality, or special district, impact fees must meet the following minimum criteria:

- The fee must be calculated using the most recent and localized data.
- The local government adopting the impact fee must account for and report fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.
- Charges imposed for the collection of impact fees are limited to the actual costs.
- All local governments are required to give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect. Counties and municipalities need not wait 90 days before decreasing, suspending, or eliminating an impact fee.<sup>2</sup>

The types of impact fees, amounts, and timing of collection are within the discretion of the local government authorities choosing to impose the fees.<sup>3</sup> The courts have found appropriate the imposition of impact fees where the local government meets two fundamental requirements: a reasonable connection, or nexus, between the need for additional capital facilities and the population growth generated by the project, and a reasonable connection, or nexus, between the expenditures of the funds collected from the impact fees and the benefits accruing to the subdivision or project. Meeting the second criteria requires the local government ordinance imposing the impact fee to earmark the funds collected to acquire the new capital facilities necessary to benefit the new residents.<sup>4</sup>

Some local governments require payment of impact fees prior to the issuance of a development or building permit.<sup>5</sup> In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.<sup>6</sup> A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.<sup>7</sup>

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<sup>1</sup> Section 163.31801(2), F.S.

<sup>2</sup> Section 163.31801(3), F.S.

<sup>3</sup> Currently, in Florida there are 67 counties, 413 municipalities, 1,056 independent special districts, and 634 dependent special districts. See ch. 7, F.S.; *The Local Government Formation Manual 2017-2018*, Appx. B, at <http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2018&DocumentType=GeneralPublications&FileName=2017-2018LocalGovernmentFormationManualFinalPub.pdf> (accessed 12/27/2017); Lists of Independent and Dependent Districts available through Dept. of Economic Opportunity, Special District Accountability Program, at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (accessed 12/27/2017).

<sup>4</sup> This is known as the dual rational nexus test. *St. Johns County v. Northeast Florida Builders Association, Inc.*, 583 So. 2d 635, 637 (Fla. 1991), citing *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 611-612 (Fla. 4th DCA (1983), *rev. den.* 440 So. 2d 352 (Fla. 1983).

<sup>5</sup> See, e.g., Roads Impact Fee, ch. 2, art. VI, div. 2, s. 2-267(a), Land Development Code Lee County, Florida, at [https://library.municode.com/fl/lee\\_county/codes/land\\_development\\_code?nodeId=LADECO\\_CH2AD\\_ARTVIIMFE](https://library.municode.com/fl/lee_county/codes/land_development_code?nodeId=LADECO_CH2AD_ARTVIIMFE) (accessed 12/17/2017); Transportation Impact Fee, Ch. 56, Part I, s. 56-15.C.1, City of Orlando Code of Ordinances, at [https://library.municode.com/fl/orlando/codes/code\\_of\\_ordinances?nodeId=TITIICICO\\_CH56IMFE](https://library.municode.com/fl/orlando/codes/code_of_ordinances?nodeId=TITIICICO_CH56IMFE) (accessed 12/17/2017); Road Impact Fees, Miami-Dade County Code of Ordinances, s. 33E-6.1(c), at [dade\\_county/codes/code\\_of\\_ordinances?nodeId=CD\\_MIAMIDADE\\_CO\\_FLORIDA\\_CH33EROIMFEOR\\_S33E-6.1PAROIMFE](https://library.municode.com/fl/miami-dade-county/codes/code_of_ordinances?nodeId=CD_MIAMIDADE_CO_FLORIDA_CH33EROIMFEOR_S33E-6.1PAROIMFE) (accessed 12/17/2017).

<sup>6</sup> Section 553.79, F.S.

<sup>7</sup> Section 163.3164(16), F.S.

A certificate of occupancy is required before a building or structure may be used or occupied.<sup>8</sup> The certificate is issued by the appropriate local building official after completion of all work and a final inspection of the building or structure shows no violations of the Florida Building Code or other applicable laws.<sup>9</sup>

### **Effect of the Bill**

The bill makes technical changes to s. 163.31801, F.S. The bill prohibits a local government from collecting impact fees any earlier than the issuing of a building permit. The impact fee will be required to have a rational nexus both to the need for additional capital facilities and to the expenditure of funds collected and the benefits accruing to the new construction. Local governments will be required to designate the funds collected by the impact fees for acquiring the capital facilities to benefit the new residents. Finally, impact fees collected by a local government may not be used to pay existing debt or pay for prior approved projects unless such expenditure has a rational nexus to the impact generated by the new construction.

#### **B. SECTION DIRECTORY:**

Section 1: Amends s. 163.31801, F.S., codifying requirements for the collection and use of impact fees and making technical changes.

Section 2: Provides an effective date of July 1, 2018.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None. The bill will affect the timing when the fees may be collected but not the amount imposed by the local government.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The only impact would be the potential effect on private financing of the change in timing of collecting the fees.

#### **D. FISCAL COMMENTS:**

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<sup>8</sup> Section 111.1, Florida Building Code – Building (6th ed. 2017), at <https://codes.iccsafe.org/public/document/FBC2017/chapter-1-scope-and-administration> (accessed 12/27/2017) .

<sup>9</sup> Section 111.2, Florida Building Code (6th ed. 2017). *See also* Broward County Amendments to the 5<sup>th</sup> Edition (2014) Florida Building Code (Effective June 30, 2015, with amendments through March 2017), s. 110, “Inspections,” p. 1.39, at <http://www.broward.org/CodeAppeals/AboutUs/Documents/ch%201-5thEdition%20-PAssed%2003-09-2017.pdf> (accessed 12/26/2017).

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill neither requires nor authorizes administrative rulemaking by executive agencies.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 10, 2018, the Local, Federal & Veterans Affairs Subcommittee adopted a strike-all amendment and approved the bill as a committee substitute. The amendment made technical changes to s. 163.31801, F.S., revised the limitation on the timing of collecting impact fees to no earlier than the issuance of a building permit, and codified requirements for imposing and using impact fees articulated by the Florida Supreme Court in *St. Johns County v. Northeast Florida Builders Association, Inc.*, 583 So. 2d 635, 637 (Fla. 1991). Under the amendment, impact fees will be required to have a rational nexus to both the need for additional capital facilities and the expenditure of funds collected and the benefits accruing to the new construction. Local governments will be required to designate the funds collected by the impact fees for acquiring the capital facilities to benefit the new residents. Finally, impact fees collected by a local government may not be used to pay existing debt or pay for prior approved projects unless such expenditure has a rational nexus to the impact generated by the new construction.

This analysis is drawn to the bill as amended.