

Tab 1	SB 142 by Perry ; (Identical to H 00127) Permit Fees
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Tab 2	SB 144 by Bean ; (Similar to H 00207) Impact Fees
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Flores, Chair
Senator Farmer, Vice Chair

MEETING DATE: Tuesday, February 5, 2019
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Building

MEMBERS: Senator Flores, Chair; Senator Farmer, Vice Chair; Senators Broxson, Pizzo, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 142 Perry (Identical H 127)	Permit Fees; Requiring the governing bodies of counties and municipalities to post their permit and inspection fee schedules and building permit and inspection utilization reports on their websites; requiring certain governing bodies of local governments to post their building permit and inspection utilization reports on their websites by a specified date, etc. CA 02/05/2019 Favorable IT RC	Favorable Yeas 5 Nays 0
2	SB 144 Bean (Similar H 207)	Impact Fees; Revising the minimum requirements for impact fees adopted by a local government; exempting water and sewer connection fees from the Florida Impact Fee Act, etc. CA 02/05/2019 Temporarily Postponed FT AP	Temporarily Postponed

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 142

INTRODUCER: Senator Perry

SUBJECT: Permit Fees

DATE: January 28, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Favorable
2.			IT	
3.			RC	

I. Summary:

SB 142 requires the governing body of a local government to post its building permit and inspection fee schedules on its website. The bill also requires that by December 31, 2020, the governing body will post a newly required building permit and inspection utilization report. The report will include costs incurred and revenues derived from the enforcement of the Florida Building Code. After December 31, 2020, a local government must update the utilization report prior to amending its building permit and inspection fee schedule.

II. Present Situation:

Florida Building Code

Part IV of chapter 553, F.S., is known as the “Florida Building Codes Act.” The purpose and intent of the Florida Building Codes Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code.¹ The Florida Building Code must be applied, administered and enforced uniformly and consistently from jurisdiction to jurisdiction.² The Florida Building Commission develops and maintains the Florida Building Code.³

Florida Fire Prevention Code

The State Fire Marshall must adopt, by rule, the Florida Fire Prevention Code (FPPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and

¹ Section 553.72(1), F.S.

² *Id.*

³ Section 553.74, F.S. The Florida Building Commission is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Florida Building Code.

the enforcement of such fire safety laws and rules.⁴ The FFPC operates in conjunction with the Florida Building Code. Conflicts between the FFPC and the Florida Building Code are resolved through coordination and cooperation between the State Fire Marshall and the Florida Building Commission in favor of requirements offering the greatest degree of life safety.⁵

Enforcement of the Florida Building Code: Permits and Inspections

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public's health, safety, and welfare.⁶ Authorized state and local government agencies enforce the Florida Building Code and issue building permits.⁷

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.⁸ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local enforcing agency upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁹ A local enforcement agency must post each type of building permit application on its website.¹⁰

A building official is a local government employee who supervises building code activities, including plan review, enforcement, and inspection.¹¹ Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the Florida Building Code,¹² including certain required building, electrical, plumbing, mechanical, and gas inspections.¹³

Local Government Building Code Permitting Fees

Determination and Usage

A local government entity may provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement of the Florida Building Code.¹⁴ The local government entity's fees must be used solely for carrying out that local government entity's responsibilities

⁴ Section 633.202(1), F.S.

⁵ See ss. 553.72(5), 553.73(1)(d), and 633.104(5), F.S.

⁶ Section 553.72(2), F.S.

⁷ See ss. 125.01(1)(bb), 125.56(1), 553.72(3), and 553.80(1) F.S.

⁸ Section 202, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-2-definitions> (last visited Jan. 14, 2019). Section 553.79(1)(b), F.S. requires a local enforcement agency of the Florida Building Code to post each type of building permit application on its website.

⁹ See ss. 125.56(4)(a) and 553.79(1), F.S. Other entities may, by resolution or regulation, be directed to issue permits.

¹⁰ Section 553.79(1)(b), F.S.

¹¹ Section 468.603(2), F.S.

¹² Section 553.79(2), F.S.

¹³ Section 110.3, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-1-scope-and-administration> (last visited Jan. 14, 2019).

¹⁴ See ss. 125.56(2), 166.222, and 553.80(7), F.S. While not required by Florida Statutes, it appears that many local governments currently post fee schedules on their websites.

in enforcing the Florida Building Code.¹⁵ The basis for the fee structure must relate to the level of service provided by the local government.¹⁶ The total estimated annual revenue derived from fees, and fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities.¹⁷ Fees charged must be consistently applied.¹⁸ The funding of certain general government activities and programs from fee revenues is expressly prohibited. Examples of these include planning and zoning activities or the enforcement of local ordinances unrelated to the Florida Building Code.¹⁹

Fiscal Tracking and Accountability

A local government must use recognized management, accounting, and oversight practices to ensure that any building permitting and inspection fees, fines, and investment earnings are maintained and allocated or used solely for the purposes of enforcing building codes.²⁰ Any unexpended fee balances are carried forward to future years for allowable activities or are refunded at the discretion of the local government.²¹

The most recent information on building permit fee revenues provided by the Office of Economic and Demographic Research captures data from 2016. For that year, 64 counties reported building permit fee revenues totaling \$258,489,279; while 318 municipalities reported revenues totaling \$447,863,533.²²

Local Government Annual Financial Audit Reports and Web Postings

Sections 218.32 and 218.39, F.S., provide requirements for local governments regarding submissions of annual financial reports and audits. Local governments must submit an annual financial report to the Department of Financial Services (DFS) covering their operations for the preceding fiscal year.²³ Each local governmental entity's website must provide a link to the DFS website to view the entity's submitted financial report.²⁴ If the local government does not have an official website, the county government's website must provide the required link.²⁵

¹⁵ The phrase "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement. *See* s. 553.80(7)(a), F.S.

¹⁶ Section 553.80(7), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 553.80(7)(b), F.S. Additional activities that may not be funded by permit fees include public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.

²⁰ Section 553.80(7)(b), F.S.

²¹ Section 553.80(7), F.S.

²² Office of Economic and Demographic Research, The Florida Legislature, *Building Permit Fees*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/a-f.cfm> (last visited Jan. 16, 2019).

²³ It is possible that smaller municipalities (those with annual revenues or total expenditures and expenses between \$100,000 and \$250,000) may go three years between financial audit submissions. *See* Section 218.39(1)(g), F.S.

²⁴ Section 218.32(1)(g), F.S.

²⁵ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 125.56, F.S., to require the governing body of a county that charges permit and inspection fees to enforce the Florida Building and Florida Fire Prevention Codes to post on its website both its permit and inspection fee schedules and a building permit and inspection utilization report.

Section 2 amends s. 166.222, F.S., to require the governing body of a municipality that charges building code inspection or enforcement fees to post on its website both its permit and inspection fee schedules and a building permit and inspection utilization report.

Section 3 amends s. 553.80, F.S., to require the governing body of a local government that provides a schedule of Florida Building Code enforcement fees to post a building permit and inspection utilization report on its website by December 31, 2020. The report shall be based upon information in the entity's most recently completed financial audit. After December 31, 2020, a local government must update this report prior to making any fee adjustments. The report must include:

- Direct and indirect costs incurred by the local government to implement the Florida Building Code, including costs related to:
 - The review of building plans.
 - Building inspections.
 - Building reinspections.
 - Building permit processing.
 - Building code enforcement.
- Number of building permits requested.
- Number of building permits issued.
- Number of building inspections and reinspections conducted.
- Number of personnel employed by the local government to implement the Florida Building Code, issue building permits, and conduct inspections.
- Salary and related employee benefit costs incurred by the local government to implement the Florida Building Code, issue building permits, and conduct inspections.
- Revenue derived from fees and fines imposed by the local government to implement the Florida Building Code, and, when applicable, any investment earnings derived from the investment of such revenue.
- Balances carried forward by the local government to implement the Florida Building Code and any balances refunded.

Section 4 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Eligible local governments are authorized to charge reasonable, level of service building permit fees to enforce the Florida Building Code. This bill does not abrogate that authority. The proposed building permit and inspection utilization report should capture the extent of existing fees as well as any fee adjustments going forward.

B. Private Sector Impact:

Requiring local governments to post their permit and inspection fee schedules as well as a building permit and inspection utilization report on their websites will help applicants for building permits assess the associated costs of the permits.

C. Government Sector Impact:

Some local governments may require an initial expenditure of funds to revise their existing websites to include the ability to post permit and inspection fee schedules as well as expenditures to create and then post a building permit and inspection utilization report.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

A. Public Records/Open Meetings Issues:

None.

B. Trust Funds Restrictions:

None.

C. State Tax or Fee Increases:

None.

D. Other Constitutional Issues:

None identified.

VIII. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

IX. Technical Deficiencies:

None.

X. Related Issues:

None.

XI. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.56, 166.222, 553.80.

XII. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 2/5/2015

Bill Number (if applicable) 192

Topic Reim. Fees

Amendment Barcode (if applicable) _____

Name Jeff Branch

Job Title Legislator Asheville

Address _____

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 2/5/19

Bill Number (if applicable) 142

Topic Permit Fees

Amendment Barcode (if applicable)

Name Scott Jenkins

Job Title Lobbyist

Address 113 E. College Ave Suite 200

Phone 850-661-0829

Street TLH City FL State FL Zip 32301

Email scott.jenkins@tlh.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing National Ability Contractors Association - Florida

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

Meeting Date 2-5-19

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Amendment Barcode (if applicable) _____
Bill Number (if applicable) SB 142

Topic Permit Fees

Name Cam Fenuris

Job Title Leg. Counsel

Address 1400 Village Sq # 3243

Street Lake City Lake State FL Zip 32312

Phone 850-222-2772

Email A.FENURIS@FLSOS.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLA. ROOFING & SHEET METAL CONTRACTORS ASSN, FLA. PERIS. & ACE CONTRACTORS

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 2/5/19

Bill Number (if applicable) SR 142

Topic Permit Fees

Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title _____

Address 231 West Bay Ave.

Phone 407 830 1882

Street Lanewood City FT State FL Zip 32750

Email BKershner@att.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Swimming Pool Assn. of Southeast & Gulf States Assn.

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 2-5-18

Bill Number (if applicable) 142

Topic Reim. Fee

Amendment Barcode (if applicable)

Name Rusty Payton

Job Title CEO

Address 2600 Cumberland Place

Phone 567-1073

Street Tallahassee City FL State 32317 Zip

Email rpayton@fhba.com

Speaking: For Against Information Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLA Home Builders Association

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

Meeting Date 2-5-19 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Bill Number (if applicable) 142

Topic Permit Fees Amendment Barcode (if applicable) _____

Name Carlos Cruz

Job Title Govt Consultant

Address 307 W Park Ave Phone 904-214-5724

Street Tallahassee FL State FL Zip 32301

Email cruz@convergegov.com

Speaking: For Against Information Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing FL Swimming Pool Association
Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting. S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

Call last
for clean up.

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 2-5-19

Bill Number (if applicable) SB 142

Topic Permit Fees

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Chief Lobbyist

Address 3730 Coconut Creek Pkwy, Ste 200 Phone (954) 4105-6811

City Coconut Creek State FL Zip 33006 Email cbowen@abreasflorida.com

Speaking: For Against Information Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Builders and Contractors of Florida

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

By Senator Perry

8-00470-19

2019142__

A bill to be entitled

An act relating to permit fees; amending ss. 125.56 and 166.222, F.S.; requiring the governing bodies of counties and municipalities to post their permit and inspection fee schedules and building permit and inspection utilization reports on their websites; amending s. 553.80, F.S.; requiring certain governing bodies of local governments to post their building permit and inspection utilization reports on their websites by a specified date; providing reporting requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) is added to subsection (4) of section 125.56, Florida Statutes, to read:

125.56 Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.—

(4)

(c) The governing body of a county authorized under this section or s. 553.80 to issue fees shall post its permit and inspection fee schedules and its building permit and inspection utilization report required under s. 553.80(7) on its website.

Section 2. Section 166.222, Florida Statutes, is amended to read:

166.222 Building code inspection fees.—

(1) The governing body of a municipality may provide a schedule of reasonable inspection fees in order to defer the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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costs of inspection and enforcement of the provisions of its building code.

(2) The governing body of a municipality authorized under s. 553.80 to issue fees shall post its permit and inspection fee schedules and its building permit and inspection utilization report required under s. 553.80(7) on its website.

Section 3. Subsection (7) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(7) (a) The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances shall be carried forward to future years for allowable activities or shall be refunded at the discretion of the local government. The basis for a fee structure for allowable activities shall relate to the level of service provided by the local government and shall include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged shall be consistently applied.

1. ~~(a)~~ As used in this subsection, the phrase "enforcing the Florida Building Code" includes the direct costs and reasonable

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59 indirect costs associated with review of building plans,
60 building inspections, reinspections, and building permit
61 processing; building code enforcement; and fire inspections
62 associated with new construction. The phrase may also include
63 training costs associated with the enforcement of the Florida
64 Building Code and enforcement action pertaining to unlicensed
65 contractor activity to the extent not funded by other user fees.

66 ~~2.(b)~~ The following activities may not be funded with fees
67 adopted for enforcing the Florida Building Code:

68 ~~a.1.~~ Planning and zoning or other general government
69 activities.

70 ~~b.2.~~ Inspections of public buildings for a reduced fee or
71 no fee.

72 ~~c.3.~~ Public information requests, community functions,
73 boards, and any program not directly related to enforcement of
74 the Florida Building Code.

75 ~~d.4.~~ Enforcement and implementation of any other local
76 ordinance, excluding validly adopted local amendments to the
77 Florida Building Code and excluding any local ordinance directly
78 related to enforcing the Florida Building Code as defined in
79 subparagraph 1 paragraph (a).

80 ~~3.(e)~~ A local government shall use recognized management,
81 accounting, and oversight practices to ensure that fees, fines,
82 and investment earnings generated under this subsection are
83 maintained and allocated or used solely for the purposes
84 described in subparagraph 1 paragraph (a).

85 ~~4.(d)~~ The local enforcement agency, independent district,
86 or special district may not require at any time, including at
87 the time of application for a permit, the payment of any

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88 additional fees, charges, or expenses associated with:

89 ~~a.1.~~ Providing proof of licensure pursuant to chapter 489;

90 ~~b.2.~~ Recording or filing a license issued pursuant to this
91 chapter; or

92 ~~c.3.~~ Providing, recording, or filing evidence of workers'
93 compensation insurance coverage as required by chapter 440.

94 (b) By December 31, 2020, the governing body of a local
95 government that provides a schedule of fees shall post its
96 building permit and inspection utilization report on its
97 website. The report shall be based on the information available
98 in the most recently completed financial audit. After December
99 31, 2020, the governing body of a local government that provides
100 a schedule of fees shall update its building permit and
101 inspection utilization report on its website prior to making any
102 adjustments to the fee schedule. The report shall include:

103 1. Direct and indirect costs incurred by the local
104 government to enforce the Florida Building Code, including costs
105 related to:

106 a. The review of building plans.

107 b. Building inspections.

108 c. Building reinspections.

109 d. Building permit processing.

110 e. Building code enforcement.

111 2. Number of building permits requested.

112 3. Number of building permits issued.

113 4. Number of building inspections and reinspections
114 conducted.

115 5. Number of personnel employed by the local government to
116 enforce the Florida Building Code, issue building permits, and

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117 conduct inspections.

118 6. Salary and related employee benefit costs incurred by
119 the local government to enforce the Florida Building Code, issue
120 building permits, and conduct inspections.

121 7. Revenue derived from fees pursuant to paragraph (a).

122 8. Revenue derived from fines pursuant to paragraph (a).

123 9. When applicable, investment earnings derived from the
124 local government's investment of revenue derived from fees and
125 fines pursuant to paragraph (a).

126 10. Balances carried forward by the local government
127 pursuant to paragraph (a).

128 11. Balances refunded by the local government pursuant to
129 paragraph (a).

130 Section 4. This act shall take effect July 1, 2019.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 144

INTRODUCER: Senator Bean

SUBJECT: Impact Fees

DATE: January 28, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 144 requires that the collection of an impact fee occur no earlier than the issuance of a property's building permit. The bill also codifies the 'dual rational nexus test' for impact fees as articulated in case law. This test requires an impact fee to have a reasonable connection, or rational nexus, between 1) the proposed new development and the need and the impact of additional capital facilities and, 2) the expenditure of funds and the benefits accrued to the proposed new development.

Additional conditions of the bill include earmarking impact fee funds for capital facilities that benefit new residents and prohibiting the use of impact fee revenues to pay existing debt unless specific conditions are met. The bill deems that certain statutory provisions related to impact fees do not apply to water and sewer connection fees.

II. Present Situation:

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

³ FLA. CONST. art. VIII, s. 2(b). See also s. 166.021(1), F.S.

Unlike counties or municipalities, independent special districts do not possess home rule power. Therefore, the powers possessed by independent special districts are those expressly provided by, or which can be reasonably implied from, the special district's charter or by general law.⁴

Local Government Revenue Sources Based on Home Rule Authority⁵

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,⁶ regulatory fees, and special assessments⁷ to pay the cost of providing a facility or service or regulating an activity. Each fee imposed under a local government's home rule powers should be analyzed in the context of requirements established in Florida case law that are applicable to its validity.

Regulatory fees are home rule revenue sources that may be imposed pursuant to a local government's police powers in the exercise of a sovereign function. Examples of regulatory fees include building permit fees, impact fees, inspection fees, and storm water fees. Two principles guide the application and use of regulatory fees. The fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.

Special districts do not possess home rule powers; therefore, special districts may impose only those taxes, assessments, or fees authorized by special or general law.⁸

Impact Fees

As one type of regulatory fee, impact fees are charges imposed by local governments against new development to provide for capital facilities' costs made necessary by such growth.⁹ Examples of capital facilities include the provision of additional water and sewer systems, schools,¹⁰ libraries, parks and recreational facilities. Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

In 2017, the most recent year for which the Office of Economic and Demographic Research (EDR) has impact fee data, 35 counties reported impact fee revenues totaling \$629.1 million, 194

⁴ Section 189.031, F.S. See also *State ex rel. City of Gainesville v. St. Johns River Water Mgmt. Dist.*, 408 So. 2d 1067 (Fla. 1st DCA 1982).

⁵ Office of Economic and Demographic Research, The Florida Legislature, *2018 Local Government Financial Handbook*, 9-13, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih18.pdf> (last visited Jan. 10, 2019).

⁶ Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.

⁷ Special assessments are typically used to construct and maintain capital facilities or to fund certain services.

⁸ See ch. 189, F.S. See also State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *The Local Government Formation Handbook 2018-2020*, 70, available at <http://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=3025> (last visited Jan. 10, 2019).

⁹ See supra note 5.

¹⁰ *Id.* With respect to a school impact fee, the fee is imposed by the respective board of county commissioners at the request of the school board. The fee amount is usually determined after a study of the actual impact/costs of new residential construction on the school district has been made.

cities reported impact fee revenues of \$279.7 million, and 28 school districts reported impact fee revenues of 329.7 million.¹¹

Florida Impact Fee Act

In response to local governments' reliance on impact fees and the growth of impact fee collections, the Legislature adopted the Florida Impact Fee Act in 2006, which requires local governing authorities to satisfy certain requirements when imposing impact fees.¹² The Act was amended in 2009 to impose new restrictive rules on impact fees by requiring local governments to shoulder the burden of proof when an impact fee is challenged in court and prohibiting the judiciary from giving deference to local government impact fee determinations.¹³

Section 163.31801(3), F.S., provides requirements and procedures for the adoption of an impact fee. An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures. If a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund;
- Limit administrative charges for the collection of impact fees to actual costs; and
- Require that notice be provided at least 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.

Dual Rational Nexus Test

While s. 163.31801, F.S., outlines many characteristics and limitations of impact fees, case law serves an integral role in the impact fee process in Florida. As developed under case law, an impact fee imposed by a local government should meet the 'dual rational nexus test' in order to withstand legal challenge.¹⁴ A number of court decisions have addressed the dual rational nexus test and challenges to the legality of impact fees.¹⁵

In *Hollywood, Inc. v. Broward County*,¹⁶ the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if (1) it offsets reasonable needs that are sufficiently attributable to the new development and (2) the fees collected are adequately earmarked for the

¹¹ Office of Economic and Demographic Research, The Florida Legislature, *Impact Fees*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm> (last visited Jan.10, 2019).

¹² Section 163.31801, F.S.

¹³ Chapter 2009-49, L.O.F., creates a "preponderance of the evidence" standard of review placing the burden of proof on the local government to show that the imposition or amount of an impact fee meets the requirement of case law and s. 163.31801, F.S.

¹⁴ See supra note 4.

¹⁵ See, e.g., *Contractors & Builders Ass'n v. City of Dunedin*, 329 So.2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So.2d 140 (Fla. 4th DCA 1983).

¹⁶ *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA 1983).

acquisition of capital assets that will benefit the residents of the new development.¹⁷ In order to show the impact fee meets those requirements, the local government must demonstrate a rational relationship between the need for additional capital facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.¹⁸

In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when a residential development has no potential to increase school enrollment, public school impact fees may not be imposed.¹⁹ The county in that case had imposed a school impact fee on a deed-restricted community for adults 55 years old and older. In *City of Zephyrhills v. Wood*, the Second District Court of Appeal upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.²⁰

As developed under case law, an impact fee must have the following characteristics to be legal:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportionate share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions toward the cost of the increased capacity for public facilities.²¹

Timing of Collection for Impact Fees

Florida Statutes do not specify when a local government must collect impact fees. As a result, the applicable local government makes this decision, and the time of collection varies.²² For example, in Orange County, residential impact fees are due when the building permit is issued, although the county allows the fees to be deferred in certain circumstances.²³ In contrast, in

¹⁷ *Id.* at 611.

¹⁸ *Id.* at 611-12.

¹⁹ *Volusia County v. Aberdeen at Ormond Beach*, 760 So.2d 126, 134 (Fla. 2000).

²⁰ *City of Zephyrhills v. Wood*, 831 So.2d 223, 225 (Fla. 2d DCA 2002).

²¹ Committee on Community Affairs, The Florida Senate, *Impact Fees*, 4 (Issue Brief 2010-310) (Sept. 2009), available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-310ca.pdf (last visited Jan. 7, 2019).

²² Common benchmark development actions include plat approval, building permitting, and certificate of occupancy. A 2015 national impact fee study by Duncan Associates entitled *State Impact Fee Enabling Acts* identified 29 states with impact fee enabling acts. The study found that “about one-third of enabling acts allow impact fees to be collected at any time during the development process. Most of the others provide that impact fees cannot be collected prior to the building permit or certificate of occupancy.” See http://impactfees.com/publications%20pdf/state_enabling_acts.pdf (last visited Jan 7, 2019).

²³ Orange County Government, Florida, *Residential Impact Fees*, available at <http://www.orangecountyfl.net/PermitsLicenses/Permits/ResidentialImpactFees.aspx#.WgnLs0kUmUl>. (last visited January 25, 2019).

Volusia County, impact fees are due before the issuance of a certificate of occupancy or business tax receipt.²⁴

Water and Sewer Connection Fees

Counties²⁵ and municipalities²⁶ may construct or acquire and operate water supply and wastewater disposal systems and may charge reasonable fees for the connection to and use of such systems.²⁷ Connection fees are charges imposed by the operator of a water supply or wastewater disposal system to defray the costs incurred for allowing additional users to tie into the system and may be considered a type of impact fee.²⁸

III. Effect of Proposed Changes:

The bill amends s. 163.31801, F.S., to require that the collection of an impact fee occur no earlier than the date of issuance of the building permit for the property that is subject to the fee.

The bill also codifies the dual rational nexus test. Specifically, the bill requires that an impact fee be reasonably connected to, or have a rational nexus with:

- The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
- The expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.

The local government also must specifically earmark funds collected pursuant to the impact fees for use in acquiring, constructing, or improving capital facilities to benefit the new users. In addition, the bill prohibits the use of impact fee revenues to pay existing debt or for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction. Lastly, the bill provides that water and sewer connection fees are excluded from the statutory provisions related to impact fees contained in s. 163.31801, F.S.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18(b) of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect

²⁴ Volusia County, Florida, *Frequently Asked Questions on Impact Fees*, available at <https://www.volusia.org/services/growth-and-resource-management/impact-fees/faqs-impact-fees.stml> (last visited Jan. 25, 2019).

²⁵ Section 153.03, F.S.

²⁶ Section 180.06, F.S.

²⁷ Section 153.03(3), F.S. authorizes counties to “fix and collect” fees for service, including connection fees. Section 180.13, F.S., authorizes municipalities to establish “just and equitable” service rates or charges for utilities.

²⁸ See *City of Zephyrhills v. Wood*, 831 So. 2d 223 (Fla. 2d DCA 2002); *Hernando County Water and Sewer District v. Hernando Board of Public Instruction*, 610 So. 2d 6 (Fla. 5th DCA 1992).

of doing so would be to reduce the *authority* that counties or municipalities have to raise revenues in the aggregate. However, the mandate requirements do not apply to laws having an insignificant fiscal impact, which for Fiscal Year 2018-2019 is forecast at slightly over \$2 million.^{29,30,31}

In 1991, Senate President Margolis and House Speaker Wetherell created a memo to guide the House and Senate in the review of local government mandates.³² In the memo, the guidelines define the term “authority” to mean the power to levy a tax; the vote required to levy the tax, e.g., increasing the required vote from majority to majority plus one; the tax rate which can be levied; and the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.

While SB 144 does not restrict the amount of an impact fee, the county/municipality mandates provision of Article VII, Section 18 of the Florida Constitution may apply because the bill restricts the time at which a county or municipality may collect its impact fees. An impact fee collected at the platting stage is theoretically worth more than an amount collected no earlier than the issuance of the building permit due to the time value of money.³³ It is unclear if this bill lessens the type of *authority* contemplated by President Margolis and Speaker Wetherell.

If the bill is determined to reduce the *authority* that counties and municipalities have to raise revenues in the aggregate and exceeds the threshold for insignificant fiscal impact, the bill may qualify as a mandate and require final passage by a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁹ FLA. CONST. art. VII, s. 18(d).

³⁰ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 9, 2019).

³¹ Based on the Florida Demographic Estimating Conference’s November 5, 2018 population forecast for 2019 of 21,170,399. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 18, 2019).

³² Memorandum to Members of The Florida House and The Florida Senate from Gwen Margolis, President of the Senate and T.K. Wetherall, Speaker of the House, *County and Municipal Mandates Analysis*, (March 7, 1991) (on file with the Seante Committee on Community Affairs).

³³ Provided money can earn interest, any amount of money is worth more the sooner it is received.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the bill will reduce local impact fee revenues by an indeterminate amount in Fiscal Year 2019-2020 and beyond.³⁴

B. Private Sector Impact:

Developers will not have to pay impact fees prior to the issuance of the building permit for a property.

C. Government Sector Impact:

Counties, municipalities, and special districts will not be able to collect impact fees prior to the issuance of the building permit for a property.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.31801 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

³⁴ Office of Economic and Demographic Research, The Florida Legislature, *Local Taxes and Fees, SB 144/HB 107*, 29-34 (Jan. 24, 2019), available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/_pdf/Impact0124.pdf (last visited Jan. 28, 2019).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Bean

4-00371A-19

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1 A bill to be entitled
2 An act relating to impact fees; amending s. 163.31801,
3 F.S.; revising the minimum requirements for impact
4 fees adopted by a local government; exempting water
5 and sewer connection fees from the Florida Impact Fee
6 Act; providing an effective date.

8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Section 163.31801, Florida Statutes, is amended
11 to read:

12 163.31801 Impact fees; short title; intent; minimum
13 requirements; audits; challenges definitions; ordinances levying
14 impact fees.-

15 (1) This section may be cited as the "Florida Impact Fee
16 Act."

17 (2) The Legislature finds that impact fees are an important
18 source of revenue for a local government to use in funding the
19 infrastructure necessitated by new growth. The Legislature
20 further finds that impact fees are an outgrowth of the home rule
21 power of a local government to provide certain services within
22 its jurisdiction. Due to the growth of impact fee collections
23 and local governments' reliance on impact fees, it is the intent
24 of the Legislature to ensure that, when a county or municipality
25 adopts an impact fee by ordinance or a special district adopts
26 an impact fee by resolution, the governing authority complies
27 with this section.

28 (3) At a minimum, an impact fee adopted by ordinance of a
29 county or municipality or by resolution of a special district

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30 must satisfy all of the following conditions, at minimum:

31 (a) ~~Require that~~ The calculation of the impact fee must be
32 based on the most recent and localized data.

33 (b) The local government must provide for accounting and
34 reporting of impact fee collections and expenditures. If a local
35 governmental entity imposes an impact fee to address its
36 infrastructure needs, the entity must shall account for the
37 revenues and expenditures of such impact fee in a separate
38 accounting fund.

39 (c) ~~Limit~~ Administrative charges for the collection of
40 impact fees must be limited to actual costs.

41 (d) The local government must provide ~~Require that~~ notice
42 ~~be provided~~ no less than 90 days before the effective date of an
43 ordinance or resolution imposing a new or increased impact fee.
44 A county or municipality is not required to wait 90 days to
45 decrease, suspend, or eliminate an impact fee.

46 (e) Collection of the impact fee may not be required to
47 occur earlier than the date of issuance of the building permit
48 for the property that is subject to the fee.

49 (f) The impact fee must be reasonably connected to, or have
50 a rational nexus with, the need for additional capital
51 facilities and the increased impact generated by the new
52 residential or commercial construction.

53 (g) The impact fee must be reasonably connected to, or have
54 a rational nexus with, the expenditures of the funds collected
55 and the benefits accruing to the new residential or commercial
56 construction.

57 (h) The local government must specifically earmark funds
58 collected under the impact fee for use in acquiring,

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59 constructing, or improving capital facilities to benefit new
60 users.

61 (i) Revenues generated by the impact fee may not be used,
62 in whole or in part, to pay existing debt or for previously
63 approved projects unless the expenditure is reasonably connected
64 to, or has a rational nexus with, the increased impact generated
65 by the new residential or commercial construction.

66 (4) Audits of financial statements of local governmental
67 entities and district school boards which are performed by a
68 certified public accountant pursuant to s. 218.39 and submitted
69 to the Auditor General must include an affidavit signed by the
70 chief financial officer of the local governmental entity or
71 district school board stating that the local governmental entity
72 or district school board has complied with this section.

73 (5) In any action challenging an impact fee, the government
74 has the burden of proving by a preponderance of the evidence
75 that the imposition or amount of the fee meets the requirements
76 of state legal precedent or this section. The court may not use
77 a deferential standard.

78 (6) This section does not apply to water and sewer
79 connection fees.

80 Section 2. This act shall take effect July 1, 2019.

