

**STORAGE NAME:** h4473a.ca

**DATE:** April 22, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMUNITY AFFAIRS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 4473

**RELATING TO:** Educational Facilities and Fees or Assessments

**SPONSOR(S):** Representative Bullard and others

**COMPANION BILL(S):** SB 2532 (i)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) COMMUNITY AFFAIRS
- (2) FINANCE & TAXATION
- (3)
- (4)
- (5)

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I. SUMMARY:

This bill prohibits state and local government boards and agencies from levying **any** fees, assessments, or taxes on educational boards, districts, or facilities not authorized by statute.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**Building Code for Public Educational Facilities:**

Pursuant to section 235.26, Florida Statutes, the Department of Education (DOE) is responsible for developing and enforcing the Uniform Building Code for Public Educational Facilities Construction, which is promulgated under rule 6A-2 FAC. The code is applicable to K-12 and community college facilities. The Standard Building Code, Standard Gas Code, Standard Plumbing Code, Standard Mechanical Code are the basis for this code. Typically, the school boards submit construction documents to DOE for review. Licensed Uniform Building Code Inspectors perform the review.

**Impact Fees and Public Educational Facilities:**

Advisory Council on Intergovernmental Relations, ***Study of Fees and Other Charges Levied by Governmental Entities on School Districts Related to School Development, Conducted Pursuant to Section 7 of Chapter 95-341, Laws of Florida***, dated February 20, 1996, states:

School Boards are exempt from the payment of impact fees or service availability fees imposed by a governmental entity such as a municipal utility pursuant to section 235.26(1), F.S. **The definition of “impact fees” and “service availability fees” in section 235.26(1), F.S., has been interpreted by Florida courts in the cases of *Loxahatchee River Environmental Control District v. School Board of Palm Beach County*, 496 So.2d 930, approved, 515 So.2d 217 (Fla, 1987), and *Hernando County Water and Sewer District v. Hernando County Public Board of Public Instruction*, 610 So.2d 6 (Fla. 5th DCA 1992), to mean intangible fees that are not related to the direct costs of providing utility service to the school board.** Fees imposed by a utility based upon a pro rata contribution of the new school facility to the utility’s costs are also exempt pursuant to the section. **Therefore, school boards are exempt from the payment of service availability standby charges, connection fees, and contributions in aid of construction that are calculated on a pro rata basis.**

Amendments to chapter 235, F.S., set forth in section 8 of chapter 95-341, Laws of Florida, allow a school board to “pay its proportionate share of the cost of onsite and offsite system improvements necessitated by the educational facility development . . .” **This use of the term “proportionate share” found in section 235.34, F.S. may permit school boards to pay for fees which would otherwise be exempt pursuant to section 235.26(1), F.S.** Alternative, the term proportionate share could mean that school boards may only pay that proportion of utility improvements that are attributable to the needs of the school facility. The concept of proportionate share is ambiguous in the light of prior case law construing section 235.26(1), F.S. to exclude impact and service availability fees calculated on a pro rata basis.

**B. EFFECT OF PROPOSED CHANGES:**

This bill clarifies the prohibition of local and state government boards and agencies from levying **any** fees, assessments, or taxes on educational boards, districts, or facilities not authorized by statute.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 235.26, Florida Statutes

E. SECTION-BY-SECTION RESEARCH:

**Section 1:** Adds paragraph 235.26(1)(c), clarifying that school boards, boards of trustees, school and community college districts, and public educational facilities are exempt from **any** fees, charges, assessments, or taxes of boards of county commissions, municipal boards, and other agencies and boards of the state not authorized by section 235.34, Florida Statutes.

**Section 2:** Provides that the bill takes effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

Uncertain.

According to the **Florida League of Cities** this bill will significantly reduce local governments' abilities to impose fees, assessments, or taxes related to the costs of providing certain services to public educational facilities. [See **Comments Section** of this research statement.]

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The **Advisory Council on Intergovernmental Relations** published the *Study of Fees and Other Charges Levied by Governmental Entities on School Districts Related to School Development* (study), on February 20, 1996. The study concluded that school districts that have recently constructed school facilities pay a wide range of fees and permits to a variety of state and local governmental entities, including the following:

- Cities;
- The Florida Department of Environmental Protection;
- Counties;
- Water Management Districts; and
- County Health Departments.

According to the study, as of 1995, there were a relatively small number of large payments for fees and services paid to other governmental entities by school districts.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require expenditures by counties or municipalities.

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**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority of counties to raise revenues.

**C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce state tax shared with counties and municipalities.



V. COMMENTS:

On April 21, 1998, the Committee on Community Affairs voted 4-4 and a motion was adopted to reconsider and leave this bill pending.

**Florida Department of Education:** The Florida Department of Education *supports* this bill.

**Florida School Boards Association:** The Florida School Boards *Association supports* this bill.

**Florida League of Cities:** The Florida League of Cities does *not support* this bill, and has provided the following statement:

The Florida League of Cities opposes the bill because it broadens the exemption from fees and charges currently provided in s. 235.26(1)(a), F.S. Current statutory and case law authorizes governmental entities to charge stormwater utility fees and other fees and assessments on other governmental entities, including school boards and other educational institutions. School boards and other educational institutions also pay utility and other fees for services provided by governmental entities. The language in HB 4473 significantly broadens the exception to payment of fees and charges to state that school boards and educational institutions only have to pay for expenditures incurred under s. 235, F.S. This language is much too narrow and could be used to preempt the payment of legitimate and proper fees and charges.

**The Florida Association of Counties:** The Florida Association of Counties opposes any Legislation that exempts public education facilities from paying their fair share of development and infrastructure costs.

**The Florida Homebuilders Association:** The Florida Homebuilders Association (FHBA), opposes this bill. Their position is that school boards that site schools are effectively no different from any other form of development with impacts on local community public facilities. FHBA's position is that this bill goes far beyond the exemption contained in s. 235.26(1), F.S., by completely exempting all local and state educational boards from paying their fair share of the impacts their facilities generate on public facilities (i.e., roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, transportation, police, and fire). This significant change in the law will result in inequitable cost shifting of those impacts on both new developments, as well as the community as a whole.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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