HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1173 CS Local Government Land Development Requirements
SPONSOR(S): Clarke and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2302

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Growth Management Committee	9 Y, 1 N, w/CS	Grayson	Grayson
2) Local Government Council			
3) Finance & Tax Committee			
4) State Infrastructure Council			
5)			

SUMMARY ANALYSIS

HB 1173/CS creates s. 163.3219, F.S., regarding local government impact fees. The bill provides: legislative intent; the basis for the adoption and amendment of impact fees; for impact fee credits; when an impact fee or amendment becomes effective; a local government reporting requirement; and for the payment of impact fees in whole or in part.

The bill does not appear to have a fiscal impact upon the state, but may have an impact on local government revenues.

The bill provides an effective date of July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill increases the options of an individual regarding the conduct of their own affairs. The bill allows for a deferred payment of a portion of an impact fee over a 10 to 20 year period.

Promote personal responsibility - The beneficiaries of this bill pay a portion of the cost of implementation. The bill allows local government to collect an administrative fee in connection with the imposition of impact fees for the collection, accounting for, and distributing of impact fees. The bill also allows local government to collect the cost of deferred payment when impact fees with some portion deferred over a 10 to 20 year period.

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

HB 1173/CS creates s. 163.3219, F.S., regarding local government impact fees. The bill provides: Legislative intent; the basis for the adoption and amendment of impact fees; impact fee credits; when an impact fee or amendment becomes effective; a local government reporting requirement; and for the payment of impact fees in whole or in part.

Legislative Intent

The bill provides a Legislative finding and declaration regarding:

- Lack of consistent criteria for the determination of the appropriateness, amount, and collection of impact fees;
- Wide disparity across the state in the application and burden of such fees;
- Unreasonable resulting increase in the cost of housing in some areas; and
- Insufficient level of oversight in the collection and use of such fees.

As a result, the bill states the Legislative intent to:

- Ensure greater consistency in the determination of appropriateness, amount, and collection of such fees;
- Ensure flexibility in the timing of the payment of such fees;
- Provide appropriate notice of new fees or fee increases; and
- Ensure local government accountability for the collection and expenditure of all impact fees.

Basis for Adoption or Amendment of Impact Fees

The bill provides that the adoption or amendment of impact fees be based upon the most recent accurate and relevant data available.

Impact Fee Credits

The bill provides for a credit against impact fees for the full, present, value of all taxes, fees, assessments, liens, charges, or other payments of any kind that have been or will be directly paid by the fee payer or property owner, to the local government or other service provider; and which will be used to construct capital facilities of the same type for which the impact fee is imposed.

The credit calculation shall be based on an estimate of such payments for a period of not less than 20 years. The calculation is required to:

- Include adjustments for inflation, increased taxable values, and increased payments;
- Use a discount rate no greater than the current costs of borrowing to finance such capital improvements;
- Be based solely upon the estimated payments from new development and the property upon which the new development is located.

Additionally, the bill provides a credit for all taxes or other payments of any kind indirectly paid by the fee payer or property owner through state, federal, or other revenues anticipated to be expended to construct capital facilities of the same type for which the impact fee is imposed.

Effective Date for Imposition of Impact Fees

The bill prevents the imposition of an impact fee sooner than six months following the date of final adoption of the imposing ordinance.

The bill prevents the application of an impact fee to building permits for which a complete application has been filed with the local government prior to the effective date of the ordinance.

Local Government Reporting

The bill requires a local government to submit an annual report to the Auditor General on all impact fee collections, expenditures, refunds, and administrative expenses.

The bill restricts the Imposition of an administrative fee for the collection, accounting for, and distributing of impact fees that exceeds the actual direct costs associated with those functions. However, in no case shall the administrative fee exceed 3 percent of the total fees collected.

The bill provides for a refund, with interest, when a local government has not expended an impact fee within 9 years of its collection for the purpose for which it was collected.

Payment of Impact Fees in Whole or Part

The bill allows for the payment of the impact fee, except for school impact fees, in whole or in part at the time of the "first closing to transfer real estate or title" closing following issuance of a certificate of occupancy. If paid in part, the bill allows the remainder to be assessed as part of the local government's tax bill and paid over a 10 to 20 year period. If paid in part, the bill additionally allows the local government to establish a schedule of payments including any cost of deferring such payment.

Municipally Owned Utilities

The bill provides that an impact fee shall not include any charge or fee imposed for a municipally owned utility.

Independent Special Fire Control Districts

The bill excepts the provisions of s. 163.3219, F.S., from applying to independent special fire control districts that have adopted an impact fee for fire services within their jurisdiction, pursuant to s. 191.009(4), F.S.

Background

Local governments impose impact fees, as a condition of development approval, to fund public facilities that are necessitated by development projects. These fees are assessed against new development or

a change in use that results in an increased need for public facilities. Section 163.3202(3), F.S., encourages:

> the use of innovative land development regulations which include provisions such as transfer of development rights, incentive and inclusionary zoning, planned-unit development, impact fees, and performance zoning.

Impact fees are imposed for a variety of facilities, including transportation; parks and recreation; police and corrections; fire and emergency management; libraries; schools; and water and sewer. The concurrency provisions of ch. 163, F.S., require that public facilities be in place concurrent with the impacts of development. In local fiscal year ending September 30, 2002, forty of Florida's 67 counties imposed impact fees and collected $466,571,712.[1] During the same fiscal year, an estimated 19 counties levied school impact fees, in a total amount in excess of $124.6 million, on behalf of school districts in their county.[2]

Home Rule Fee 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.[3] 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.[4] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.[5] Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law. Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.

Given these constitutional and statutory powers, local governments use a variety of revenue sources to fund services and improvements without express statutory authorization.[6] Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.[7]

Statutory Provisions Addressing Impact Fees

Impact fees are a unique product of local government home rule powers, and the development of such fees has occurred in Florida by home rule ordinance rather than by direct statutory authority or mandate. Therefore, the characteristics and limitations of impact fees are found in Florida caselaw

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[1] Florida Legislative Committee on Intergovernmental Relations, http://fcn.state.fl.us/lcir/data/impfeeco.xls .
[2] The Florida Senate *Interim Project Report 2005-118*, November 2004, Table 6. No figures were available for three of the 19 listed counties: Manatee, Polk, and Sarasota Counties.
[3] Art. VIII, s. 1(f), Fla. Const.
[4] Art. VIII, s. 1(g), Fla. Const.
[5] Art. VIII, s. 2(b), Fla. Const.. Also see s. 166.021, F.S.
[6] The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution, general law,
or special law regarding the power at issue. Counties and municipalities cannot levy a tax without express statutory authorization because the constitution specifically prevents them from doing so. [Art. VII, s. 1(a)] However, local governments may levy special assessments and a variety of fees absent any general law prohibition provided such home rule source meets the relevant legal sufficiency tests.
[7] For a catalogue of such revenue sources, see the most recent editions of the Legislative Committee on Governmental Relations Local Government Financial Information Handbook and the Florida Tax Handbook published jointly by the Florida Senate Finance and Taxation Committee, the House of Representatives Committee on Fiscal Policy and Resources, the Office of Economic and Demographic Research, and the Florida Department of Revenue.

rather than statute.[8] However, there are several statutory provisions that affect the imposition of certain impact fees.

Independent Special Fire Districts. Section 191.009(4), F.S., provides that an independent special district fire control district that has been authorized to impose an impact fee by special act or general law may establish a schedule of impact fees, in compliance with standards set by law for new construction. These fees must be kept separate from the other revenues of the district and used exclusively to acquire, purchase, or construct the facilities needed to provide fire protection and emergency services to new construction. The district's board is required to maintain adequate records to ensure the fees are only expended for permissible facilities and equipment.

Developments of Regional Impact. Section 380.066, F.S., governs developments of regional impact (DRI).[9] If the development order for a DRI requires a developer to contribute land or a public facility, to construct or expand such facility, or to pay for the acquisition or expansion or construction, and the developer is also subject to an impact fee imposed by local ordinance, the local government must establish and implement a procedure for the developer to receive a credit of the development order fee towards the impact fee for the same need. Also, if the local government imposes or increases an impact fee after the development order for a DRI has been issued, the developer may petition the local government for a credit for any contribution required by the development order towards the impact fee for the same need. This section authorizes the local government and a developer to enter into "capital contribution front-ending agreements" as part of a development order for a DRI that allows a developer or his or her successor to be reimbursed for voluntary contributions paid in excess of his or her fair share.

Court Decisions and Impact Fees

A number of Florida Court decisions (discussed below) address the subject of fees tied to the impacts of new development.

As developed under caselaw, a legally sufficient impact fee has the following characteristics:

- 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 proportional 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 towards the cost of the increased capacity for public facilities.

Dual Rational Nexus Test. The dual rational nexus test provides that local governments must demonstrate reasonable connections between the:

1. Need for additional capital facilities and the growth in population generated by the development; and
2. Expenditures of the funds collected and the benefits accruing to the development.

[8] This information is adapted from the Legislative Committee on Intergovernmental Relations publication *Local Government Financial Information Handbook*, 2002 Edition, p. 25.

[9] Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a process to provide state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.

Connection to a Water and Sewer System. The Florida Supreme Court, in 1976, first adopted the use of a "dual rational nexus test" to determine the validity of an ordinance imposing impact fees for connection to a water and sewer system. In *Contractors & Builders Association of Pinellas County v. City of Dunedin*, the Court stated that:

> Raising expansion capital by setting connection charges, which do not exceed a pro rata share of reasonably anticipated costs of expansion, is permissible where expansion is reasonably required, if use of the money collected is limited to meeting the costs of expansion.[10]

In 2002, the First 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. In this case, a couple purchased an abandoned automobile repair business and changed the use into a sports bar. The new owners made plumbing changes in order to facilitate the use of the building as a bar, which included the addition of a three-sink system for dishwashing, and plumbing changes in order to have handicapped accessible bathrooms.[11]

Dedication of Land for Park System. In 1983, the Fourth District Court of Appeal upheld an ordinance requiring a developer, as a condition to plat approval, to dedicate land or pay a fee to be used in expanding the county level park system so as to be sufficient to accommodate the new residents.[12]

Road Construction. Also in 1983, the Fourth District Court of Appeal upheld the validity of an ordinance imposing an impact fee on new development for the purpose of constructing roads made necessary by the increased traffic generated by such new development.[13]

New School Facilities. The Florida Supreme Court upheld the validity of an ordinance imposing an impact fee on new residential construction, which fee was to be used for new school facilities. However, the Court did sever a clause, which while providing a possible exemption for households without children also could be interpreted to mean that the impact fee amounted to a "user fee" to be paid by those households containing public school children in conflict with the constitutional requirement of free public schools. Further, the Court held that no impact fee could be collected under the ordinance until the second prong of the dual rational nexus test had been met (e.g., that there be a reasonable connection between expenditures of the funds collected and the benefits accruing to the development).[14]

In contrast, the Florida Supreme Court held unconstitutional the imposition of a public school impact fee on an age-restricted community and found that requiring an exemption for age-restricted communities did not violate constitutional guarantees of free public schools.[15] In this case, the owner of a mobile home park with restrictive covenants prohibiting children from living in the park brought suit against the county to challenge the constitutionality of public school impact fees assessed on new homes.

C. SECTION DIRECTORY:

Section 1. Creates s. 163.3219, F.S. regarding local government impact fees.

Section 2. Provides an effective date of July 1, 2005.

[10] 329 So.2d 314, 320 (Fla. 1976).
[11] *City of Zephyrhills v. Wood*, 831 So.2d 223 (Fla. 2d DCA 2002)
[12] *Hollywood, Inc. v. Broward County*, 431 So2d 606 (Fla. 4th DCA 1983).
[13] *Home Builders and Contractors Association of Palm Beach County v. Palm Beach County*, 446 So.2d 140 (1983).
[14] *St. Johns County v. Northeast Florida Builders Association, Inc.*, 583 So.2d 635 (Fla. 1991).
[15] *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So.2d 126 (Fla. 2000).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

The bill requires each local government imposing and collecting an impact fee to submit an annual report to the Auditor General. The reporting and review of those reports may have an impact on state expenditures. Information regarding the extent of that impact was not available at the time this analysis was prepared.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a fiscal impact on local revenues as it requires a credit against impact fees for certain other funds expended by a fee payer or property owner. Additionally, the bill may decrease the flexibility of the imposition of impact fees and resulting revenues Information regarding the extent of that impact was not available at the time this analysis was prepared.

2. Expenditures:

The bill may have a fiscal impact on local government expenditures since it requires certain accounting and submission of annual reports to the Auditor General. However, local governments currently imposing and collecting impact fees may already have such accounting in place.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an economic impact on the private sector by virtue of the consistency in the determination of the appropriateness, amount, and collection of impact fees provided by this bill. However, the bill may result in a decrease in local government revenues resulting in either a decrease in service provision or an increase in other taxes, fees and the like.

D. FISCAL COMMENTS:

None noted.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate*, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

* However, no fiscal analysis of the impact to local governments was available at the time of the completion of this analysis.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

The following comments were received in relation to the originally filed bill.

Proponents

According to a representative of the Florida Home Builders Association (FHBA), the FHBA supports HB 1173.[16] The FHBA, through their representative, provided the following points in support of the bill:

- Data Used to Support Impact Fees.

  In many cases around the state, impact fees have been prepared from data supplied by either the local government or school board which is significantly out-of-date or inconsistent with data which the local government entity uses for other purposes. Since growth rates, facility costs, credit values and other aspects of impact fees calculations may change rapidly, the use of old data can significantly affect the accuracy of the fees.

- Credits

  Until recently, all school impact fees calculated by local governments included a sizable credit for state and local revenues which were anticipated to be available to the school district for capital improvements, including increased capacity, and which were paid or payable by the impact fee payor. The credit was viewed to be a legal requirement of the fee calculation so that the fee payor would not be required to pay twice for the same capital improvements.

  Beginning in Osceola County, and now spreading to other Central Florida counties including Orange County and Lake County, [*an*] impact fee consultant[17] has been persuading local school districts and counties that it was not a legal requirement that they provide credit for past or future taxes used for the same purpose. As a result, impact fees have jumped exponentially; in Osceola County the single family impact fee was increased from $2,808 to $9,708. Although there is a pending challenge to the Osceola methodology, other local governments are now beginning to utilize [*this*] approach.

  The argument advanced by [*this individual*] is that all future taxes available for school construction will be used to pay off existing deficits or for maintenance and other non-capacity related improvements. The effect of this approach is that the only person paying for new capacity for schools are impact fee payors, despite the obvious fact that new development is not the only source of new students.

  In other local government jurisdictions, a variety of methodologies have been used to minimize the credit which will be applied. These approaches have to minimize the ad valorem credit to be applied, holding that lower valuation constant throughout the credit period, and limiting the credit period to five years even though the taxes will be paid for the life of the new development.

[16] Douglas Buck, Governmental Affairs Director, Florida Home Builders Association.
[17] The individual's name was redacted throughout this section.

- Process Issues.

  In numerous instances around the state, impact fees have been significantly increased with little notice to the fee-paying public. This is accomplished through a quick implementation date, often coupled with applying the increased fees to person already in the permit issuance process. Although the local government wants to increase the fees to obtain the additional revenue, the practical impact of a quick effective date is to catch builders and property owners off-guard, after their contracts have been finalized and all expenses of the project allocated. In some circumstances, the increased fees have been considered to be an impairment of contracts entered into prior to the effective date of the change.

- Accountability for Impact Fees Collected.

  Very little oversight is provided for local governments who collect impact fees, and there is considerable concern that impact fee collections are not spent for appropriate and fee-eligible infrastructure expansions. In addition, 'administrative fees' are often added onto impact fees in amounts which far exceed any reasonable costs of collecting, accounting for and expending the impact fees.

- Method of Collection.

  The public appears to be under the general impression that impact fees are paid by home builders and commercial developers, and this fallacy has made the imposition and increase of these fees politically attractive. In fact, impact fees are paid by the home owner, and are incorporated into the overall cost of the home paid, in the usual case, by way of a 30-year mortgage. Thus, the actual cost of an impact fee to the home buyer is increased significantly because it is paid during the entire life of the mortgage.

  "Some home purchasers may prefer to pay the impact fees to be assessed on their new home in a shorter period of time in order to decrease the carrying cost."

Opponents

The following comments were supplied by a representative of the Florida Association of Counties (FAC).[18]

> "Where a local government's existing facilities would be adequate to serve the present inhabitants were it not for drastic growth, it seems unfair to make the existing inhabitants pay for new infrastructure when they have already been paying for the old ones." *City of Dunedin v. Contractors & Builders Assoc of Pinellas County*, 312 So. 2d 763 (Fla. 2d DCA 1975).
>
> HB 1173 by Representative Clarke and SB 2302 by Senator Bennett are identical bills that restrict local government impact fees. The Florida Association of Counties Legislative Program, adopted by the elected county commissioners from around the state, opposes these bills and any other effort to diminish or eliminate county home rule authority to impose impact fees. This document provides a critique of the most damaging portions of the legislation. The critique is not exhaustive, but is meant as a brief explanation of some of the problems created by the legislation. Additionally, following the critique, this document includes a brief explanation of impact fees themselves.

[18] Sarah Bleakley, Esquire, Nabors, Giblin & Nickerson, P.A., Special Counsel to the Florida Association of Counties,

FAC's most important point on this legislation is that impact fee legislation is a mandate on local government. No legislation is needed or desired by FAC to authorize or limit county power in the area. Existing appellate case law provides all the guidance needed. By legislating on the subject, the bill creates a tax that takes the place of the home rule fee whose parameters are governed not by equity and fairness as determined by judicial inquiry given the unique circumstances of every local government, but by legislative fiat in crafting a tax system uniform through-out Florida.

If the goal of this Legislature is to require existing taxpayers to pay the cost of new development, then the bill may be appropriate. If instead, the Legislature believes that new development should pay a fair share of the cost of the infrastructure it requires, then the bill and all other efforts to restrict impact fees should be rejected.

Turning to HB 1173 and SB 2072, the legislation creates a new section of Florida statutes, section 163.3219. The following are FAC's comments regarding the most invasive provisions.

MOST RECENT, ACCURATE AND RELEVANT DATA. Subsection 2 mandates that local governments' data pass a certain test. County governments endeavor to use the most recent, accurate and relevant data to determine the costs of new infrastructure and to estimate the revenues to be paid by developers. But, economists disagree all the time about accuracy and relevance. The legislation will make it easy for a judge to toss out valid impact fees on technicalities that are really disagreements over which data is the most recent, which data is the most accurate, and which data is the most relevant. The existing residents and business will pick up the cost for these disagreements over technicalities in the form of additional taxes or a lower level of service.

CREDITS FOR FUTURE REVENUES. Subsection 3 requires that developers be given credit for state and local capacity-adding revenue sources and that the present value of such revenues be calculated over a 30 year period. Many counties do not give credit for local capacity-adding revenues because there is a deficit in the facilities and all new revenues from all sources except impact fees are expended to make up the deficit. By case law, impact fees cannot be used to make up a deficit. Additionally, the credits for future revenue given by local governments vary, with credits for roads typically established at 20 years, the life span of a road. One county has estimated that Subsection 3 alone will reduce its county road impact fees by 31 percent. The loss of revenue must be made up from other sources, if any are available, or the roads needed to accommodate new development will not be built.

COLLECTION OF IMPACT FEES. Subsection 6 seems to allow developers the option of deferring the payment of impact fees by electing to have the fees paid at real estate closing. Impact fees are typically one time payments collected from the developer at either the issuance of a building permit or certificate of occupancy. A building permit is issued before any real estate closing. A certificate of occupancy is issued generally after the closing. By requiring the collection at closing, the impact fee payment will be delayed; resulting in less revenue for the funding of necessary infrastructure, and the buyer will be directly responsible for paying the fee, instead of the developer.

Subsection 6 also seems to allow the developer to decide to have the fee collected on the tax bill. It is unclear what tax bill the legislation intends. If the legislation intends to collect the fees on the ad valorem tax bill, the legislation should include a finding that the impact fee is an assessment or tax and authorization that an impact fee may be collected pursuant to the process of collecting ad valorem taxes and non-ad valorem assessments pursuant to section 197.3632, Florida Statutes. Some counties are considering the efficacy of collecting impact fees on the ad valorem tax bill with the consent of the fee payer.

EFFECTIVE DATE OF NEW FEES. Subsection 4 requires a six month delay before a new impact fee or an increase in an impact fee may take effect after adoption by a local government. Impact fees are not adopted without public input. Local governments commission a study of the cost of infrastructure needed by new development. The study is prepared with public input and then subject of public hearings. Typically, the process takes six months or less. The impact fee must be adopted by ordinance, which also requires at least one public hearing, notice for which is given in the newspaper 15 days prior to the hearing. Thus, local governments offer businesses and residents ample opportunity to comment on the study and the impact fees. Typically impact fees are updated one month after adoption by the governing body. By requiring a six month delay, the legislation will undermine its goal that all local governments use the most up to date data, as required in subsection 2 of the bill. This provision would have a significant fiscal impact by delaying the receipt of impact fee revenue.

EXPENDITURES AND REFUNDS. Subsection 5(c) requires that all impact fees be expended within six years or refunded to the person who paid them. Most local governments' ordinances establish the time period during which the fees must be expended or refunded upon request. Typically, refunds will run with the land, meaning that the current owner will receive the refund. Requiring that the refunds be made to the person who paid them creates administrative problems in locating that person. Additionally, the fiscal burden of the impact fee may initially be borne by the developer, but economic principles indicate that the developer passes the fiscal impact onto the buyer. Homebuyers and businesses which purchase the improved property pay for the impact fee, but will not receive the refund under the legislation. The refunds will go to the developer.

WHAT ARE IMPACT FEES? To understand FAC's position on impact fee legislation, it may be helpful to understand the definition of impact fees and the restrictions on them in current appellate case law. Impact fees are charges imposed on new development to provide for the cost of capital facilities made necessary by that growth. The fees are a way to shift the cost of providing additional facilities from existing taxpayers to those coming into the county. Impact fees are not authorized by specific statutory provision. Instead, the genesis of the power to levy impact fees is the home rule power of counties to provide and regulate growth and development within the county. Impact fee revenue must be expended for the purpose for which the fee was levied. Impact fee expenditures must benefit the fee payer, although the benefit need not be exclusive to, or overwhelmingly for, the fee payer. Impact fees cannot be imposed on new development to make up for an existing deficit in a capital facility not caused by that development. The courts have upheld the imposition of impact fees to fund the following types of projects:

- County Roads
- School Facilities
- Parks
- Water-Wastewater Facilities

Additionally, it appears that impact fees for fire-rescue facilities and perhaps other capital facilities may meet the legal requirements for a valid fee.

Counties impose the majority of impact fees collected in the state. School boards do not have the power to impose impact fees, but the governing body of a county may impose an impact fee and direct the revenue to school boards to pay for additional facilities needed to accommodate new growth. High growing counties such as Osceola, Lake, Seminole, and Orange, have imposed impact fees for educational facilities because their local revenues and the state Public Educational Facilities Capital Outlay program has not kept pace with the unprecedented growth in the number of new school age children. Osceola County, for example, needs an additional classroom a day to create space for the 23 school age kids per day joining

the population of the county. School impact fees are levied on new residential property to pay for the cost of their required educational facilities.

In addition to school impact fees, counties may impose impact fees to fund the additional county road facilities needed to accommodate new development, whether residential or commercial. Typically, the impact fee is allocated among benefited property based on the number of transportation trips estimated for each category of property. Water-wastewater fees are also referred to as hook-up fees, and are imposed to hold the existing customers harmless for the capital costs of providing additional facilities for newcomers.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2005, the Growth Management Committee adopted 6 amendments as described below.

- Amendment 1b (a Substitute Amendment for Amendment No. 1) – Creates s. 163.3219(5)(d), F.S., providing that impact fees collected from new development within an incorporated area be expended pursuant to a municipality/county interlocal agreement. In the absence of such an agreement, the impact fees will be expended for infrastructure improvements within the municipality where collected and such improvements outside the municipality which directly benefit the new development.

- Amendment 1c (an Amendment to Substitute Amendment 1b) – Excepted "school impact fees" from the provisions of s. 163.3219(5)(d), F.S., created by Amendment 1b.

- Amendment 2 – Created s. 163.3219(7), F.S., excepting the provisions of s. 163.3219, F.S., from applying to independent special fire control districts that have adopted an impact fee for fire services within their jurisdiction under s. 191.009(4), F.S.

- Amendment 3 – Creates s. 163.3219(3)(a), F.S., to change the language of the original bill from 30 years to 20 years the length of time payments for the calculation of a credit against an impact fee must be calculated.

- Amendment 4 – Creates s. 163.3219(6), F.S., to change the language of the original bill changing the event which gives rise to the payment of an impact fee from "the first real estate closing" as found at line 88 of the original bill, to "the first closing to transfer real estate or title".

- Amendment 5 – Deleted lines 82 and 83 of the original bill and inserted language to provide for a refund of an impact fee when the funds have not been encumbered for the purpose for which the fee was collected after a period of nine years.