SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Community Affairs Committee

BILL:	CS/SB 2302
SPONSOR:	Community Affairs Committee and Senator Bennett
SUBJECT:	Local Government Land Development Requirements
DATE:	March 28, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CA	**Fav/CS**
2.			RI	
3.			GE	
4.				
5.				
6.				

I. Summary:

This committee substitute (CS) requires a local government to include a credit for the full present value of all taxes, fees, or other payments paid directly or indirectly by the fee payer or property owner to fund the construction of capital facilities of the same type for which the impact fee is being collected. It specifies that credit of such payments must be for a period of at least 30 years and be adjusted as provided for in the CS.

In addition, the CS imposes a 6-month waiting period between the enactment of an ordinance that levies or increases an impact fee and the collection of the fee or increase. It exempts building permit applications that are complete and have been filed with the local government prior to the effective date of an ordinance that imposes or increases an impact fee.

Under this CS, a local government must report annually to the Auditor General on its collection, expenditures, refunds, and administrative fees associated with impact fees. It also puts a limitation on the amount of an administrative fee. A local government must refund an impact fee plus interest if the funds are not expended within 6 years for the purposes for which it was collected.

Impact fees collected within a municipality must be expended pursuant to an interlocal agreement between the county and municipality. If there is no interlocal agreement, the impact fees that are collected within the municipality must be spent on infrastructure improvements in the incorporated area or, if it directly benefits the new development, in the unincorporated area.

This CS allows an impact fee to be paid in whole or in part on the first closing to transfer real estate or title after issuance of the certificate of occupancy. The remainder of any impact fee will

be assessed as part of the local government's tax bill and paid over a 10- to 20-year period. Finally, the CS exempts any charge or fee imposed for a municipally owned utility.

This CS creates section 163.3219 of the Florida Statutes.

II. Present Situation:

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 its functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.[3] 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 may use a variety of revenue sources to fund services and improvements without express statutory authorization.[4] Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.[5]

Statutory Provisions Addressing Impact Fees[6]

Impact fees are a unique product of local governments' home rule powers, and the development of such fees has occurred in Florida by home rule ordinance rather than by direct statutory authorization or mandate. Therefore, the characteristics and limitations of impact fees are found in Florida case law rather than statute.[7]

However, there are several statutory provisions that affect the imposition of certain impact fees. Section 163.3202(3), F.S., encourages:

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[1] Art. VIII, § 1(f), Fla. Const.
[2] Art. VIII, § 1(g), Fla. Const.
[3] Art. VIII, § 2(b), Fla. Const. Also See s. 166.021, F.S.
[4] 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.
[5] 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 Hose of Representatives Committee on Fiscal Policy and Resources, the Office of Economic and Demographic Research, and the Florida Department of Revenue.
[6] Much of this information was previously published in the Senate Bill Analysis for CS/SB 2874, 2004 Legislative Session.
[7] This information is adapted from the Legislative Committee on Intergovernmental Relations (LCIR) publication *Local Government Financial Information Handbook, 2002 Edition,* p. 25.

"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."

Section 191.009(4), F.S., provides that an independent special 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, to pay for the cost of new facilities and 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.

Section 380.06, F.S., governs developments of regional impact (DRI).[8] 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[9]

There have been a number of court decisions that address impact fees.[10] In *Hollywood, Inc. v. Broward County,*[11] 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 it offsets needs that are sufficiently attributable to the new development and the fees collected are adequately earmarked for the benefit of the residents of the new development.[12] In order to show the impact fee meets those requirements, the local government must demonstrate a rational nexus between the need for additional public facilities and the proposed development. In addition, the local government must show the funds are earmarked for

[8] 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.

[9] Much of this information was previously published in the Senate Bill Analysis for CS/SB 2874, 2004 Legislative Session.

[10] *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).

[11] 431 So. 2d 606 (Fla. 4th DCA 1983).

[12] *See id.* at 611.

the provision of public facilities to benefit the new residents.[13] Because the ordinance at issue satisfied these requirements, the court affirmed the circuit court's validation of the ordinance.[14]

The Florida Supreme Court addressed the issue of impact fees for school facilities in *St. Johns County v. Northeast Builders Association, Inc.*[15] The ordinance at issue conditioned the issuance of a new building permit on the payment of an impact fee. Those fees that were collected were placed in a trust fund for the school board to expend solely "to acquire, construct, expand and equip the educational sites and educational capital facilities necessitated by new development."[16] Also, the ordinance provided for a system of credits to fee-payers for land contributions or the construction of educational facilities. This ordinance required funds not expended within six years to be returned, along with interest on those funds, to the current landowner upon application.[17]

The court applied the dual rational nexus test and found the county met the first prong of the test, but not the second. The builders in *Northeast Builders Association, Inc.* argued that many of the residences in the new development would have no impact on the public school system. The court found the county's determination that every 100 residential units would result in the addition of forty-four students in the public school system was sufficient and, therefore, concluded the first prong of the test was satisfied. However, the court found that the ordinance did not restrict the use of the funds to sufficiently ensure that such fees would be spent to the benefit of those who paid the fees.[18]

Recent decisions have further clarified the extent to which impact fees may be imposed. In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when residential development has no potential to increase school enrollment, public school impact fees may not be imposed.[19] In *City of Zephyrhills v. Wood*, the district court 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, 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;

[13] *See id.* at 611-12.
[14] *See id.* at 614.
[15] 583 So. 2d 635 (Fla. 1991).
[16] *See id.* at 637, *citing*, St. Johns County, Fla., Ordinance 87-60, § 10(B) (Oct. 20, 1987).
[17] *See id.* at 637.
[18] *See id.* at 639. Because the St. Johns County ordinance was not effective within a municipality absent an interlocal agreement between the county and municipality, there was the possibility that impact fees could be used to build a school for development within a municipality that is not subject to the impact fee.
[19] 760 So. 2d 126 (Fla. 2000), at 134. Volusia County had imposed a school impact fee on a mobile home park for persons aged 55 and older.
[20] 831 So.2d 233 (Fla. 2d DCA 2002)

- 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.

The Legislative Committee on Intergovernmental Relations (LCIR) reports that forty counties imposed impact fees in FY 2001/02, collecting $466,571,712. In addition, 156 municipalities levying impact fees collected $133,132,215 in FY 2001/02, with thirty-one cities collecting more than $1 million. The largest category of impact fees is transportation for counties, and physical environment for municipalities. An estimated 19 counties levy school impact fees on behalf of school districts in their county.

III. Effect of Proposed Changes:

Section 1 creates s. 163.3219, F.S., that provides in subsection (1) Legislative findings regarding the lack of criteria for levying and determining the amount of impact fees. It specifies legislative intent to ensure greater consistency in the levy, amount, notice, and collection of impact fees.

Subsection (2) requires any impact fee adopted or amended must be based on the most recent accurate and relevant data available.

Subsection (3) requires a local government to include a credit when calculating an impact fee. This credit is for the full present value of all taxes, fees, assessments, liens, charges, or other payments that have been or will be directly paid by the fee payer or property owner and which will be used for constructing capital facilities of the same type for which the impact fee is being imposed. The credit of such payments shall be calculated using a period of at least 30 years; be adjusted for inflation and increased tax revenues; use a discount rate that does not exceed the current cost to borrow funds for the capital improvements; and be based solely on the estimated payments from the new development and the property where the development is located. The local government must also provide a credit for taxes and other payments indirectly paid by the fee payer or property owner through state, federal, and other revenues anticipated as part of the funding of the capital facilities for which the impact fee is being imposed.

Subsection (4) requires a 6-month waiting period between the adoption of an ordinance that imposes or increases an impact fee and the collection of the fee or increase. An impact fee or increase does not apply to any building permit for which a complete application has been filed with the local government prior to the effective date of the ordinance enacting or increasing the fee.

Subsection (5) requires the local government to provide an annual report to the Auditor General on its collections, expenditures, refunds, and administrative expenses relating to impact fees. A local government's administrative fee may not exceed the actual direct costs associated with collecting, accounting for, and disbursing the fees and is limited to no more than 3 percent of the total fees collected. It provides for the refund of any impact fee plus interest which is not expended within 6 years for the purpose it was collected.

This subsection also provides for the expenditure of impact fees collected within a municipality according to an interlocal agreement between the county and the municipality. In the absence of such an interlocal agreement, the impact fees must be spent for infrastructure improvements within the municipality. These funds may only be expended in the unincorporated area if the infrastructure improvements directly benefit the new development.

Subsection (6) requires a local government collecting an impact fee to allow the fees to be paid in whole or in part at the first closing to transfer real estate or title following issuance of the certificate of occupancy. The reference to "first closing to transfer real estate or title" extends the provisions of s. 163.3219, F.S., as created by this CS, to transactions involving manufactured housing. If the fee is paid in part, the local government must allow the remainder to be assessed as part of the tax bill and paid over a 10- to 20-year period. The local government will set the schedule of payments which may include the costs of deferring the fee.

Subsection (7) exempts any charge or fee imposed for a municipally owned utility, including, but not limited to, electric, gas, water, or wastewater facilities.

Section 2 provides the CS shall take effect on July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This CS requires local governments to credit the fee payer or property owner for any taxes, fees, or other payment paid indirectly or directly to fund certain facilities. It also requires the refund of an impact fee plus interest if not expended within 6 years of its collection.

Under this CS, the fee payer is allowed to make partial payment of an impact fee at the first closing to transfer real estate or title. The remainder will be assessed as part of the tax bill for the property with payment over a 10- to 20-year period.

C. Government Sector Impact:

Under this CS, a local government must calculate its impact fees using a "credit 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." This credit has to be calculated using a payment period of at least 30 years.

The CS allows for the partial payment of impact fees at the first closing to transfer real estate or title. The local government must allow the remainder to be assessed as part of the tax bill and to be paid over a 10-year to 20-year period. The local government may set the schedule of payments, including any costs of deferring payment.

The CS requires a local government to wait 6 months between the imposition or increase of an impact fee and collection of those fees. This CS requires a local government to report to the Auditor General annually on its collection and expenditure of impact fees. It also limits the amount of a local government's administrative fee to no more than 3 percent of the fees collected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.