

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: Government Efficiency Appropriations Committee

BILL: CS/CS/SB 1196

INTRODUCER: Government Efficiency Appropriations Committee, Community Affairs Committee and Senator Constantine

SUBJECT: Impact Fees

DATE: April 24, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vickers</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Fournier</u>	<u>Johansen</u>	<u>GE</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute (CS) codifies certain provisions relating to the imposition of impact fees by local governments. In addition to providing legislative findings and intent relating to the adoption of a local ordinance levying an impact fee, the CS stipulates that such an ordinance must, at a minimum:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Significantly address affordable housing through waiver, exemption, or payment of impact fees, or the establishment of an affordable housing program;
- Provide for accounting and reporting of impact fee collections and expenditures;
- Limit administrative charges for the collection of impact fees to actual costs;
- Require that notice be provided at least 90 days before the effective date of a new or amended impact fee; and
- Address whether credits should be granted for future tax payments and other funding sources.

This CS also requires that certified public accountants conducting audits of local governments and school districts must report whether the audited entities are complying with impact fee laws and ordinances. It provides that, notwithstanding any other state law or any local ordinance, the term “sales price” in s. 212.02, F.S., excludes the amount paid for a permit fee or an impact fee.

This CS creates section 163.31801 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 - 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.⁶

However, there are several statutory provisions that affect the imposition of certain impact fees. 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."

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

¹ Section 1(f), Art. VIII, Fla. Const.

² Section 1(g), Art. VIII, Fla. Const.

³ Section 2(b), Art. VIII, Fla. Const. *See also* 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. *See* s. 1(a), Art. VII, Fla. Const. 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 House of Representatives Committee on Fiscal Policy and Resources, the Office of Economic and Demographic Research, and the Florida Department of Revenue.

⁶ This information is adapted from the Legislative Committee on Intergovernmental Relations (LCIR) publication *Local Government Financial Information Handbook, 2002 Edition*, p. 25.

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).⁷ 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 - There have been a number of court decisions that address impact fees.⁸ In *Hollywood, Inc. v. Broward County*,⁹ 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.¹⁰ 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 the provision of public facilities to benefit the new residents.¹¹ Because the ordinance at issue satisfied these requirements, the court affirmed the circuit court's validation of the ordinance.¹²

The Florida Supreme Court addressed the issue of impact fees for school facilities in *St. Johns County v. Northeast Builders Association, Inc.*¹³ 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

⁷ 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.

⁸ 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).

⁹ 431 So. 2d 606 (Fla. 4th DCA 1983).

¹⁰ See *id.* at 611.

¹¹ See *id.* at 611-12.

¹² See *id.* at 614.

¹³ 583 So.2d 635 (Fla. 1991).

equip the educational sites and educational capital facilities necessitated by new development.”¹⁴ 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.¹⁵

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.¹⁶

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.¹⁷ 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.¹⁸

An ongoing impact fee case, *Homebuilders of Metro Orlando v. Osceola County*, involves Osceola County’s amendment of an existing impact fee ordinance. In this instance, Osceola County used data contained in a study it had commissioned and raised the amount of the impact fee per dwelling considerably. Plaintiff challenged the methodology and data employed by the county in determining the amount of its school impact fee. Initially, the court acknowledged the principle that “courts generally defer to the legislative body unless such a determination is clearly arbitrary” when reviewing the methodology and data used by a local government.¹⁹ Much of the discussion by the court focused on credits. To avoid having the impact fee exceed the cost of the development unit’s share of the improvement at hand, such as a student station, credits are given to reflect any other revenue source available and applied to the improvement. As a result of the formula contained in the ordinance to calculate credits the developer received no credits for taxes paid or future taxes to be paid. In short, because of the serious student station shortages, all other existing (and some future) revenue sources would be committed to school repairs, renovations and maintenance rather than new capacity. The court found this methodology employed by the county to be “reasonable” and “rational.”

¹⁴ See *id.* at 637, citing, St. Johns County, Fla., Ordinance 87-60, § 10(B) (Oct. 20, 1987).

¹⁵ See *id.* at 637.

¹⁶ 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.

¹⁷ 760 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.

¹⁸ 831 So.2d 233 (Fla. 2d DCA 2002)

¹⁹ *Homebuilders of Metro Orlando v. Osceola County*, Case CI-04-OC-1024, Final Judgment at 9 Fla. 9th Cir. Ct. Aug. 5, 2005.

Upon rehearing, the court agreed with Plaintiffs that Osceola County had not given them adequate credit in the impact fee calculation. In a subsequent order, the court required the school district to give Plaintiffs credit for other revenue sources used to fund additional school capacity. The court accepted the school district's credit calculations as correct, but deemed it appropriate to include interest in the calculation, which the School District had not done.

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;
- 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.

Impact Fee Trends in Florida - Each year the Legislative Committee on Intergovernmental Relations (LCIR) compiles data concerning impact fee revenues reported annually by counties, municipalities, independent special districts, and school districts. In 1993, reported impact fee revenues in Florida totaled \$177 million. Eleven years later, in 2004, impact fee revenues totaled \$1.07 billion statewide. This growth in impact fee revenues represents a 505 percent increase with much of the accelerated growth since the late 1990s. Cumulatively, from 1993 through 2004, reported impact fee revenues totaled nearly \$5.3 billion. As the chart below reveals, impact fee revenue collections vary by type of governmental entity. Between 1993 and 2004, counties accounted for the largest amount of impact fee revenue collections at \$3.5 billion. Municipalities follow with \$1.2 billion in impact fee revenue collections. Prior to 2002, school districts reported very few impact fee revenue collections. Since 2002, however, school districts have become a major beneficiary of impact fees with \$500 million in impact fee collections.

Table 1 Reported Impact Fee Revenues by Government Type Fiscal Years 1993 - 2004						
Year	Counties	Municipalities	Independent Special Districts	School Districts	Annual Totals	% Change
1993	\$ 107,959,016	\$ 65,159,178	\$ 3,748,855	\$ 51,082	\$ 176,918,131	-
1994	142,835,074	70,215,815	5,761,159	91,919	218,903,967	24%
1995	157,598,994	46,722,317	4,589,574	1,126,903	210,037,788	-4%
1996	160,396,998	41,189,959	4,687,187	1,275,037	207,549,181	-1%
1997	196,634,639	57,600,001	9,014,576	2,198,842	265,448,058	28%
1998	214,357,753	73,655,715	8,685,871	2,295,472	298,994,811	13%
1999	262,544,090	102,323,355	9,616,597	-	374,484,042	25%
2000	324,233,477	83,707,192	15,675,246	3,429,300	427,045,215	14%
2001	385,440,874	119,024,491	17,651,599	3,505,450	525,622,414	23%
2002	466,571,715	132,851,319	18,033,558	124,451,364	741,907,956	41%
2003	479,479,595	180,966,895	21,711,285	117,672,871	799,830,646	8%
2004	560,496,789	230,918,802	20,501,638	258,581,444	1,070,498,673	34%
Cum. Totals	\$ 3,458,549,014	\$ 1,204,335,039	\$ 139,677,145	\$ 514,679,683	\$ 5,317,240,881	

Sources:
 Counties, municipalities, and independent special districts: Florida Department of Financial Services.
 School districts: Florida Department of Education, Office of Funding and Financial Reporting.

Compiled by LCIR staff, 1-20-06.

This increase in impact fee revenues is a result of Florida’s rapid population growth, the growing number of local governments imposing impact fees and the rising cost of land and building infrastructure. The LCIR also reviewed reported impact fee revenues by fee category, i.e., transportation, physical environment, public safety, etc., during the same time period, 1993 to 2004. As a percentage of total cumulative revenues, transportation impact fees represented the largest impact fee category, totaling \$2.2 billion or 38 percent of the total. Physical environment impact fees represented the second largest category, totaling \$1.3 billion or 24 percent of the total.

When looking at the number of governmental entities reporting impact fee revenues by fee category, more governmental entities reported public safety impact fees than any other category, followed by the number of jurisdictions imposing physical environment, cultural and recreation, and transportation impact fees. Furthermore, a review of the data illustrates that a relatively small number of governmental entities account for the majority of impact fee revenues reported in Florida.

Florida Impact Fee Review Task Force – In 2005 the Legislature enacted CS/CS/CS/SB 360 (Ch. 2005-290, L.O.F.) which established the Florida Impact Review Task Force. The 15-member Task Force was charged with surveying the current use of impact fees, reviewing current impact fee case law and making recommendations as to whether statutory direction was necessary with respect to specific impact fee topics. Based on the testimony and supporting documentation received, the Task Force concluded that:

- Impact fees are a growing source of revenue for infrastructure in Florida.

- Local governments in Florida do not have adequate revenue generating resources with which to meet the demand for infrastructure within their jurisdictions.
- Without impact fees, Florida's growth, vitality and levels of service would be seriously compromised.
- Impact fees are a revenue option for Florida's local governments to meet the infrastructure needs of their residents.
- Because Florida comprises a wide variety of local governments – small and large, urban and rural, high growth and stable, built out and vacant land – each with diverse infrastructure needs, a uniform impact fee statute would not serve the state.
- Impact fees must remain flexible to address the infrastructure needs of the specific jurisdiction which it was tailored to serve.
- Statutory direction on impact fees is needed to address and clarify certain issues regarding impact fees.

In its final report, the Task Force recommended that the Legislature provide statutory direction relating to the following topics:

Impact Fee Data - The Task Force recommended that local governments use the most recent and localized data when calculating impact fees.

Affordable Housing - The Task Force recommended that “impact fee ordinances must significantly address affordable housing. This may include waiving, exempting, deferring, or paying impact fees out of another revenue source for affordable housing or establishing a significant program.” Furthermore, the Task Force unanimously recommended that the Legislature fully fund the State Housing Trust Fund and the Local Government Housing Trust Fund, collectively referred to as the Sadowski program, and dedicate the funds for affordable housing units.

Accounting and Reporting Collections and Expenditures - The Task Force recommended that all impact fee collections and expenditures be accounted and reported.

Notice - The Task Force recommended that notice of not less than 90 days before the effective date of an impact fee ordinance be provided.

Administrative Charges - The Task Force recommended that administrative charges for impact fee collections be limited to “no more than actual cost.”

Additional or Alternative Revenue Sources for Local Government Infrastructure - The Task Force recommended that the Legislature consider additional or alternative funding sources for local governments to meet their infrastructure demands. Specifically, the Task Force recommended the following revenue sources for consideration: (1) allow passage of the Local Option Sales Tax, which includes the Local Government Infrastructure Surtax and the Small County Surtax by majority or supermajority vote of the Board of County Commissioners, and the School Capital Outlay Surtax by majority or supermajority vote of the District School Board, as an option to the referendum requirement; (2) increase the bonding capacity of County Revenue Sharing Dollars; (3) find an alternative revenue source to augment the Public Education Capital

Outlay (PECO) fund; and (4) allow all local governments to assess a Documentary Stamp Surtax, similar to Miami-Dade County's \$0.45 per \$100.

The Task Force recommended 'no' statutory guidance regarding the following impact fee topics: (1) methodology used to calculate impact fees; (2) sharing of impact fees between counties and cities; (3) timing of impact fee payments; (4) time limits for the expenditure of impact fee collections and impact fee refunds; (5) changing the legal burden of proof for impact fee challenges; (6) a presumptively unchallengeable impact fee; (7) impact fee caps; and (8) a model impact fee ordinance. The Task Force was unable to come to a consensus (by a vote of six to six) with regards to a recommendation on impact fee credits.

Section 212.02, F.S., provides that "sales price"

means the total amount paid for tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expense whatsoever...

Permit fees and impact fees are not excluded from sales price.

III. Effect of Proposed Changes:

Section 1 creates s. 163.31801, F.S., to codify certain provisions relating to the creation of impact fees by local governments. Subsection (1) designates the CS as the "Impact Fee Act".

Subsection (2) provides legislative findings regarding impact fees. Specifically, this subsection finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. Additionally, this subsection provides that due to the growth in impact fee collections and the increased reliance of local governments on impact fees, it is the intent of the Legislature to ensure that local governments comply with the provisions of this section.

Subsection (3) provides that an impact fee ordinance adopted by local government must, at a minimum, include the following elements:

- Require that the calculation of the impact fee be based on the most recent and localized data.
- Significantly address affordable housing through waiver, exemption, or deferral of impact fees; paying impact fees for affordable housing units out of another revenue source; or establishing a significant affordable housing program.
- 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.

- Require that notice be provided at least 90 days before the effective date of a new or amended impact fee.
- Address whether credits should be granted for future local tax payments for capital improvements, outside funding sources, and in-kind contributions from developers.

Subsection (4) requires that certified public accountants conducting audits of local governmental entities and district school boards must report whether the audited entities have complied with the requirements of s. 163.31801, F.S., and whether the revenues generated by each impact fee are spent in accordance with local impact fee laws.

Subsection (5) provides that, notwithstanding any other state law or any local ordinance, the term “sales price” in s. 212.02, F.S., excludes the amount paid for a permit fee or an impact fee.

Section 2 provides this act shall take effect July 1, 2006.

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:

The provision that impact fees and permit fees are not included in the sales price of tangible personal property will result in a reduction in sales tax revenue. The Revenue Estimating Conference has not estimated the impact of this provision.

B. Private Sector Impact:

The CS codifies several provisions that are generally acknowledged in case law governing impact fees. Similarly, the CS provides some specificity regarding the implementation and operation of impact fee ordinances. The fiscal impact of codifying impact fee laws on the private sector is indeterminate. The exclusion of impact fees and permit fees from the sales price of tangible personal property will reduce sales taxes paid by some individuals.

C. Government Sector Impact:

While local governments may incur some additional costs in the development and implementation of impact fee ordinances as a result of the CS, the likely fiscal impact on local governments will be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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