

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill creates a framework for establishing an impact fee ordinance and levying impact fees. To the extent that current impact fee ordinances and levying practices are inconsistent with the provisions of this bill, those required to pay impact fees may pay more or less. For those local governments that do not currently levy impact fees, creation of an impact fee ordinance and the levying of impact fees pursuant to the provisions would create an additional cost to those required to pay the impact fee.

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes:

HB 1431 creates s. 163.31801, F.S., the "Impact Fee Act."

Legislative findings and intent:

The bill provides legislative findings that:

- Impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth.
- Impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction.

The bill provides legislative intent to ensure that impact fees throughout the state are used to maintain adequate public facilities, represent a proportionate share of the cost of each public facility, and promote orderly growth and development.

Definitions:

The bill provides the following definitions relating to impact fees:

- **Capital outlay project** – The buildings, equipment, and structures that are built, installed, or established to serve the need for infrastructure in a new or expanded development, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, education, parks, and recreational projects.
- **Impact fee**: A total or partial reimbursement to a local government for the cost of the additional public facilities or services necessitated by new development or the expansion of existing development.
- **Local Government**: A county, municipality, or special district that is authorized by its enabling legislation or by general law to impose an impact fee.
- **Public Notice**: Notice as required by s. 125.66(2), F.S., for a county, s. 166.041 (3) (a), F.S., for a municipality, or s. 189.417, F.S., for a special district.
- **Rational Nexus**: A reasonable connection.

Impact fee requirements:

The bill requires an impact fee to do the following:

- Be a one-time charge, although the charge may be paid at certain times over the course of the development process.

- Be used for capital outlay projects only. Specifically, the impact fee may not be used to fund operating costs and infrastructure deficiencies.
- Represent a proportionate share of the cost of the capital outlay project that is needed to serve the new development.

Authorization to levy impact fees:

The bill authorizes to a local government by its home rule power, to adopt an impact fee ordinance within its jurisdiction in order to fund infrastructure necessary to serve new development.

The bill further authorizes a special district to levy an impact fee only if it is authorized to so by general law.

Notice:

The bill provides that public notice must be given prior to a county, municipality, or special district enacting an impact fee ordinance.

Impact fee ordinance requirements:

The bill provides that an impact fee must do the following:

- Specify the geographical area to be served by the collection of the impact fee.
- Specify that there is a rational nexus between the anticipated need for the capital outlay project and the growth generated by the new development.
- Specify that there is a rational nexus between the anticipated use of the revenue that is collected from the impact fee and the benefits that will accrue to the new development upon completion of the capital outlay project.
- Specify the criteria and methodology used to calculate the amount of the impact fee and the assumptions on which they are based.
- Demonstrate that the impact fee does not exceed a proportionate share of the cost of the capital outlay project or system improvement needed to serve the new development.
- Specify certain times during the development process when partial payments of the impact fee are due.
- Require that the revenue from the impact fee is spent only on the capital outlay project for which the fee was collected.
- Specify that the revenue from the impact fee that is collected by a local government shall be deposited into an interest-bearing account. The interest from the account shall also be used only for the capital outlay project.
- Specify that the revenue from the impact fee and disbursement shall be accounted for and reported separately from other governmental sources of revenue. The accounting and reporting of the revenue from an impact fee shall be available for audit pursuant to s. 218.39.
- Provide a process for refunding an impact fee that was not expended on or encumbered for the capital outlay project for which it was collected within a reasonable amount of time., not to exceed 8 years following the date of the adoption of the ordinance.
- Specify who is entitled to a refund after the time for construction of the capital outlay project has expired. [developer, property owner of record at the time of the refund, some other individual entity]

Impact fee credits:

The bill authorizes an impact fee ordinance may provide credits for outside funding sources, improvements initiated by developers, in-kind contributions, and local tax payments that fund capital improvements.

Impact fee exemptions:

The bill requires that an ordinance levying an impact fee must include a calculation of the amount of the fee to be paid as credit against a specified series of other payments. The calculation is required to estimate such payments for at least the useful life of the type of project for which the impact fee is imposed, including adjustments to account for inflation, increased taxable values, and increased payments. Additionally, the calculation is required to use a discount rate no greater than the current costs of borrowing to finance such capital improvements; and is required to be based solely upon the estimated payments from new development and the property upon which the new development is located. Further, the bill requires that an impact fee also provide a credit for all taxes or other payments of any kind through state, federal, or other revenues anticipated to be expended to construct capital outlay projects of the same type for which the fee is imposed. Finally, the bill requires that such impact fees only be used to supplement other funds used to construct capital outlay projects.

Compliance:

The bill provides that an impact fee ordinance that is enacted before July 1, 2006, need not comply with the provisions in this bill until July 1, 2008.

Background:

The Florida Constitution grants local governments broad home rule authority. 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.¹

There have been a number of court decisions that address impact fees.² In *Hollywood, Inc. v. Broward County*,³ 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.⁴ 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.⁵ Because the ordinance at issue satisfied these requirements, the court affirmed the circuit court's validation of the ordinance.⁶

The Florida Supreme Court addressed the issue of impact fees for school facilities in *St. Johns County v. Northeast Builders Association, Inc.*⁷ 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."⁸ 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.⁹

¹ This information is adapted from the Legislative Committee on Intergovernmental Relations (LCIR) publication *Local Government Financial Information Handbook*, 2002 Edition, p. 25.

² 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).

³ 431 So. 2d 606 (Fla. 4th DCA 1983).

⁴ *See id.* at 611.

⁵ *See id.* at 611-612.

⁶ *See id.* at 614.

⁷ 583 So. 2d 635 (Fla. 1991)

⁸ *See id.* at 637, citing, *St. Johns County, Fla., Ordinance 87-60, § 10(B)* (Oct. 20, 1987).

⁹ *See id.* at 637

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.¹⁰

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.¹¹ 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.¹²

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.

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.

The 2005 Florida Legislature created the Florida Impact Fee Review Task Force (Task Force). The Task Force was comprised of 15 members representing the state and local governments, the building and development community, the school boards, and an affordable housing advocate. The Task Force was established to serve as an advisory body to the Legislature on the issue of impact fees.

In the Task Force's final report issued to the Legislature, they proposed a number of recommended statutory changes to existing law rather than the creation of a uniform impact fee statute. Further, the task force offered the following recommendations:

- Data – Require local governments to use the most recent and localized data when calculating an impact fee.
- Affordable Housing – Require that all impact fee ordinances significantly address affordable housing. This may include waiving, deferring, exempting, paying out of another source, or establishing a significant affordable housing program. They further recommend fully funding the Sadowski Act.

¹⁰ 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.

¹¹ 760 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.

¹² 831 So. 2d 233 (Fla. 2d DCA 2002)

- Accounting and Reporting Collections and Expenditures – Require that all impact fee collections and expenditures be accounted and reported.
- Notice – Require that local governments provide notice of not less than 90 days before the effective date of an impact fee ordinance.
- Administrative Charges – Require that administrative charges for impact fee collections be limited to “no more than actual cost.”

In the Task Force’s report, they recommended no statutory guidance regarding the following impact fee topics:

- Methodology used to calculate impact fees;
- Sharing of impact fees between counties and cities;
- Timing of impact fee payments;
- Time limits for the expenditure of impact fee collections and impact fee refunds;
- Switching the legal burden of proof for impact fee challenges;
- Creation of a presumptively unchallengeable impact fee;
- Impact fee caps; and
- A model impact fee ordinance.

The Task Force recommended that the Legislature consider the following alternative revenue sources for local governments to meet their infrastructure demands:

- Authorizing 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;
- Increasing the bonding capacity of County Revenue Sharing Dollars;
- Finding an alternative to augment the Public Education Capital Outlay (PECO) fund;
- Fully funding the Sadowski program for affordable housing, and
- Authorizing all local governments to assess a Documentary Stamp Surtax, similar to Miami-Dade County’s \$0.45 per \$100. I

C. SECTION DIRECTORY:

Section 1: Creates s. 163.31801, F.S., relating to impact fees.

Section 2: Provides an effective date of July 1, 2006.

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 government revenues.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate: Local governments that have not already established impact fees may benefit by establishing impact fees consistent with the provisions of this bill. Other local governments that have already established impact fees may either benefit or not based upon the consistency of their impact fee ordinance with the provisions of this bill.

2. Expenditures:

Indeterminate: Some local governments may need to reenact existing impact fee ordinances to come into compliance with the provisions of this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate: To the extent that impact fee ordinances have been created and impact fees levied inconsistent with the provisions of this bill, the development community may or may not benefit from the passage of this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the Growth Management Committee adopted one amendment. The amendment requires that an ordinance levying an impact fee must include a calculation of the amount of the fee to be paid as credit against a specified series of other payments. The calculation is required to estimate such payments for at least the useful life of the type of project for which the impact fee is imposed, including adjustments to account for inflation, increased taxable values, and increased payments. Additionally, the calculation is required to use a discount rate no greater than the current costs of borrowing to finance such capital improvements; and is required to be based solely upon the estimated payments from new development and the property upon which the new development is located. Further, the amendment requires that an impact fee also provide a credit for all taxes or other payments of any kind through state, federal, or other revenues anticipated to be expended to construct capital outlay projects of the same type for which the fee is imposed. Finally, the amendment requires that such impact fees only be used to supplement other funds used to construct capital outlay projects.