

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 630

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Impact Fees

DATE: April 14, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/CS
2.			FT	
3.			TA	
4.			WPSC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This CS limits impact fees to \$2.00/sq ft for residential property and \$8.00/sq ft for commercial property and authorizes a local option surtax on documents conveying an interest in real property.

This bill substantially amends section 163.31801 of the Florida Statutes. This bill creates section 201.032 of the Florida Statutes.

II. Present Situation:

Impact Fees

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

¹ FLA. CONST. art VIII, § 1(f).

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. Section 166.021, F.S., gives municipalities broad home rule powers except: annexation, merger, and exercise of extraterritorial power, and subjects prohibited by the federal, state, or county constitution or law.

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

Impact fees are enacted by local home rule ordinance. They require total or partial payment to counties, municipalities, special districts, and school districts for the cost of additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources and the local government's determination to charge the full cost of the fee's earmarked purposes.

In 2005, the Legislature created 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. 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.

² FLA. CONST. art VIII, § 1(g).

³ FLA. CONST. art VIII, § 2(b). *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* FLA. CONST. art VII, § 1. 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.

- 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 2006, the Legislature enacted s. 163.31801, F.S., to provide requirements and procedures to be followed by a county, municipality, or special district when it adopts an impact fee. By statute, 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.
- 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.

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 district and used exclusively to acquire, purchase, or construct the facilities needed to provide fire protection and emergency services for 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).⁶ 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

⁶ 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.

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.

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.⁷

The Documentary Stamp Tax

There is a documentary tax on deeds, instruments, or writings whereby real property, or any interest therein, is transferred or vested in the purchaser or any other person by his or her direction.⁸ It is due when the deed or other paper is delivered, regardless of when the sale occurs.⁹ When a deed is deposited in escrow the tax is not due until its delivery to the grantee. The tax must be paid on all taxable conveyances, regardless of where the document was made, executed, or delivered.¹⁰

III. Effect of Proposed Changes:

Section 1 amends s. 163.31801, F.S., to limit impact fees to \$2 per square foot of residential property and \$8 per square foot for nonresidential property and allows the impact fees to be increased for inflation according to the Consumer Price Index.

Section 2 creates s. 201.032, F.S., which states that a county may levy a surtax on those documents in s. 201.02, F.S., which include:

- deeds, instruments, or writings whereby any lands, tenements, or other real property, or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or any other person by his or her direction;

⁷ *Hollywood, Inc. v. Broward County*, 431 So. 2d 606 (Fla. 4th DCA 1983); *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); *St. Johns County v. Northeast Builders Association, Inc.*, 583 So.2d 635 (Fla. 1991).

⁸ Section 201.02(1), Fla. Stat.; Fla. Admin. Code R. 12B-4.011(1).

⁹ Fla. Admin. Code R. 12B-4.011(1).

¹⁰ Fla. Admin. Code R. 12B-4.011(2).

- documents which convey or transfer, pursuant to s. 689.071, F.S., any beneficial interest in lands, tenements, or other real property, or any interest therein, even though such interest may be designated as personal property; and
- a judicial sale of real property under an order or final judgment issued pursuant to a foreclosure proceeding.

The surtax does not apply to:

- any assignment, transfer, or other disposition, or any document, which arises out of a transfer of real property from a nonprofit organization to the Board of Trustees of the Internal Improvement Trust Fund, to any state agency, to any water management district, or to any local government;
- deed, transfer, or conveyance between spouses or former spouses pursuant to an action for dissolution of their marriage wherein the real property is or was their marital home or an interest therein; and
- a contract to sell the residence of an employee relocating at his or her employer's direction or to documents related to the contract, which contract is between the employee and the employer or between the employee and a person in the business of providing employee relocation services.

The surtax is levied at a rate not to exceed \$1 on each \$100 of the consideration for the real estate or interest therein. The surtax shall be paid by the grantor of the real estate but it shall not be levied on a document that conveys a specific interest in real property in this state for the first transaction following the adoption of the ordinance.

Consideration includes, but is not limited to:

- the money paid or agreed to be paid;
- the discharge of an obligation; and
- the amount of any mortgage, purchase money mortgage lien, or other encumbrance, whether the underlying indebtedness is assumed.

If the consideration paid or given in exchange for real property or any interest therein includes property other than money, it is presumed that the consideration is equal to the fair market value of the real property or interest therein.

The surtax may be enacted pursuant to an ordinance that will take effect only upon approval by a majority vote of the electors of the county voting in a referendum or pursuant to an ordinance enacted by an extraordinary vote of the governing body of the county. The governing body must inform the Department of Revenue of the adoption of the surtax and what the rate will be. Failure to timely provide the notice results in a delay of the effective date of the surtax for a period of one year. Any change to the surtax must take effect on January 1 and terminate on December 31. The bill specifies how the ballot to approve the ordinance would be designed.

Proceeds of the surtax may be used only to provide infrastructure necessary to implement adopted local government comprehensive plans. The proceeds of the surtax may not be used for operating costs. Infrastructure means:

- any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, and
- any land acquisition, land improvement, design, and engineering costs related thereto, including projects that qualify for the district facilities work program, as defined in s. 1013.35(1)(b), F.S.

The Department of Revenue shall pay to the county that levies the surtax all taxes, penalties, and interest collected from the surtax. Up to 1 percent of the surtax may be used for administrative costs by the Department of Revenue. Up to 1 percent of the surtax may be retained by the clerk of the court. Following these deductions, the proceeds of the surtax shall be distributed as follows:

- 25% to the county or the municipality where the property located;
- 75% is distributed as follows:
 - one third to municipalities within the county based on population, and
 - two thirds to the county, which must distribute at least 25 percent of those funds to the school districts.

The surtax is a bondable revenue source to be administered by the Department of Revenue. Each governing body of the county that levies the surtax must submit to the Department of Financial Services a financial report that shows how the proceeds are used. The Department of Revenue may adopt rules to implement and enforce the surtax.

Section 3 provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII of the State Constitution, provides that “except upon approval of each house of the legislature by a two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.”

This bill does limit the authority of municipalities or counties to levy impact fees under their home rule power. This bill will likely require approval by a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Developers would likely see savings due to this cap on impact fees. The cost of real estate under a surtax would increase in a manner proportional to the value of the property. Impact fees, however, increase the cost of property in a manner proportional to the cost of the impacts of the development on the surrounding infrastructure. The surtax impacts a broader base of people.

C. Government Sector Impact:

The Florida Legislative Committee on Intergovernmental Relations estimated that the statewide total that could be enacted if *every* county enacted the *full* \$1 per every \$100 of consideration allowable under the surtax in the 2007-2008 fiscal year would be \$2.68 billion in revenue. Whereas the Revenue Estimating Conference estimated that the total amount of impact fees collected by counties was \$733 million and for cities was \$292 million. There is no current cap on impact fees so impact fees are currently limited only by political realities and the magnitude of impacts that new development has on existing infrastructure. Although the revenues that could be collected by the surtax are greater than what is collected in impact fees, there would be a delay in generation of revenue because the counties would first have to choose to adopt the ordinance then it would not apply to the first time that an interest in real estate was conveyed after the ordinance was adopted. Therefore, the local governments would be functioning with a cap on their impact fees for some time before substantial revenues could be generated by the surtax.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on April 14, 2009:

- The bill limits impact fees to \$2.00/sq ft for residential property and \$8.00/sq ft for commercial property.
- The bill authorizes a local option surtax.

The CS no longer creates a moratorium on impact fees.

B. Amendments:

None.

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