

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 Committee on Community Affairs

BILL: SB 660

INTRODUCER: Senator Hays

SUBJECT: Local Governments

DATE: February 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Pre-meeting
2.			FT	
3.			FP	

I. Summary:

SB 660 authorizes the use of existing impact fees to construct new capital facilities or to improve, alter, or replace existing capital facilities. The bill authorizes counties and municipalities to impose a surcharge on documents taxable under s. 201.02, F.S., in lieu of imposing an impact fee. The proceeds from the documentary surcharge must be used to fund certain capital improvements. The bill places a limit on the total amount of surcharges that may be levied under this section. The bill provides procedural and reporting requirements and mandates that funds from a documentary surcharge be deposited in a separate trust fund.

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 their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³

The Florida Statutes enumerate the powers and duties of all county governments, unless preempted on a particular subject by general or special law.⁴ 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

¹ FLA. CONST. art VIII, s. 1(f).

² FLA. CONST. art VIII, s. 1(g).

³ FLA. CONST. art VIII, s. 2(b). See also s. 166.021(1), F.S.

⁴ Section 125.01, F.S.

supplies.⁵ Article VIII, Section 2 of the State Constitution and s. 166.021, F.S., grant municipalities broad home rule powers.

Given these constitutional and statutory powers, local governments may 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

Impact Fees

Impact fees are enacted by local ordinance. These fees are tailored to pay the cost of additional infrastructure necessitated by new development. 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 or only part of the cost of the infrastructure improvement through utilization of the impact fee.

Statutory Authority for 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. An impact fee ordinance adopted by local government must:

- 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 an ordinance or resolution imposing a new or increased impact fee.⁸

The Dual Rational Nexus Test

Impact fees have their roots in the common law. A number of court decisions have addressed challenges to the legality of impact fees.⁹ In *Hollywood, Inc. v. Broward County*,¹⁰ the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer,

⁵ *Id.*

⁶ The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution or a general law or special law regarding the power at issue. Article VII, s. 1 of the State Constitution prohibits counties and municipalities from levying a tax without express statutory authorization. However, local governments may levy special assessments and a variety of fees absent any general law prohibition, provided such home rule funding source meets the relevant legal sufficiency tests.

⁷ For a catalogue of such revenue sources, see the most recent editions of the Florida Legislature's *Local Government Financial Information Handbook* and the *Florida Tax Handbook*.

⁸ Section 163.31801, F.S. Other sections of law also address the ability of local governments or special districts to levy impact fees. See ss. 163.3202(3), 191.009(4), and 380.06, F.S.

⁹ 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).

¹⁰ *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA 1983).

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 (1) it offsets reasonable needs that are sufficiently attributable to the new development and (2) the fees collected are adequately earmarked for the acquisition of capital assets that will benefit the residents of the new development.¹¹ These two requirements are called the dual rational nexus test. In order to show the impact fee meets those requirements, the local government must demonstrate a rational relationship between the need for additional capital 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.¹²

In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when a residential development has no potential to increase school enrollment, public school impact fees may not be imposed.¹³ The county in that case had imposed a school impact fee on a deed-restricted community for adults 55 years old and older. In *City of Zephyrhills v. Wood*, the Second 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.¹⁴

As developed under case law, an impact fee must have the following characteristics to be legal:

- 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 proportionate 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 toward the cost of the increased capacity for public facilities.¹⁵

The Documentary Stamp Tax

Section 201.02, F.S., levies a tax on deeds and other instruments relating to real property or interests in real property. The tax is due when the deed or other paper is delivered, regardless of when the sale occurs.¹⁶ 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.¹⁷

¹¹ *Id.* at 611.

¹² *Id.* at 611-12.

¹³ *Volusia County v. Aberdeen at Ormond Beach*, 760 So.2d 126, 134 (Fla. 2000).

¹⁴ *City of Zephyrhills v. Wood*, 831 So.2d 223, 225 (Fla. 2d DCA 2002).

¹⁵ The Florida Senate, Issue Brief 2010-310, 4 (Sept. 2009), available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-310ca.pdf (last visited Feb. 2, 2016).

¹⁶ Fla. Admin. Code R. 12B-4.011(1).

¹⁷ Fla. Admin. Code R. 12B-4.011(2).

III. Effect of Proposed Changes:

Section 1 amends s. 163.31801, F.S., to provide that an existing impact fee may be used by a county, municipality, or special district to construct new capital facilities or to improve, alter, or replace existing capital facilities. Capital facilities include, but are not limited to transportation facilities, utilities, water and sewer systems, park and recreational facilities, libraries, educational facilities, and health systems and facilities.

Section 2 creates s. 201.032, F.S., to authorize a county or municipality to impose a discretionary surcharge on documents taxable under s. 201.02, F.S.,¹⁸ in lieu of imposing an impact fee. The surcharge on documents must be for the purpose of financing capital improvements and facilities.

A county or municipality may impose more than one surcharge under this bill. However, the combined total of all surcharges may not exceed the rate of \$1 for each \$100, or fractional part thereof.

A local government that enacts and implements a discretionary surcharge in lieu of imposing an impact fee must provide credits on a dollar-for-dollar basis for impact fees, mobility fees, or other exactions previously paid by the entity under a developer agreement, proportionate share agreement, or development order.

A discretionary surcharge imposed pursuant to this section must be established by ordinance. The bill provides procedural requirements for adoption of the ordinance. The purpose of the surcharge must be expressed prior to its enactment and the proceeds of the surcharge must be restricted to that purpose.

The Department of Revenue (DOR) is directed to pay to the governing authority of a county or municipality that imposes such a surcharge all moneys, penalties, and interest collected under this section, minus any administrative costs.

The revenue from the surcharge must be deposited in a trust fund created solely for that purpose. Revenues from individual surcharges must be deposited in separate trust funds, except revenues from surcharges levied for the same purpose which may be deposited into the same trust fund. The county or municipality is required to include information showing the revenues and expenses of each such trust fund for the fiscal year in the financial report that it must submit pursuant to s. 218.32, F.S.

Revenue in the trust funds may be transferred to the local school district pursuant to an interlocal agreement, which must govern the authorized use of the funds and the required financial reporting. A school district receiving such funds must prepare and submit an annual report to the governing authority of the county detailing the expenditure of the funds.

A county or municipality that imposes a discretionary surcharge on documents may not also assess an impact fee for the same purpose while the surcharge is in effect.

¹⁸ Section 201.02, F.S., applies to deeds and other instruments relating to real property or interests in real property.

All provisions of ch. 201, F.S., apply to a discretionary surcharge under this bill except for s. 201.15, F.S.¹⁹

The bill provides that the imposition of a discretionary surcharge pursuant to this section shall be construed as being authorized by general law in accordance with Art. VII, ss. 1 and 9 of the State Constitution.

Section 3 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill authorizes the use of impact fees for constructing new capital facilities or improving, altering, or replacing existing capital facilities. However, as discussed above, Florida courts have ruled that impact fees must be used to pay for infrastructure improvements necessitated by the new development. Furthermore, they must be used specifically to benefit the citizens subject to the tax and cannot be used to provide a benefit that instead goes to the general public, even though the general public includes those citizens required to pay the impact fee.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The documentary stamp tax on deeds and other documents related to real property is at the rate of 70 cents per \$100²⁰ for a total revenue of \$1.35 billion in FY 2014-15.²¹ Using the average rate for 1 cent per \$100 based upon such data, the estimated rate for this bill's maximum of \$1 per \$100 documentary tax stamp tax is \$1.93 billion. However, the total of all reported impact fees for counties, municipalities, independent special districts and schools districts was \$1.07 billion in 2004, so the total estimated fiscal impact may be overstated.

¹⁹ Section 201.15, F.S., relates to the distribution of taxes collected.

²⁰ Section 201.02, F.S.

²¹ Data was provided by the Office of Economic and Demographic Research.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOR bill analysis states that the agency will be charged a nonrecurring fee of \$30,000 in Fiscal Year 2016-2017 by the outside e-services vendor to update the web applications to facilitate collection of the new documentary stamp tax.²²

The DOR analysis states that implementation of the bill will require 230 contractor hours at a cost of \$21,390 and 213 in-house hours to provide necessary modifications to the DOR System for Unified Taxation.²³

The DOR also opines that a “significant amount of administrative time will need to be allocated to tracking of ordinances at the city level.”²⁴ However, the costs associated with this duty will be absorbed by the DOR.²⁵

The bill is estimated to have a total negative impact of \$51,390 impact on the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOR suggested that the phrase “final adoption of the ordinance” in line 80 be changed to “formal adoption of the ordinance” to maintain consistent term usage and avoid confusion.²⁶

Limitation on Surcharges

The bill states that the combined total of all surcharges imposed by a county and each municipality within the county may not exceed the rate of \$1 for each \$100, or fractional part thereof, of the consideration paid for the real property interest transferred. The bill does not clarify how the portions of this \$1 surcharge will be meted out to the municipal and county governments. As the bill is currently written, the first governmental entity could levy the full \$1, thereby preventing the county from utilizing the surcharge.

VIII. Statutes Affected:

This bill substantially amends section 163.31801 of the Florida Statutes.

This bill creates section 201.032 of the Florida Statutes.

²² Dep’t of Revenue, *Fiscal Impact Analysis of SB 660*, at 2 (2016).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Dep’t of Revenue, *Legislative Bill Analysis of SB 660*, at 4 (2016)

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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