

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 637 Impact Fees

SPONSOR(S): State Affairs Committee, Ways & Means Committee, Local, Federal & Veterans Affairs Subcommittee, DiCeglie and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 1066

FINAL HOUSE FLOOR ACTION: 81 Y's 37 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 637 passed the House on March 11, 2020, as CS/CS/CS SB 1066, as amended. The Senate refused to concur in the House amendment on March 13, 2020, and returned the bill to the House. The House insisted on the House amendment and requested the Senate to concur in the amendment on March 13, 2020. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on March 13, 2020.

Impact fees are imposed by counties, municipalities, and special districts to fund local infrastructure needed to expand local services to meet the demands of population growth caused by development. An impact fee ordinance enacted by a county, municipality, or special district must meet certain minimum statutory criteria. The calculation of the amount due must have a rational nexus both to the need for additional capital facilities and to the expenditures of funds collected and the benefits accruing to the new construction. Impact fees may not be collected prior to issuance of the building permit.

The bill prohibits new or increased impact fees from applying to current or pending permit applications submitted before the effective date of the ordinance imposing the new or increased fee, unless the new or increased impact fee will reduce the total mitigation costs or impact fees for an applicant. The bill requires counties and municipalities to credit against the collection of school impact fees any contribution related to public education facilities regardless of the requirement of any charter provision, comprehensive plan policy, ordinance, or resolution. The bill also makes impact fee credits assignable and transferable from one development or parcel to another within the same or adjacent impact fee zone or district in the same local government jurisdiction.

The bill is not expected to have a fiscal impact on the state and may have an indeterminate fiscal impact on local governments.

The bill was approved by the Governor on June 20, 2020, ch. 2020-58, L.O.F., and is effective on July 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Impact Fees

Impact fees are imposed by counties, municipalities, and special districts¹ to fund local infrastructure needed to expand local services to meet the demands of population growth caused by development.² Impact fees must meet the following minimum criteria when adopted:

- The fee must be calculated using the most recent and localized data.
- The local government adopting the impact fee must account for and report fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.
- Charges imposed for the collection of impact fees must be limited to the actual costs.
- All local governments must give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect. Counties and municipalities need not wait 90 days before decreasing, suspending, or eliminating an impact fee.³
- The local government may not require payment of the impact fee before the date of issuance of the building permit for the property that is subject to the fee.⁴
- The impact fee must be reasonably connected to, or have a rational nexus with the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.⁵
- The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction.⁶
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.⁷
- The local government may not use revenues generated by the impact fee to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with the increased impact generated by the new residential or commercial construction.⁸

The types of impact fees charged and the timing of the collection of such fees after issuance of the building permit are within the discretion of the local authorities choosing to impose the fees.⁹

The amount of the impact fee must have a rational nexus both to the need for additional capital facilities and to the expenditures of funds collected and the benefits accruing to the new construction.¹⁰ Meeting

¹ See, e.g., *Crocker v. Diland Corp.*, 593 So. 2d 1096 (Fla. 5th DCA 1992); *Pro-Art Dental Lab, Inc. v. V-Strategic Group, LLC*, 986 So. 2d 1244 (Fla. 2008) (approving *Crocker*, 593 So. 2d 1096, and addressing the interplay between the Florida Rules of Civil Procedure and s. 51.011, F.S.).

² S. 163.31801, F.S., the impact fee statute, uses "local government" inclusively to refer to counties, municipalities, and special districts. The statute distinguishes school districts from other local governments. See s. 163.31801(4), F.S.

³ S. 163.31801(3), F.S.

⁴ S. 163.31801(3)(e), F.S.

⁵ S. 163.31801(3)(f), F.S.

⁶ S. 163.31801(3)(g), F.S.

⁷ S. 163.31801(3)(h), F.S.

⁸ S. 163.31801(3)(i), F.S.

⁹ See s. 163.31801(2), F.S.

¹⁰ See ch. 2019-106, Laws of Fla, codified as s. 163.31801(3)(f)-(i), F.S. (Under long-standing court decisions, impact fees must have a reasonable connection, or nexus, between the need for additional capital facilities and the population growth generated by the project, and expenditures of the funds collected from the impact fees and the benefits accruing to the subdivision or project. This is known as the dual rational nexus test. See *St. Johns County v. Northeast Florida Builders*

this criterion requires the local ordinance or resolution imposing the impact fee to earmark the funds collected for acquiring the new capital facilities necessary to benefit the new residents.

Some local governments¹¹ impose impact fees specifically for local school facilities.¹² School districts have authority to impose ad valorem taxes within the district for school purposes¹³ but are not general purpose governments with home rule power¹⁴ and are not expressly authorized to impose impact fees.¹⁵ Local governments imposing specific impact fees for education capital improvements typically collect the fees for deposit directly into a segregated account for those improvements.¹⁶ Ordinances creating an impact fee must require the funds be used only for education capital improvement projects.¹⁷ The credit for impact fees imposed for public educational facilities must be based on the total impact fee assessed and not limited to the impact fee imposed for a particular type of school.¹⁸

Counties, municipalities, and special districts may not require payment of impact fees prior to the issuance of a development or building permit.¹⁹ In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.²⁰ A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.²¹

Concurrency

In the context of comprehensive planning, “concurrency” refers to the concept of timely providing additional public facilities necessary to achieve and maintain standards of service in the community in response to increased demand caused by development.²² All local government comprehensive plans must provide for concurrency in providing public facilities and services for sanitary sewer, solid waste, drainage, and potable water, but local governments may extend concurrency requirements to other public facilities such as transportation and schools.²³ When concurrency is applied to other public facilities and services, the local comprehensive plan must provide sufficient principles, standards, and adopted levels of service to guide its implementation.²⁴

Association, Inc., 583 So. 2d 635, 637 (Fla. 1991) (citing *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 611-612 (Fla. 4th DCA (1983), *rev. den.* 440 So. 2d 352 (Fla. 1983)).

¹¹ For purposes of the Community Planning Act (ch. 163, Part II, F.S., see s. 163.3161(1), F.S.), which includes s. 163.31801, F.S., the term “local government” means any county or municipality. S. 163.3164(29), F.S.

¹² See, e.g., Miami-Dade County Code of Ordinances ch. 33k, “Educational Facilities Impact Fee Ordinance,” Orange County Code of Ordinances ch. 23, art. V, “School Impact Fees.”

¹³ Art. VII, s. 9(a), art. IX, s. 4(b), Fla. Const.; s. 1011.71, F.S. See also *St. Johns County*, *supra* at 583 So. 2d 642.

¹⁴ See art. VIII, ss. 1(f)-(g) and (2), Fla. Const.

¹⁵ S. 163.31801(2), F.S.

¹⁶ In Miami-Dade County, the education facility impact fee is paid to the County Planning & Zoning Director, who must then deposit that amount into a specific trust fund maintained by the county. Miami-Dade County Code of Ordinances, ss. 33K-7(a), 33K-10(1). In Orange County, the school impact fee is paid to the county or municipality (if the land being developed is within a municipality), which then transfers the funds collected at least quarterly to the Orange County School District. The District is responsible for maintaining the trust into which the impact fee revenues are deposited. Orange County Code of Ordinances, ss. 23-142.

¹⁷ See Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).

¹⁸ S. 163.3180(6)(h)2.b., F.S. See s. 163.31801(4), F.S.

¹⁹ S. 163.31801(3)(e), F.S.

²⁰ S. 553.79, F.S.

²¹ S. 163.3164(16), F.S.

²² See s. 163.3180(5)(d), F.S. See also David M. Layman, “Concurrency and Moratoria,” 71 Fla. Bar. J., No. 1 (January 1997).

²³ S. 163.3180(1), (5), and (6), F.S.

²⁴ S. 163.3180(1)(a), F.S.

With certain exceptions, when establishing concurrency requirements for public education facilities,²⁵ the local government must enter into an interlocal agreement with the school district.²⁶ The interlocal agreement may authorize a contribution of land, construction, expansion, or payment for land acquisition, construction or expansion of a public school, or construction of a charter school, as proportionate-share mitigation. If so, the local government must credit such contribution towards a public education impact fee or exaction on a dollar-for-dollar basis at fair market value.²⁷ The credit for impact fees imposed for public educational facilities must be based on the total impact fee assessed and not limited to the impact fee imposed for a particular type of school.²⁸

Effect of the Bill

The bill provides that new or increased impact fees may not apply to current or pending permit applications submitted before the effective date of an ordinance or resolution imposing a new or increased fee. An exception is provided if applying a new or increased impact fee will reduce the total mitigation costs or impact fees for an applicant.

The bill provides that impact fee credits are assignable and transferable at any time after establishment from one development or parcel to another within the same or adjacent impact fee zone or district in the same local government jurisdiction.

The bill requires local governments to credit against the collection of school impact fees any contribution related to public education facilities regardless of the requirement of any county charter provision, comprehensive plan policy, ordinance, or resolution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimates the bill will have an indeterminate fiscal impact on local governments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

²⁵ S. 163.3180(6)(a), F.S.

²⁶ Ss. 163.31777(1) and 163.3180(6)(i), F.S.

²⁷ S. 163.3180(6)(h)2.b., F.S.

²⁸ *Id.*

D. FISCAL COMMENTS:

None.