HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 337 Impact Fees
SPONSOR(S): State Affairs Committee; Ways & Means Committee; Local Administration & Veterans Affairs Subcommittee; DiCeglie and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 750

FINAL HOUSE FLOOR ACTION: 94 **Y's** 23 **N's** **GOVERNOR'S ACTION:** Approved

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SUMMARY ANALYSIS

CS/CS/CS/HB 337 passed the House on April 21, 2021, and subsequently passed the Senate on April 26, 2021.

Impact fees are imposed by counties, municipalities, and some special districts to fund local infrastructure needed to expand local services to meet the demands of population growth caused by development. An impact fee enacted by a county or municipal ordinance or special district resolution 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 development construction. Impact fees may not be collected before issuing a building permit for the subject property.

The bill defines the terms "infrastructure" and "public facilities" and clarifies existing statutory text. In addition to local governments, the bill requires special districts to credit against the collection of impact fees any contribution related to public facilities towards impacts on the same type of public facilities for which the contribution was made. All credits against impact fee collections must be made regardless of any provision in local government or special district charter, comprehensive plan policy, ordinance, resolution, or development order or permit. In addition, the bill provides that the assignability and transferability of impact fees apply to all impact fee credits regardless of whether the credit was established before or after the effective date of the bill.

The bill provides that if a local government, school district, or special district impact fee increases not more than 25 percent above the current rate, the increase must be implemented in two equal annual increments. If a fee is increased between 25 and 50 percent above the current rate, the phase in is four equal installments. No impact fee increase may exceed 50 percent and an impact fee may not be increased more than once every four years. The bill provides an exception to these requirements if a local government, school district, or special district establishes the need for the increased impact fee pursuant to the rational nexus test, uses a study showing the extraordinary circumstances requiring the additional increase that was completed within 12 months before the increase, holds at least two publicly-noticed workshops, and adopts the increase by at least a two-thirds vote. Additionally, an impact fee may not be increased retroactively for a previous or current fiscal or calendar year. The impact fee increase limitations operate retroactively to January 1, 2021.

The bill revises a current affidavit requirement by requiring a local government, school district, or special district to submit with its annual financial report or its financial audit report an affidavit signed by its chief financial officer attesting, to the best of his or her knowledge, that all impact fees were collected and expended in compliance with the statute, the reporting entity complied with the spending period provision in the local ordinance or resolution, and that the funds were expended only for the uses allowed under the statute.

The Revenue Estimating Conference, on March 12, 2021, determined the bill would have a negative indeterminate impact on local government revenues. The bill does not have an impact on state government revenues.

The bill was approved by the Governor on June 4, 2021, ch. 2021- 63, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Impact Fees

Impact fees are imposed by local governments[1] to fund infrastructure needed to expand local services to meet the demands of population growth caused by new growth.[2] Impact fees must meet the following minimum criteria when adopted:

- The fee must be calculated using the most recent and localized data.[3]
- The local government adopting the impact fee must account for and report impact 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.[4]
- Charges imposed for the collection of impact fees must be limited to the actual costs.[5]
- 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, but need not wait 90 days before decreasing, suspending, or eliminating an impact fee. Unless the result reduces total mitigation costs or impact fees on an applicant, new or increased impact fees may not apply to current or pending applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.[6]
- A local government may not require payment of the impact fee before the date of issuing a building permit for the property that is subject to the fee.[7]
- 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.[8]
- 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.[9]
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.[10]
- 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.[11]

The types of impact fees charged and the timing of their collection after issuing a building permit are within the discretion of the local government or special district authorities choosing to impose the fees.[12]

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[1] S. 163.31801, F.S., 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.
[2] S. 163.31801(2), F.S.
[3] S. 163.31801(3)(a), F.S.
[4] S. 163.31801(3)(b), F.S.
[5] S. 163.31801(3)(c), F.S.
[6] S. 163.31801(3)(d), F.S.
[7] S. 163.31801(3)(e), F.S.
[8] S. 163.31801(3)(f), F.S.
[9] S. 163.31801(3)(g), F.S.
[10] S. 163.31801(3)(h), F.S.
[11] S. 163.31801(3)(i), F.S.
[12] *See* s. 163.31801(2), F.S.

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.[13] Meeting this criterion requires the local government 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 governments impose impact fees specifically for local school facilities.[14] School districts have authority to impose ad valorem taxes within the district for school purposes[15] but are not general purpose governments with home rule power[16] and are not expressly authorized to impose impact fees.[17] Local governments imposing specific impact fees for education capital improvements typically collect the fees for deposit directly into a segregated account for those improvements.[18] Ordinances creating such an impact fee must require the funds be used only for education capital improvement projects.[19] 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.[20]

Credits for impact fees may be assigned or transferred at any time once established, from one development or parcel to another within the same impact fee zone or district or within an adjoining impact fee zone or district within the same local government jurisdiction.[21] A local government that increases an impact fee must still provide the holder of any impact fee credit the full benefit of the density and intensity prepaid by the credit balance.[22]

Local governments may not require payment of impact fees prior to issuing a development or building permit.[23] In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.[24] 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.[25]

<u>Local Government Financial Reporting</u>

Counties, district school boards, municipalities with revenues or total expenditures and expenses exceeding $250,000, and special districts with revenues or total expenditures and expenses exceeding $100,000 must have an annual financial audit prepared either by the Auditor General or an

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[13] *See* 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 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)).
[14] *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.”
[15] 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.
[16] *See* art. VIII, ss. 1(f)-(g) and (2), Fla. Const.
[17] S. 163.31801(2), F.S.
[18] 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.
[19] *See* Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).
[20] S. 163.3180(6)(h)2.b., F.S.
[21] S. 163.31801(8), F.S.
[22] S. 163.31801(5), F.S. This subsection expressly operates prospectively.
[23] S. 163.31801(3)(e), F.S.
[24] S. 553.79, F.S.
[25] S. 163.3164(16), F.S.

independent certified public accountant.[26] The financial audit must be performed according to specific statutory criteria and the rules of the Auditor General.[27] Municipalities with revenues or total expenditures and expenses between $100,000 and $250,000, and special districts with revenues or total expenditures and expenses between $50,000 and $100,000, must have a financial audit prepared every three years.[28] All local government financial audits must be filed with the Auditor General no later than nine months from the end of the audited entity's fiscal year.[29] Municipalities with revenues or total expenditures and expenses less than $100,000 and special districts with revenues or total expenditures and expenses of less than $50,000 are not required to have their financial statements audited.[30] All local governmental entities are required to file an annual financial report with the Department of Financial Services no later than nine months after the end of the entity's fiscal year.[31]

The financial audit report of a county, municipality, special district, or district school board filed with the Auditor General must include an affidavit signed by the chief financial officer (CFO)[32] of the reporting entity that the local governmental entity or district school board has complied with the requirements of the impact fee statute.[33]

Effect of the Bill

<u>Definitions</u>

The bill defines "infrastructure" as a fixed capital expenditure or fixed capital outlay, excluding the cost of repairs or maintenance, associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of at least five years; related land acquisition, land improvement, design, engineering, and permitting costs; and other related construction costs required to bring the public facility into service. The term also includes a fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, a school bus,[34] and the equipment necessary to outfit the vehicle for its official use. For independent special fire control districts, the term includes "new facilities" as stated in the independent special fire control district statute.[35] The bill also defines "public facilities" as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks, and recreational facilities,[36] and expressly includes emergency medical, fire, and law enforcement facilities.

<u>Impact Fee Credits</u>

In addition to local governments, the bill requires special districts to credit against the collection of impact fees, on a dollar-for-dollar basis at fair market value, any contribution related to the improvement of public facilities or infrastructure towards impacts on the same type of public facilities for which the contribution was made. All credits against impact fee collections must be made regardless of

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[26] S. 218.39(1), F.S.
[27] S. 218.39(2)-(7), F.S. *See* ch. 10.550, Local Governmental Entity Audits (9-30-2019), at https://flauditor.gov/pages/pdf_files/10_550.pdf (last visited Jan. 21, 2021).
[28] S. 218.39(1)(g) and (h), F.S.
[29] S. 218.39(7), F.S.
[30] S. 218.39(1), F.S.
[31] S. 218.32(1), F.S. Local governments required to prepare a financial audit must file a copy of the audit report. S. 219.32(1)(d) F.S.
[32] The term "chief financial officer" for a local government is not defined in statute. For counties, the county commission may designate a county budget officer, typically either the county comptroller or the clerk of the circuit court. S. 129.025, F.S. The finances of a municipality are under the authority of the governing body, which may designate a municipal budget officer. S. 166.241, F.S. Special district boards are responsible for district financial management. S. 189.016(3), F.S. District school boards are responsible to manage and oversee district finances. S. 1001.42(12), F.S.
[33] S. 163.31801(6), F.S.
[34] S. 1006.25, F.S.
[35] S. 191.009(4), F.S.
[36] *See* s. 163.3164(39), F.S. The bill expressly cross-references to s. 163.3164, F.S.

any provision in a local government or special district charter, comprehensive plan policy, ordinance, resolution, or development order or permit.

The bill deletes the provision providing that the requirement to provide the holder of impact fee credits full benefit of the intensity and density prepaid by the credit operate prospectively. Additionally, the requirement for full assignability and transferability of impact fee credits is made applicable to all impact fee credits regardless if they were created before or after the effective date of the bill.[37]

<u>Impact Fee Increases</u>

The bill provides limitations on impact fee increases imposed by a local government, school district, or special district. An impact fee may increase only pursuant to a plan for the imposition, collection, and use of the increased impact fees that complies with the provisions in the bill. An impact fee may not be increased retroactively for a previous or current fiscal or calendar year.

Additionally, the bill limits impact fee increases as follows:

- An increase to a current impact fee rate of not more than 25 percent of the current rate must be implemented in two equal annual increments beginning with the date on which the increased fee is adopted.
- If the increased rate is between 25 and 50 percent of the current rate, the increase must be implemented in four equal installments.
- No impact fee increase may exceed 50 percent of the current impact fee rate.
- An impact fee may not be increased more than once every four years.

The bill provides an exception to these four specific requirements if a local government, school district, or special district increases an impact fee rate by first establishing the need for the increase pursuant to the rational nexus test. A local government or special district implementing this exception must use a study expressly demonstrating the extraordinary circumstances requiring the need to exceed the phase-in limitations, which study must be completed no earlier than 12 months before the adoption of the increase. In addition, the jurisdiction must hold at least two publicly noticed workshops on the extraordinary circumstances justifying the increase and must approve the increase by not less than a two-thirds majority vote of the governing body.

These limitations on impact fee increases operate retroactively to January 1, 2021.

<u>Financial Statement Audits</u>

The bill requires a local government, school district, or special district to submit with its annual financial report or its financial audit report an affidavit signed by its CFO attesting, to the best of his or her knowledge, that all impact fees were collected and expended in compliance with the statute, that the reporting entity complied with the spending period provision in the local ordinance or resolution, and that the funds were expended only for the uses allowed under the statute: acquiring, constructing, or improving the specific infrastructure needs.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference (REC) estimated that the bill will not impact state government revenues.

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[37] The bill directs the Division of Law Revision to replace the phrase “the effective date of this act” with the actual date the bill goes into effect.

2. Expenditures:

   The bill does not appear to have an impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The REC estimated the bill will have a negative indeterminate impact on local government revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   None.

D. FISCAL COMMENTS:

   None.