

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 Finance and Tax

BILL: CS/SB 750

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Impact Fees

DATE: March 30, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>Babin</u>	<u>FT</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 750 makes a number of changes regarding limitations on, and requirements for, the imposition of impact fees by local governments to fund local infrastructure to meet the demands of population growth.

The bill defines the terms “infrastructure” and “public facilities” to specify that impact fees may be utilized only for fixed capital expenditures or fixed capital outlays for major capital improvements.

In addition to local governments, the bill requires special districts to credit against the collection of impact fees any contribution related to public facilities. The requirement to credit contributions is expanded to apply to contributions related to all public facilities, rather than only public education facilities under current law. 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.

The bill provides local governments, school districts, and special districts may only increase impact fees as follows:

- For an increase of not more than 25 percent, the increase must be implemented in two equal annual increments;
- For an increase of between 25 and 50 percent, the increase must be implemented in four equal annual increments;

- Impact fees may not be increased by more than 50 percent; and
- Impact fees may not be increased more than once every four years.

However, local governments, school districts, and special districts may bypass the prescribed impact fee increase limitations if a proposed increase complies with certain impact fee requirements in current law, including adherence to the rational nexus test. Additionally, impact fees may not be increased retroactively for a previous or current fiscal or calendar year. The bill's impact fee increase provisions operate retroactively to January 1, 2021.

The bill revises a current affidavit requirement by providing that a local government, school district, or special district must submit with its annual financial report or its financial audit report an affidavit signed by its chief financial officer attesting that all impact fees were collected and expended in full compliance 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.

Finally, the bill adds school districts to a list of entities that must report additional information relating to their impact fees charged.

The Revenue Estimating Conference determined that the bill will have a negative indeterminate fiscal impact to local governments and school districts.

The bill takes effect upon becoming a law.

II. Present Situation:

Local Government Authority

The State 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

Under the State Constitution, local governments have no authority to levy taxes, other than ad valorem taxes, except as provided by general law.⁴ However, local governments have authority under their home rule authority to impose special assessments and user fees.⁵

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

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

⁴ *Collier County v. State*, 733 So. 2d 1012, 1014 (Fla. 1999).

⁵ *Id.*

Local Government Impact Fees

In Florida, impact fees are imposed pursuant to local legislation and are generally charged as a condition for the issuance of a project's building permit. The principle behind the imposition of impact fees is to transfer to new users of a government-owned system a fair share of the costs the new use of the system involves.⁶ Impact fees have become an accepted method of paying for public improvements that must be constructed to serve new growth.⁷ In order for an impact fee to be a constitutional user fee and not an unconstitutional tax, the fee must meet a dual rational nexus test, in that the local government must demonstrate the impact fee is proportional and reasonably connected to, or has a rational nexus with:

- The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
- The expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.⁸

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.

Until 2006, the characteristics and limitations of impact fees in Florida were found in case law rather than state statute.⁹ In 2006, in response to local governments' reliance on impact fees and the growth of impact fee collections, the Legislature adopted the Florida Impact Fee Act¹⁰, found in s. 163.31801, F.S., which requires local governing authorities to satisfy certain requirements when imposing impact fees.¹¹ Section 163.31801(3), F.S., provides requirements and procedures for the adoption of an impact fee. An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum, meet the following criteria:

- The fee must be calculated using the most recent and localized data.
- 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.
- 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, 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 *Contractors & Builders Ass'n of Pinellas County v. City of Dunedin*, 329 So. 2d 314, 317-318 (Fla. 1976).

⁷ *St. Johns County v. Ne. Florida Builders Ass'n, Inc.*, 583 So. 2d 635, 638 (Fla. 1991); s. 163.31801(2), F.S.

⁸ *See St. Johns County*, at 637. Codified at s. 163.31801(3)(f) and (g), F.S.

⁹ Office of Economic and Demographic Research, The Florida Legislature, *2020 Local Government Financial Information Handbook*, Dec. 2020, 13, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih20.pdf> (last visited March 28, 2021).

¹⁰ Ch. 2006-218, s. 9, Laws of Fla.

¹¹ *Supra* note 9.

- 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.
- 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.
- 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.
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.
- 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.

Meeting the dual rational nexus test 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.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 an account segregated for funding those improvements.¹⁶

Section 163.31801(4), F.S., provides that a local government must credit against the collection of an education-based impact fee any contribution for public education facilities on a dollar-for-dollar basis at fair market value.

Section 163.31801(5), F.S., provides that if a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under concurrency, developments of regional impact, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established.

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

¹³ FLA. CONST. art. VII, s. 9(a), and art. IX, s. 4(b); See s. 1011.71, F.S.

¹⁴ See FLA. CONST. art. VIII, ss. 1(f)-(g) and 2

¹⁵ Section 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. See Miami-Dade County Code of Ordinances, ss. 33K-7(a), 33K-10(c). 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 must be deposited. See Orange County Code of Ordinances, s. 23-142.

Financial Reporting

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 independent certified public accountant.¹⁷ 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 fiscal years.¹⁸ 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.¹⁹ All local governmental entities are required to file an annual financial report with the Department of Financial Services no later than nine months from the end of the entity's fiscal year.²⁰

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 officer²¹ of the reporting entity that the local governmental entity or district school board has complied with the requirements of the impact fee statute.²²

In addition to their annual financial reporting requirements, counties, municipalities, and special districts must report the following information on all impact fees charged:²³

- The specific purpose of the impact fee, including the specific infrastructure needs to be met, including, but not limited to, transportation, parks, water, sewer, and schools.
- The impact fee schedule policy describing the method of calculating impact fees, such as flat fees, tiered scales based on number of bedrooms, or tiered scales based on square footage.
- The amount assessed for each purpose and for each type of dwelling.
- The total amount of impact fees charged by type of dwelling.
- Each exception and waiver provided for construction or development of housing that is affordable.

III. Effect of Proposed Changes:

Definitions

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 with a life expectancy of at least 5 years; related land

¹⁷ Section 218.39(1), F.S.

¹⁸ Section 218.39(1), F.S.

¹⁹ Section 218.39(1), F.S.

²⁰ Section 218.39(1), F.S.

²¹ 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. Section 129.025, F.S. The finances of a municipality are under the authority of the governing body, which may designate a municipal budget officer. Section 166.241, F.S. Special district boards are responsible for district financial management. Section 189.016(3), F.S. District school boards are responsible to manage and oversee district finances. Section 1001.42(12), F.S.

²² Section 163.31801(6), F.S.

²³ Section 163.31801(11), F.S.

acquisition, land improvement, design, engineering, and permitting costs; and other related construction costs required to bring the public facility into service. For the independent special fire control districts, the term includes “new facilities” as defined in the independent special fire control district statute.²⁴ The bill also defines “public facilities” as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks, and recreational facilities, and expressly includes emergency medical, fire, and law enforcement facilities.

Impact Fee Credits

The bill expands the current requirement, added in 2019²⁵, for local governments to credit against impact fees any contributions related to public education facilities. First, the bill subjects special districts to the requirement. Second, it expands the credit requirement to any contribution related to public facilities, rather than only public education facilities under current law, and provides that contributions must be applied to reduce any impact fees, rather than only education-based impact fees under current law, on a dollar-for-dollar basis at fair market value. All credits against impact fee collections must be made regardless of any provision in a local government’s or special district’s charter, comprehensive plan policy, ordinance, resolution, or development order or permit.

Impact Fee Increases

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 of this bill.

The bill limits impact fee increases as follows:

- An impact fee increase 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 increase in rate is between 25 and 50 percent of the current rate, the increase must be implemented in four equal annual 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.
- An impact fee may not be increased retroactively for a previous or current fiscal or calendar year.

The bill provides an exception to the first four bulleted requirements above if a local government, school district, or special district increases an impact fee rate by first establishing the need for the increase in full compliance with the criteria set forth in current s. 163.31801(3), F.S., including adherence to the rational nexus test.

²⁴ Section 191.009(4), F.S. That statute defines “new facilities” as land, buildings, and capital equipment, including, but not limited to, fire and emergency vehicles, radio telemetry equipment, and other firefighting or rescue equipment.

²⁵ Chapter 2019-165, s. 5, Laws of Fla.

The bill provides that the above provisions relating to impact fee increases operate retroactively to January 1, 2021.

Financial Statement Audits

The bill revises financial reporting requirements to specify that the chief financial officer of a local government, school district, or special district, in his or her signed affidavit, must attest that:

- All impact fees were collected and expended by the local government, school district, or special district, or were collected and expended on its behalf, in full compliance with the spending period provision in the local ordinance or resolution; and
- Funds expended from each impact fee account were used only to acquire, construct, or improve specific infrastructure needs, as defined in s. 163.31801, F.S.

Additional Reporting Requirements

The bill adds school districts to the list of entities that must report the following information on all impact fees charged, in addition to the annual financial reporting requirements under s. 213.32, F.S.:

- The specific purpose of the impact fee, including the specific infrastructure needs to be met, including, but not limited to, transportation, parks, water, sewer, and schools.
- The impact fee schedule policy describing the method of calculating impact fees, such as flat fees, tiered scales based on number of bedrooms, or tiered scales based on square footage.
- The amount assessed for each purpose and for each type of dwelling.
- The total amount of impact fees charged by type of dwelling.
- Each exception and waiver provided for construction or development of housing that is affordable.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that except upon the 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 counties or municipalities have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirement does not apply to laws having an insignificant impact. Based on joint guidelines of the Legislature, the insignificant impact threshold for Fiscal Year 2020-2021, is approximately \$2.2 million.²⁶

²⁶ Neither the State Constitution nor the Florida Statutes define “insignificant fiscal impact” for purposes of s. 18(d), Art. VII of the State Constitution. Joint Senate and House guidelines define “insignificant” as an amount not greater than the average statewide population for the applicable fiscal year times \$0.10. *Senate President Margolis and Speaker of the House Wetherell, County and Municipality Mandates Analysis* (1991), cited at Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at

The mandate provisions may apply because the bill imposes limitations on a county and municipality's ability to increase impact fees. However, the bill provides an exception to the limitations if the county or municipality can demonstrate the proposed impact fee increase complies with certain statutory impact fee provisions, including adherence to the rational nexus test. If the impact of the limitations in the bill is determined to exceed \$2.2 million in the aggregate, final passage of the bill may require approval by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified. Lines 127 and 128 of the bill read: "This subsection [relating to limitations on impact fee increases] shall operate retroactively to January 1, 2021." Article I, s. 10 of the State Constitution prohibits the passage of bills of attainder, ex post facto laws, or laws impairing the obligation of contracts. If any revenues from a disallowed impact fee increase between January 1, 2021, to the effective date of the bill were pledged for financing for a project before the bill's effective date, there may arise a question of whether the retroactive operation of the bill unconstitutionally impairs a contractual obligation.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the bill will have a negative indeterminate fiscal impact to local governments and school districts.²⁷

<http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 28, 2021). The \$2.2 million figure is based on the Florida Demographic Estimating Conference's Nov. 13, 2020, population forecast for 2021 of 21,893,919. The conference packet is available at:

<http://www.edr.state.fl.us/Content/conferences/population/archives/201113demographic.pdf> (last visited March 28, 2021).

²⁷ Revenue Estimating Conference, *Analysis of Proposed Language*, March 12, 2021, available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/pdf/page173-195.pdf> (last visited March 28, 2021).

B. Private Sector Impact:

Private developers may avoid large future increases in local government impact fees with the impact fee increase limitations in the bill.

C. Government Sector Impact:

Local governments seeking to increase impact fees will be limited in the amount of such increase annually. However, the bill provides an exception to the limitation where a local government may increase impact fees beyond the bill's limitations if the local government can establish the need for the increase in full compliance with certain statutory impact fee provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.31801, F.S.

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

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

CS by Community Affairs on March 24, 2021:

The committee substitute:

- Removes the provision that impact fees may only be collected if the local government has planned or funded capital improvements.
- Removes the provision that local governments may not increase impact fees by more than 3 percent annually and instead institutes an alternative impact fee increase limitation scheme.
- Provides that an impact fee increase must be pursuant to a plan for the imposition, collection, and use of such fees.
- Provides an exception to the impact fee increase limitations if a proposed impact fee increase complies with certain statutory impact fee provisions, including adherence to the rational nexus test.
- Modifies the affidavit provision to remove the requirement that the local government's chief financial officer annually attest that impact fees collected were in full compliance with s. 163.31801, F.S.

B. Amendments:

None.

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