

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 227 Impact Fees

SPONSOR(S): Aubuchon

TIED BILLS: IDEN./SIM. BILLS: SB 580

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Military & Local Affairs Policy Committee</u>	<u></u>	<u>Fudge</u>	<u>Hoagland</u>
2)	<u>Civil Justice & Courts Policy Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Economic Development & Community Affairs Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Currently, the adoption of an impact fee ordinance is subject to the “fairly debatable” standard of review which favors local governments.

HB 227 requires the challenger of an impact fee to show, by a preponderance of the evidence, that the imposition or amount of the fee does not meet the requirements of state legal precedent or s. 163.31801, F.S. The bill also removes any deferential standard that favors either party.

The bill is effective July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Standard of Review of Impact Fee Ordinances

The adoption of an impact fee ordinance is a quasi-legislative function¹ and as such is subject to the “fairly debatable” standard of review. This standard of review is a highly deferential standard that requires approval of an action if reasonable persons could differ as to its propriety. *Martin County v. Yusem*, 690 So.2d 1288, 1295 (Fla. 1997). “In other words, ‘[a]n ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction that in no way involves its constitutional validity.’” *Id. citing, City of Miami Beach v. Lachman*, 71 So.2d 148, 152 (Fla.1953).

Recent Legislation

The Florida Impact Fee Review Task Force issued its Final Recommendations and Reports in February of 2006. The Task Force considered issues related to impact fees and recommended statutory direction on certain issues. However, on other issues presented to the Task Force, it did not recommend statutory direction. One of those issues was the legal burden of proof that a party challenging an impact fee must meet to successfully challenge an impact fee ordinance. Proponents argued that because of this burden, impact fee challenges are rarely successful.² Proponents recommended elimination of the “fairly debatable” standard and adoption of the “greater weight of the evidence” (preponderance of the evidence) standard. The Task Force voted eight to three against recommending statutory guidance to the legal burden of proof for impact fee challenges.³

In 2006, the “Impact Fee Act”⁴ was created to provide a framework for the creation of impact fee ordinances and levy of impact fees. The adoption of an impact fee must, at a minimum:

¹ *City of Cape Canaveral v. Rich*, 562 So.2d 445 (Fla. 5th DCA 1990), *citing Manatee County v. Circuit Court of the Twelfth Judicial Circuit*, 433 So.2d 537 (Fla. 2d DCA 1983)

² The Report indicates that very few impact fees have been challenged since 1991. Of the 282 responses to whether an impact fee was challenged, only 13 (4 percent) indicate that the impact fee was challenged. Task Force Report p. 8.

³ Final Recommendations and Reports of the Florida Impact Fee Review Task Force available at <http://www.floridalcir.gov/UserContent/docs/File/taskforce/020106finalreport.pdf>

⁴ s. 163.31801, F.S.

- 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 governmental entity imposes an impact fee to address its infrastructure needs, the entity shall 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 no less than 90 days before the effective date of an ordinance or resolution imposing a new or amended impact fee.⁵

The Act does not address challenges to impact fees.

Effect of Proposed Changes

HB 227 requires the challenger of an impact fee to show, by a preponderance of the evidence, that the imposition or amount of the fee does not meet the requirements of state legal precedent or s. 163.31801, F.S. The bill also removes any deferential standard that favors either party.

B. SECTION DIRECTORY:

Section 1: Creates section (5) of 163.31801, F.S., describing the burden of proof applicable to challenger of impact fee and removing deferential standard of review.

Section 2: Provides an effective date of July 1, 2009.

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:

None.

2. Expenditures:

Indeterminate: Some local governments may experience an increase in litigation costs due to removal of its deferential standard of review.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate: The removal of a deferential standard of review of impact fee ordinances may increase the likelihood of such challenges. The development community may or may not benefit from the passage of this bill.

D. FISCAL COMMENTS:

⁵ s. 163.31801(3), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take an action requiring expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES