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 1716
INTRODUCER:	Senator Garcia
SUBJECT:	Growth Management
DATE:	April 2, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	**Pre-meeting**
2.			TR	
3.			ED	
4.				
5.				
6.				

I. Summary:

SB 1716 exempts certain new development from having to comply with impact fee, transportation or school concurrency or proportionate share requirements for three years. The exemption lasts from July 1, 2013, through June 30, 2016. The exemption window will not apply to a new development if it is revoked by a two-thirds majority vote of the local government's governing authority, alters a local government's financing contracts or bonds, or the developer elects to not have the exemption applied.

This bill substantially amends sections 163.3180, 163.31801 of the Florida Statutes.

II. Present Situation:

Concurrency and Proportionate Share

Concurrency requires public facilities and services to be available concurrent with the impacts of new development. Concurrency in Florida is required for sanitary sewer, solid waste, drainage, and potable water.[1] Concurrency was formerly required for transportation, schools, and parks and recreation, but in 2011, the Legislature made concurrency for these facilities optional with the passage of the Community Planning Act.[2] Many local governments continue to exercise the option to impose concurrency on transportation and school facilities.

[1] Section 163.3180(1), F.S.
[2] Section 15, ch. 2011-139, L.O.F.

Concurrency is tied to provisions requiring local governments to adopt level-of-service (LOS) standards, address existing deficiencies, and provide infrastructure to accommodate new growth reflected in the comprehensive plan.[3] Local governments are charged with setting LOS standards within their jurisdiction, and if the LOS standards are not met, development permits may not be issued without an applicable exception.

Proportionate share is a tool local governments may use to require developers to help mitigate the impacts of their development. Proportionate share requires developers to contribute to or build facilities necessary to offset a new development's impacts.[4] The State provides specific formulas local governments must use when calculating proportionate share and specify criteria for when developers have satisfied proportionate share. Local governments may require proportionate share contributions from developers for both transportation and school impacts.[5]

Chapter 2011-139, Laws of Florida, the Community Planning Act (Act), enacted fundamental changes to growth management, including the statutory requirements for transportation concurrency and the calculation of proportionate share contributions. Most notably, the Act made transportation concurrency optional. If local governments elect to retain transportation concurrency, then their comprehensive plans must comply with the requirements included in s. 163.3180(5), F.S.

According to the Florida Department of Transportation, as of January 2013, nineteen local governments in Florida had rescinded transportation concurrency. In many instances, these local governments replaced transportation concurrency with alternative transportation mitigation strategies such as mobility fees, or developer agreements.

Impact Fees

The Florida Constitution grants local governments broad home rule authority. Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources. Impact fees are enacted by local ordinance. These fees require total or partial payment to counties, municipalities, special districts, and school districts for the cost of additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. 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 of the fee's earmarked purposes.

There are several characteristics common to legally sufficient impact fees. The fee is levied on new development or new expansion of existing development. The fee is a one-time charge, although collection may be spread out over time. The fee is earmarked for capital outlay only; operating costs are excluded. The fee represents a proportional share of the cost of the facilities needed to serve the new development. To withstand legal challenge, the governing authority

[3] Id.
[4] Fla. Dep't of Comty. Affairs, Transportation Concurrency: Best Practices Guide pg. 64 (2007), retrieved from http://www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (3/11/2013).
[5] Sections163.3180(5), F.S., and 163.3180(6), F.S.

should adopt a properly drafted impact fee ordinance. Such ordinance should specifically earmark funds collected for use in acquiring capital facilities to benefit new residents.

The legislature has found that impact fees are an important source of revenue for local governments to use in funding the infrastructure necessitated by growth. Due to the growth of impact fee collections and local governments' reliance on impact fees, the legislature imposes minimum standards local governments must comply with when adopting impact fees.[6]

At minimum, an impact fee adopted by ordinance of a county or municipality or by resolution of a special district 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 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 increased impact fee. A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.[7]

In 2009, HB 227 amended s. 163.31801, F.S., to codify the burden of proof for impact fee ordinance challenges.[8] Subsequently, several cities and counties and the Florida Association of Counties sued the Florida House and Senate claiming the bill was unconstitutional. One of the arguments raised by the plaintiffs was that the bill was an unconstitutional mandate.[9] As a result of the litigation, the legislature revisited the same bill in 2011, passing it with a vote of over two-thirds of both chambers to insure the constitutionality of the bill.[10]

According to a 2012 National Impact Fee Survey, 58 Florida jurisdictions have impact fees in place.[11] The same source indicates that 41 of Florida's 67 counties had enacted impact fees which cover a variety of facilities (roads, water, wastewater, school, etc.). It should be noted that at least 17 counties had voluntarily suspended the collection of impact fees at the time of the survey. Of the counties presently suspending impact fees eight are rural or designated Rural Areas of Critical Economic Concern.

III. Effect of Proposed Changes:

Section 1 creates subsection (7) in s. 163.3180, F.S., to provide that a local government may not apply transportation or school concurrency within its jurisdiction and may not require a proportionate-share contribution or construction for new development before July 1, 2016, unless authorized by a two-thirds vote of the local government's governing authority. The bill provides

[6] Section 163.31801, F.S.
[7] Section 163.31801(3), F.S.
[8] 2009-49, L.O.F.
[9] *Alachua County v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. 2010).
[10] 2011-149, L.O.F.
[11] Duncan Associates, *National Impact Fee Survey: 2012*, available at http://www.impactfees.com/publications%20pdf/2012_survey.pdf (last visited March 28, 2013).

exceptions for existing developments before July 1, 2013. The bill requires a certificate of occupancy by July 1, 2017, to maintain the exemption.

In order to maintain the exemption the bill provides the new development must consist of 10,000 square feet or less for anything classified as other than nonresidential, 50 dwelling units or less for anything classified as multifamily residential, or 30 dwelling units or less for anything classified as single-family residential to qualify for the exemption.

The bill states that this provision of law does not apply if it requires any modification to a local government's financing that would invalidate existing contracts, including debt obligations or covenants and agreements relating to bonds validated or issued by the local government. Upon written notification to the local government, a developer may elect to have the local government apply transportation or school concurrency and proportionate-share contribution or construction to a development.

The bill provides that the subsection expires on July 1, 2017.

Section 2 creates subsection (6) in s. 163.31801, F.S., to prohibit local governments from imposing any new or existing impact fee or any new or existing fee associated with the mitigation of transportation impacts on new development until July 1, 2016, unless authorized by a two-thirds vote of the local government's governing authority. Any governing authority of a local government imposing an impact fee in existence on July 1, 2012, must reauthorize the imposition of the fee pursuant to this paragraph. The bill provides exceptions for existing developments before July 1, 2013. The bill requires a certificate of occupancy by July 1, 2017, to maintain the exemption.

The bill states that this provision of law does not apply if it requires any modification to the financing of a county, municipality, or special district that would invalidate existing contracts, including debt obligations or covenants and agreements relating to bonds validated or issued by the county, municipality, or special district. Upon notification to the county, municipality, or special district, a developer may elect to have impact fees and fees associated with the mitigation of transportation impacts imposed on a development.

The bill provides that the subsection expires on July 1, 2017.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Sec. 18, of the Constitution of the State of Florida excuses local governments from complying with state mandates that impose negative fiscal consequences. Subsections (b) and (c) of the provision prohibits the Legislature from "enacting, amending, or repealing any general law if the anticipated effect" is to reduce county or municipal aggregate revenue generating authority or aggregate percentage of state shared

revenues as they exist on February 1, 1989, unless certain requirements are met. However, several exemptions and exceptions exist.

Subsection (d) of Art. VII, Sec. 18, of the Constitution of the State of Florida, exempts those laws that have an insignificant fiscal impact from the requirements of the mandates provision. Whether a particular bill results in a significant impact must be determined on an aggregate, statewide basis. Laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times $0.10 ($1.9 million for FY 2012-2013[12]), are exempt.[13]

The Revenue Estimating Conference has not met on this bill, so the financial impact is unknown at this time. If the overall collective financial impact exceeds $1.9 million per year in the aggregate, the bill would require the Legislature pass the bill by 2/3 of the membership of each chamber.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The exemptions could save private developers of the identified new developments and their clients substantial funds for a three-year period. This may lead to increased development based on the lower costs associated.

C. Government Sector Impact:

The proposed changes could reduce the amount of revenue collected by local governments, school boards and special districts for transportation and public school facilities. For local governments that charge impact fees for solid waste, sanitary sewer, drainage and potable water facilities, the financing of these facilities may be limited by this legislation.

[12] Based on the Demographic Estimating Conference's final population estimate for April 1, 2012, which was adopted on November 7, 2012. The Executive Summary can be found at: http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf (last visited on March 5, 2013).
[13] *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Fiscal Impact*, (September 2011), available at: http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited on March 5, 2013).

VI. Technical Deficiencies:

The bill title includes "providing for an extension of the prohibition under certain conditions" (lines 7-8 and 14-15), but there does not appear to be any such provisions in the bill itself.

According to a Department of Economic Opportunity analysis of an identical House bill, "the first phrase in the sentence on lines 42-46 of the bill is unclear: The phrase states that "New development must consist of 10,000 square feet or less for anything classified as other than nonresidential." Development is either residential or nonresidential, so the only development that is "classified as other than nonresidential" is residential. The bill could be read to mean that the 10,000 square foot limitation applies to residential land uses and there is no size limitation for nonresidential development (commercial, industrial, office, institutional, etc). That does not appear to be the intent of the bill.

This is likely a scrivener's error and the sentence should be corrected to say "10,000 square feet or less for anything classified as other than *residential*" or "10,000 square feet or less for anything classified as nonresidential" (deleting the words "other than").[14]

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

[14] Department of Economic Opportunity, *House Bill 321 Analysis*, (February 18, 2013) (on file with the Senate Community Affairs Committee).