

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Finance and Tax

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BILL: PCS/CS/SB 324 (841860)

INTRODUCER: Appropriations Subcommittee on Finance and Tax; Community Affairs Committee; and Senator Young

SUBJECT: Impact Fees

DATE: January 31, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 324 requires that the collection of an impact fee be no earlier than the issuance of the building permit for the property that is subject to the fee and provides that the statutory provisions related to impact fees do not apply to water and sewer connection fees.

The bill also codifies the dual rational nexus test. The bill requires impact fees to have a rational nexus with the need for additional capital facilities and the expenditures of the funds collected. The local government must specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents. The bill prohibits the use of impact fee revenues to pay existing debt unless certain conditions are met.

Lastly, the bill prohibits local governments from requiring developers to pay for land acquisition or construction of public facilities as a condition for approving a development order unless the local government has an ordinance imposing similar requirements on all developers.

The Revenue Estimating Conference (REC) has not completed an analysis of the bill; however, the REC has determined that the portions of the bill that prohibit the collection of impact fees prior to the issuance of a building permit will reduce local revenues by an indeterminate amount. Staff estimates that the remaining bill will reduce local revenues by an indeterminate amount.

## II. Present Situation:

The Florida 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

The Florida Statutes enumerate the powers and duties of all county governments, unless preempted on a particular subject by general or special law.<sup>4</sup> Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.<sup>5</sup> Article VIII, Section 2 of the State Constitution and s. 166.021, F.S., grant municipalities broad home rule powers.

Given these constitutional and statutory powers, local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization.<sup>6</sup> Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.<sup>7</sup>

### Impact Fees

Impact fees are enacted by local ordinance. These fees are tailored to pay the cost of additional infrastructure necessitated by new development. 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 or only part of the cost of the infrastructure improvement through utilization of the impact fee.

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<sup>1</sup> FLA. CONST. art VIII, s. 1(f).

<sup>2</sup> FLA. CONST. art VIII, s. 1(g).

<sup>3</sup> FLA. CONST. art VIII, s. 2(b). *See also* s. 166.021(1), F.S.

<sup>4</sup> Section 125.01, F.S.

<sup>5</sup> Section 125.01(1), F.S.

<sup>6</sup> The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution or a general law or special law regarding the power at issue. Article VII, s. 1 of the State Constitution prohibits counties and municipalities from levying a tax without express statutory authorization. However, local governments may levy special assessments and a variety of fees absent any general law prohibition, provided such home rule funding source meets the relevant legal sufficiency tests.

<sup>7</sup> For a catalogue of such revenue sources, see the most recent editions of the Florida Legislature's *Local Government Financial Information Handbook* and the *Florida Tax Handbook*.

In 2015, 38 counties reported impact fee revenues of approximately \$504 million, and 193 cities reported impact fee revenues of approximately \$225.3 million.<sup>8</sup> In 2016, 28 school districts reported impact fee revenues of approximately \$265.3 million.<sup>9</sup>

### **Statutory Authority for Impact Fees**

In 2006, the Legislature enacted s. 163.31801, F.S., which provides requirements and procedures to be followed by a county, municipality, or special district when it adopts an impact fee. An impact fee ordinance adopted by local government 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 government imposes an impact fee to address its infrastructure needs, the entity must 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 at least 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.<sup>10</sup>

### **The Dual Rational Nexus Test**

Impact fees have their roots in the common law. A number of court decisions have addressed challenges to the legality of impact fees.<sup>11</sup> In *Hollywood, Inc. v. Broward County*,<sup>12</sup> the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if (1) it offsets reasonable needs that are sufficiently attributable to the new development and (2) the fees collected are adequately earmarked for the acquisition of capital assets that will benefit the residents of the new development.<sup>13</sup> These two requirements are called the dual rational nexus test. In order to show the impact fee meets those requirements, the local government must demonstrate a rational relationship between the need for additional capital facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.<sup>14</sup>

In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when a residential development has no potential to increase school enrollment, public school impact fees may not be imposed.<sup>15</sup> The county in that case had imposed a school impact fee on a deed-

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<sup>8</sup> Office of Economic Demographic Research, The Florida Legislature, *Impact Fees*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm>. County Revenues were updated July 25, 2017, and City Revenues were updated September 28, 2017.

<sup>9</sup> *Id.* School District Revenues were updated October 5, 2017.

<sup>10</sup> Section 163.31801, F.S. Other sections of law also address the ability of local governments or special districts to levy impact fees. See ss. 163.3202(3), 191.009(4), and 380.06(15) and (16), F.S.

<sup>11</sup> See, e.g., *Contractors & Builders Ass'n v. City of Dunedin*, 329 So.2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So.2d 140 (Fla. 4th DCA 1983).

<sup>12</sup> *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA 1983).

<sup>13</sup> *Id.* at 611.

<sup>14</sup> *Id.* at 611-12.

<sup>15</sup> *Volusia County v. Aberdeen at Ormond Beach*, 760 So.2d 126, 134 (Fla. 2000).

restricted community for adults 55 years old and older. In *City of Zephyrhills v. Wood*, the Second District Court of Appeal upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.<sup>16</sup>

As developed under case law, an impact fee must have the following characteristics to be legal:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportionate share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions toward the cost of the increased capacity for public facilities.<sup>17</sup>

### **Time of Collection for Impact Fees**

The Florida Statutes do not specify when a local government must collect impact fees. As a result, the applicable local government makes this decision, and the time of collection varies. For example, in Orange County, residential impact fees are due when the building permit is issued, although the county allows the fee to be deferred in certain circumstances.<sup>18</sup> In contrast, in Volusia County, impact fees are due before the issuance of a certificate of occupancy or business tax receipt.<sup>19</sup>

### **Sector Plans**

Local governments are authorized to adopt sector plans into their comprehensive plans.<sup>20</sup> Sector planning is a process whereby local governments engage in long-term planning for a large area of land and address regional issues through adoption of detailed specific area plans within the planning area.<sup>21</sup> Sector plans are approved in two stages: first, the local government approves an amendment to its comprehensive plan, and second, the local government adopts development orders approving one or more detailed specific area plans.<sup>22</sup>

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<sup>16</sup> *City of Zephyrhills v. Wood*, 831 So.2d 223, 225 (Fla. 2d DCA 2002).

<sup>17</sup> The Florida Senate, Issue Brief 2010-310, 4 (Sept. 2009), available at [http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-310ca.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-310ca.pdf) (last visited Jan. 17, 2018).

<sup>18</sup> Orange County, Residential Impact Fees, <http://www.orangecountyfl.net/PermitsLicenses/Permits/ResidentialImpactFees.aspx#.WgnLs0kUmUI> (last visited Jan. 17, 2018).

<sup>19</sup> Volusia County, Frequently Asked Questions on Impact Fees, <https://www.volusia.org/services/growth-and-resource-management/impact-fees/faqs-impact-fees.stml> (last visited Jan. 17, 2018).

<sup>20</sup> Section 163.3245(1), F.S.

<sup>21</sup> Section 163.3164(42), F.S.

<sup>22</sup> Section 163.3245(3), F.S.

### III. Effect of Proposed Changes:

The bill provides that an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum, specify that the impact fee be collected no earlier than the issuance of the building permit for the property that is subject to the fee.

The bill also codifies the dual rational nexus test. Specifically, the bill requires that an impact fee 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; and
- The expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.

Additionally, the local government must specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents. Finally, the bill prohibits the use of impact fee revenues to pay existing debt or for prior 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.

The bill provides that water and sewer connection fees are excluded from the statutory provisions related to impact fees contained in s. 163.31801, F.S.

The bill provides that in adopting a detailed specific area plan or related development order a local government may not require a developer to contribute or pay for land acquisition or construction or expansion of public facilities unless the local government has enacted an ordinance that requires developers of other developments not within the sector planning area to contribute a proportionate share of the funds, land or public facilities necessary to accommodate any impacts having a rational nexus to the proposed development. Obligations to fund or construct new facilities or add to the present system of public facilities must have an essential nexus with, and be roughly proportionate to, the proposed development.

The bill provides that, within 30 days of receipt of an application for approval of a detailed specific area plan or related development order, a local government must review the application for completeness and issue a letter either indicating that all required information has been submitted or specifying, with particularity, any areas that are deficient. If the application is found to be deficient, the applicant must address the deficiencies within 30 days after receiving notice of the deficiencies by submitting the required additional information. The local government must approve, approve with conditions, or deny the application for a detailed specific area plan within 90 days after receipt of the initial or supplemental submission, whichever is later, unless the deadline is waived in writing by the applicant. An approval or denial of the application for approval of a detailed specific area plan or related development order must include written findings supporting the local government's decision.

The bill takes effect July 1, 2018.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

Subsection 18(b) of article VII of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect of doing so would be to reduce the authority that counties or municipalities have to raise revenues in the aggregate.

The county/municipality mandates provision of Art. VII, S. 18 of the Florida Constitution may apply because the bill restricts the time at which a county or municipality may collect its impact fees and prohibits counties and municipalities from requiring certain payments as a condition of approving a detailed specific area plan or related development order as part of sector planning.

The mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2017-2018 was \$2.05 million or less.<sup>23,24,25</sup> If the bill is determined to reduce the authority that counties and municipalities have to raise revenues in the aggregate and exceeds the threshold for insignificant fiscal impact, the bill may qualify as a mandate and require final passage by a two-thirds vote of the membership of each house of the Legislature.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

#### V. Fiscal Impact Statement:

##### A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) has not completed an analysis of this bill; however, the REC has determined that the portions of the bill that prohibit collection of impact fees prior to issuance of a building permit will reduce local revenues by an indeterminate amount. Staff estimates that the remaining portions of the bill will reduce local revenues by an indeterminate amount.

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<sup>23</sup> FLA. CONST. art. VII, s. 18(d).

<sup>24</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 17, 2018).

<sup>25</sup> Based on the Demographic Estimating Conference's population estimate adopted on December 5, 2017. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 18, 2018).

**B. Private Sector Impact:**

Developers will not have to pay impact fees prior to the issuance of the building permit for a property, and developers will not have to contribute or pay for land acquisition or construction of public facilities related to detailed specific area plans or related development orders unless the local government has an ordinance that imposes similar payments on developers of developments not within the sector planning area requiring that they contribute a proportionate share of the funds, land, or facilities necessary to accommodate any impacts having a rational nexus to the proposed development.

**C. Government Sector Impact:**

Counties, municipalities, and special districts will not be able to collect impact fees prior to the issuance of the building permit for a property, and local governments will not be able to require contributions of or payments for land or construction of public facilities as a condition for approving a detailed specific area plan or related development order unless the local government has an ordinance that imposes similar payments on developers of developments not within the sector planning area requiring that they contribute a proportionate share of the funds, land, or facilities necessary to accommodate any impacts having a rational nexus to the proposed development.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 163.31801 and 163.3245.

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

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

**Recommended CS by Appropriations Subcommittee on Finance and Tax on January 29, 2018:**

- Provides that impact fee requirements do not apply to water or sewer connection fees.
- Prohibits local governments from requiring developers to contribute or pay for land acquisition or construction of public facilities as a condition for approving a detailed specific area plan or related development order unless the local government has an ordinance that imposes similar payments on developers of developments not within the sector planning area requiring that they contribute a proportionate share of the funds, land, or facilities necessary to accommodate any impacts having a rational nexus to the proposed development.

**CS by Community Affairs Committee on December 5, 2017:**

- Provides that collection of impact fees may not occur before the issuance of the building permit, rather than the issuance of the certificate of occupancy, for the property that is subject to the fee.
- Requires that the impact fee 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; and
  - The expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.
- Requires the local government to specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents.
- Prohibits the use of impact fee revenues to pay existing debt or for prior 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.

**B. Amendments:**

None.