

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 697 Impact Fees

**SPONSOR(S):** Government Accountability Committee; Ways & Means Committee; Local, Federal & Veterans Affairs Subcommittee; Miller and others

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 324

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N, As CS	Miller	Miller
2) Ways & Means Committee	15 Y, 1 N, As CS	Curry	Langston
3) Government Accountability Committee	20 Y, 0 N, As CS	Miller	Williamson

### SUMMARY ANALYSIS

Impact fees are amounts imposed by local governments to fund local infrastructure needed to expand local services to meet the demands of population growth caused by development. The impact fee ordinances enacted by a county, municipality, or special district must meet certain minimum statutory criteria. However, the various types of impact fees for different infrastructure needs, the calculation of the amount due, and the timing of collecting these fees is currently at the discretion of each local government.

The bill prohibits any local government from requiring payment of impact fees any time prior to issuing a building permit. The bill codifies the requirement for impact fees to bear a rational nexus both to the need for additional capital facilities and to the expenditure of funds collected and the benefits accruing to the new construction. Local governments will be required to designate the funds collected by the impact fees for acquiring, constructing, or improving the capital facilities to benefit the new users. Impact fees collected by a local government may not be used to pay existing debt or pay for prior approved projects unless such expenditure has a rational nexus to the impact generated by the new construction. The bill further excludes fees charged for connecting to water and sewer systems.

The bill prohibits local governments from requiring in a specific area plan or related development order that a developer pay part or all the of costs to buy land or expand public facilities unless the local government has an ordinance requiring developers outside of the area plan to contribute a proportionate share of the funds, land, or public facilities necessary to offset the impacts of the development. When allowed by the statute, such funding obligation must have an essential nexus and be roughly proportionate to the proposed development. The bill also creates specific requirements and deadlines for a local government to review, process, and decide on applications for a specific area plan or related development order.

The bill may delay when impact fees are collected, but not the amount, thus does not restrict the amount of revenue local governments may raise nor require they expend additional amounts. Reflecting the possibility that payments may be delayed into later fiscal years than under current law, the Revenue Estimating Conference estimates the bill will have a negative indeterminate impact on local government revenues.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Impact Fees

Impact fees are amounts imposed by local governments to fund local infrastructure required to provide for increased local services needs caused by new growth.<sup>1</sup> Adopted by ordinance of a county, municipality, or special district, impact fees must meet the following minimum 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 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 are limited to the actual costs.
- All local governments are required to give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect. Counties and municipalities need not wait 90 days before decreasing, suspending, or eliminating an impact fee.<sup>2</sup>

The types of impact fees, amounts, and timing of collection are within the discretion of the local government authorities choosing to impose the fees.<sup>3</sup> The courts have found appropriate the imposition of impact fees where the local government meets two fundamental requirements known as the dual rational nexus test, which requires impact fees to have (1) a reasonable connection, or nexus, between the need for additional capital facilities and the population growth generated by the project, and (2) a reasonable connection, or nexus, between the expenditures of the funds collected from the impact fees and the benefits accruing to the subdivision or project.<sup>4</sup> Meeting the second criterion requires the local government ordinance imposing the impact fee to earmark the funds collected to acquire the new capital facilities necessary to benefit the new residents.

Some local governments require payment of impact fees prior to the issuance of a development or building permit.<sup>5</sup> In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.<sup>6</sup> A development permit pertains to any building

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<sup>1</sup> Section 163.31801(2), F.S.

<sup>2</sup> Section 163.31801(3), F.S.

<sup>3</sup> Currently, in Florida there are 67 counties, 413 municipalities, 1,056 independent special districts, and 634 dependent special districts. *See* ch. 7, F.S.; *The Local Government Formation Manual 2017-2018*, Appx. B, at <http://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2018&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf> (accessed 12/27/2017); Lists of Independent and Dependent Districts available through Dept. of Economic Opportunity, Special District Accountability Program, at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (accessed 12/27/2017).

<sup>4</sup> *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).

<sup>5</sup> *See*, e.g., Roads Impact Fee, ch. 2, art. VI, div. 2, s. 2-267(a), Land Development Code Lee County, Florida, at [https://library.municode.com/fl/lee\\_county/codes/land\\_development\\_code?nodeId=LADECO\\_CH2AD\\_ARTVIIMFE](https://library.municode.com/fl/lee_county/codes/land_development_code?nodeId=LADECO_CH2AD_ARTVIIMFE) (accessed 12/17/2017); Transportation Impact Fee, Ch. 56, Part I, s. 56-15.C.1, City of Orlando Code of Ordinances, at [https://library.municode.com/fl/orlando/codes/code\\_of\\_ordinances?nodeId=TITICICO\\_CH56IMFE](https://library.municode.com/fl/orlando/codes/code_of_ordinances?nodeId=TITICICO_CH56IMFE) (accessed 12/17/2017); Road Impact Fees, Miami-Dade County Code of Ordinances, s. 33E-6.1(c), at [https://library.municode.com/fl/miami-dade-county/codes/code\\_of\\_ordinances?nodeId=CD\\_MIAMI-DADE\\_CO\\_FLORIDA\\_CH33EROIMFEOR\\_S33E-6.1PAROIMFE](https://library.municode.com/fl/miami-dade-county/codes/code_of_ordinances?nodeId=CD_MIAMI-DADE_CO_FLORIDA_CH33EROIMFEOR_S33E-6.1PAROIMFE) (accessed 12/17/2017).

<sup>6</sup> Section 553.79, F.S.

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.<sup>7</sup>

Counties<sup>8</sup> and municipalities<sup>9</sup> may construct or acquire and operate water supply and wastewater disposal systems and may charge reasonable fees for the connection to and use of such systems.<sup>10</sup> Connection fees are charges imposed by the operator of a water supply or wastewater disposal system to defray the costs incurred for allowing additional users to tie into the system and may be considered a type of impact fee.<sup>11</sup>

### Sector Plans

Sector planning is a tool for large-area planning through which one or more local governments engage in long-term planning for areas of at least 5,000 acres. Sector plans are intended to promote and encourage long-term planning for conservation, development, and agriculture over a large land area, to support innovative and flexible planning and development strategies, to facilitate and emphasize protection of regionally significant resources, and to avoid duplication of effort in terms of the level of data and analysis required for a development of regional impact (DRI).<sup>12</sup>

Prior to the creation of sector planning, large scale planning was through primarily DRIs and traditional comprehensive plans.<sup>13</sup> When Florida's population and concomitant development began to increase dramatically in the 1990s, planners and lawmakers sought new options for a more long term and flexible approach to planning that maintained a principled focus on conservation.<sup>14</sup> This brought about the advent of sector plans in 1998.<sup>15</sup>

The sector planning process encompasses two levels: adoption in the local government's comprehensive plan of a long-term master plan, and subsequent adoption by local development order of two or more detailed specific area plans (DSAP) that implement the master plan.<sup>16</sup> Both levels require review and approval by affected local governments and appropriate regional and state authorities.<sup>17</sup>

In addition to other requirements, a long-term master plan must include maps, illustrations, data, and analysis to provide specific required information. A long-term master plan may use a planning period longer than that generally applicable for local comprehensive planning, including a phasing or staging schedule that allocates a portion of the local government's future growth to the planning area through the planning period. A long-term master plan must specify the projected population within the planning area during the chosen planning period but is not required to demonstrate need based upon projected population growth or on any other basis.<sup>18</sup>

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<sup>7</sup> Section 163.3164(16), F.S.

<sup>8</sup> Section 153.03, F.S.

<sup>9</sup> Section 180.06, F.S.

<sup>10</sup> Counties are expressly authorized to "fix and collect" fees for service, including connection fees. Section 153.03(3), F.S. Municipalities are authorized to establish "just and equitable" service rates or charges. Section 180.13, F.S.

<sup>11</sup> See *City of Zephyrhills v. Wood*, 831 So. 2d 223 (Fla. 2d DCA 2002); *Hernando County Water and Sewer District v. Hernando Board of Public Instruction*, 610 So. 2d 6 (Fla. 5th DCA 1992).

<sup>12</sup> Section 163.3245(1), F.S..

<sup>13</sup> David L. Powell, Gary K. Hunter, Jr., & Robert M. Rhodes, "Sector Plans," *Florida Environmental and Land Use Law*, 33.1-1 to 33.1-2 (The Florida Bar, June 2014) (herein "Sector Plans"), at <https://hgslaw.com/wp-content/uploads/2014-6-11-FINAL-Chapter-33-1-on-Sector-Plans.pdf>.

<sup>14</sup> Sector Plans, 33.1-2.

<sup>15</sup> Ch. 98-176, s. 15, Laws of Fla., codified at s. 163.3245, F.S.

<sup>16</sup> Section 163.3245(3), F.S.

<sup>17</sup> Section 163.3245, F.S.

<sup>18</sup> Section 163.3245(3)(a), F.S.

DSAPs must be consistent with the long-term master plan and generally must include conditions and commitments providing the following:

- Development or conservation of an area of at least 1,000 acres;
- Detailed identification and analysis of the maximum and minimum densities and intensities of use and the distribution, extent, and location of future land uses;
- Detailed identification of plans to address water needs of development in the DSAP;
- Detailed identification of the transportation facilities to serve the future land uses in the DSAP;
- Detailed identification of other regionally significant public facilities;
- Detailed identification of public facilities necessary to serve development in the DSAP;
- Detailed analysis and identification of specific measures to ensure the protection, restoration and management of lands within the boundary of the DSAP identified for permanent preservation through recordation of conservation easements;
- Detailed principles and guidelines addressing, among other things, the future land uses, achieving a healthy environment, limiting urban sprawl, providing a range of housing types, protecting wildlife and natural areas, and advancing the efficient use of resources; and
- Identification of specific procedures to facilitate intergovernmental coordination to address extra-jurisdictional impacts from the DSAP.<sup>19</sup>

As of July 1, 2014, there were seven approved sector plans in Florida:

- Bay County (West Bay Area Vision) Sector Plan;
- Orange County (Horizon West) Sector Plan;
- City of Bartow (Clear Springs) Sector Plan;
- Escambia County Sector Plan;
- Nassau County (East Nassau County) Sector Plan;
- Hendry County (Rodina) Sector Plan; and
- Osceola County (Northeast District) Sector Plan.<sup>20</sup>

### **Effect of the Bill**

The bill makes technical changes to s. 163.31801, F.S. The bill also prohibits a local government from requiring payment of impact fees prior to the issuance of a building permit. The bill codifies the dual rational nexus test by requiring an impact fee to have a rational nexus both to the need for additional capital facilities and to the expenditure of funds collected and the benefits accruing to the new construction. Local governments will be required to designate the funds collected by the impact fees for acquiring, constructing, or improving the capital facilities to benefit the new users. Impact fees collected by a local government may not be used to pay existing debt or pay for prior approved projects unless such expenditure has a rational nexus to the impact generated by the new construction. The bill excludes fees imposed for connection to water or sewer service from being treated as impact fees.

The bill prohibits local governments from requiring in a specific area plan or related development order that a developer pay part or all of the costs to buy land or expand public facilities unless the local government has an ordinance requiring developers outside of the area plan to contribute a proportionate share of the funds, land, or public facilities necessary to offset the impacts of the development. When allowed by the statute, such funding obligation must have an essential nexus and be roughly proportionate to the proposed development. The bill also creates specific requirements and deadlines for a local government to review, process, and decide on applications for a specific area plan or related development order.

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<sup>19</sup> Section 163.3245(3)(b), F.S. Like a long-term master plan, a DSAP may be based upon a planning period longer than the generally applicable planning period of the local comprehensive plan. Again, like a long term master plan, a DSAP must specify the projected population within the specific planning area during the chosen planning period but is not required to demonstrate need based upon projected population growth or on any other basis.

<sup>20</sup> Department of Economic Opportunity, *Sector Planning Program*, available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/sector-planning-program> (accessed 2/9/2018).

**B. SECTION DIRECTORY:**

Section 1: Amends s. 163.31801, F.S., codifying requirements for the collection and use of impact fees, making technical changes, and excluding fees imposed for connecting to water and sewer services.

Section 2: Amends s. 163.3245, F.S., prohibiting local governments from imposing certain costs or expenditures in a specific area plan or related development order unless certain conditions are met and creating specific requirements and deadlines for a local government to review, process, and decide on applications for a specific area plan or related development order.

Section 3: Provides an effective date of July 1, 2018.

**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:

The bill may delay when impact fees are collected, but not the amount, thus does not restrict the amount of revenue local governments may raise nor require they expend additional amounts. Reflecting the possibility that payments may be delayed into later fiscal years than under current law, the Revenue Estimating Conference estimates the bill will have a negative indeterminate impact on local government revenues.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The only impact to the private sector would be the potential effect on private financing of the change in timing of collecting the fees.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill neither requires nor authorizes administrative rulemaking by executive agencies.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 10, 2018, the Local, Federal & Veterans Affairs Subcommittee adopted a strike-all amendment and approved the bill as a committee substitute. The amendment made technical changes to s. 163.31801, F.S., revised the limitation on the timing of collecting impact fees to no earlier than the issuance of a building permit, and codified requirements for imposing and using impact fees articulated by the Florida Supreme Court in *St. Johns County v. Northeast Florida Builders Association, Inc.*, 583 So. 2d 635, 637 (Fla. 1991). Under the amendment, impact fees will be required to have a rational nexus to both the need for additional capital facilities and the expenditure of funds collected and the benefits accruing to the new construction. Local governments will be required to designate the funds collected by the impact fees for acquiring the capital facilities to benefit the new residents. Finally, impact fees collected by a local government may not be used to pay existing debt or to pay for prior approved projects unless such expenditure has a rational nexus to the impact generated by the new construction.

On January 17, 2018, the Ways & Means Committee adopted an amendment and approved the bill as a committee substitute. The amendment prohibited local governments from requiring the payment of impact fees prior to issuing a building permit and specified that local governments must also designate funds collected by impact fees for acquiring, constructing, or improving capital facilities to benefit new users.

On February 8, 2018, the Government Accountability Committee adopted two amendments and approved the bill as a committee substitute. The first amendment excludes fees charged for connecting to water and sewer systems from the impact fee provisions in the bill. The second amendment prohibits local governments from imposing certain costs or expenditures in a specific area plan or related development order unless certain conditions are met and creates specific requirements and deadlines for a local government to review, process, and decide on applications for a specific area plan or related development order.

This analysis is drawn to the committee substitute as approved by the Government Accountability Committee.