

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 207 Impact Fees

**SPONSOR(S):** Local, Federal & Veterans Affairs Subcommittee, Donalds and others

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 144

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N, As CS	Miller	Miller
2) Commerce Committee	22 Y, 0 N	Smith	Hamon
3) State Affairs Committee	22 Y, 0 N	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 may delay when impact fees are collected, but not the amount, thus it 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<sup>1</sup> to fund local infrastructure required to provide for increased local services needs caused by new growth.<sup>2</sup> Impact fees must meet the following minimum criteria when adopted by ordinance of a county, municipality, or special district:

- 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 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. Counties and municipalities need not wait 90 days before decreasing, suspending, or eliminating an impact fee.<sup>3</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>4</sup> The courts have found the imposition of impact fees appropriate 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>5</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 impose impact fees specifically for local school facilities.<sup>6</sup> School districts have authority to impose ad valorem taxes within the district for school purposes<sup>7</sup> but are not general purpose governments with home rule power<sup>8</sup> and are not expressly authorized to impose impact fees.<sup>9</sup> 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.<sup>10</sup> The

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<sup>1</sup> S. 163.31801, the impact fee statute, uses “local government” inclusively to refer to counties, municipalities, and special districts. The statute distinguishes school districts from other local governments. *See* s. 163.31801(4), F.S.

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

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

<sup>4</sup> Currently, in Florida there are 67 counties, 413 municipalities, 1,091 independent special districts, and 637 dependent special districts. *See* ch. 7, F.S.; *The Local Government Formation Manual 2018-2020*, Appx. B, at <http://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General Publications&FileName=2018-2020 Local Government Formation Manual Final.pdf> (last accessed 1/18/2019); Lists of Independent and Dependent Districts available through Dept. of Economic Opportunity, Special District Accountability Program, at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last accessed 1/18/2019).

<sup>5</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>6</sup> *See, e.g.*, Miami-Dade County Code of Ordinances ch. 33K, “Educational Facilities Impact Fee Ordinance;” Orange County Code of Ordinances ch. 23, art. V, “School Impact Fees.”

<sup>7</sup> Art. VII, s. 9(a), art. IX, s. 4(b), Fla. Const.; s. 1011.71, F.S. *See also* *St. Johns County*, *supra* at 583 So. 2d 642.

<sup>8</sup> *See* art. VIII, ss. 1(f)-(g), (2), Fla. Const.

<sup>9</sup> S. 163.31801(2), F.S.

<sup>10</sup> 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. Miami-Dade County Code of Ordinances, ss. 33K-7(a), 33K-10(1). In

ordinances creating the impact fee also require the funds be used only for education capital improvement projects.<sup>11</sup>

Some local governments require payment of impact fees prior to the issuance of a development or building permit.<sup>12</sup> In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.<sup>13</sup> A development permit pertains to any building 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>14</sup>

Counties<sup>15</sup> and municipalities<sup>16</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>17</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>18</sup>

### **Effect of the Bill**

The bill 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 further excludes fees imposed for connection to water or sewer service from being treated as impact fees. Finally, the bill makes conforming changes to s. 163.31801, F.S.

### **B. SECTION DIRECTORY:**

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

Section 2: Provides an effective date of July 1, 2019.

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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. Orange County Code of Ordinances, ss. 23-142.

<sup>11</sup> See Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).

<sup>12</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) (last accessed 1/18/2019); 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=TITIICICO\\_CH56IMFE](https://library.municode.com/fl/orlando/codes/code_of_ordinances?nodeId=TITIICICO_CH56IMFE) (last accessed 1/18/2019); 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=PTIICOOR\\_CH33EROIMFEOR\\_S33E-6.1PAROIMFE](https://library.municode.com/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH33EROIMFEOR_S33E-6.1PAROIMFE) (last accessed 1/18/2019).

<sup>13</sup> S. 553.79, F.S.

<sup>14</sup> S. 163.3164(16), F.S.

<sup>15</sup> S. 153.03, F.S.

<sup>16</sup> S. 180.06, F.S.

<sup>17</sup> Counties are expressly authorized to “fix and collect” fees for service, including connection fees. S. 153.03(3), F.S. Municipalities are authorized to establish “just and equitable” service rates or charges. S. 180.13, F.S.

<sup>18</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).

**STORAGE NAME:** h0207e.SAC

**DATE:** 3/14/2019

## 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 it 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 primary impact to the private sector would be the potential effect on private financing of the change in timing of collecting the impact 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 February 20, 2019, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed a provision providing for an award of attorney fees to a party who successfully challenged the imposition of an impact fee by a local government.

This analysis is drafted to the committee substitute as passed by the Local, Federal & Veterans Affairs Subcommittee.