

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 Finance and Tax

BILL: CS/SB 1066

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Impact Fees

DATE: February 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Ryon	CA	Fav/CS
2.	Babin	Diez-Arguelles	FT	Pre-meeting
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1066 imposes new requirements related to impact fees. The bill:

- Requires impact fee calculations to use data obtained within the most recent 36 months and exclude any costs that do not meet specific definitions for infrastructure and public facility.
- Limits the cost per student station in school impact fee calculations to the maximum cost per student station calculated for purposes of capital outlay projects under s. 1013.64, F.S.
- Prohibits the application of a new or increased impact fee to pending permit applications.

The bill requires each county or municipality assessing impact fees to establish an impact fee review committee to:

- Establish policy and methodology for determining impact fees on new developments;
- Review proposed impact fees on each new development before the fee becomes final;
- Submit recommendations to the county or city commission; and
- Review all proposed expenditures of an impact fee after adoption by the local government to ensure that the fee is used for capital projects within the jurisdiction.

The bill also provides that impact fee credits are assignable and transferable at any time after establishment from one development or parcel to another within the same impact fee jurisdiction for the same type of applicable public facility. Provisions for crediting contributions in lieu of impact fees of greater value and those related to a transportation system and mobility as well as the timing for contribution acceptance and commitment are also outlined.

The Revenue Estimating Conference estimates that the bill will have an indeterminate, positive or negative, impact on local impact fee revenues beginning in Fiscal Year 2020-2021.

The bill takes effect July 1, 2020.

II. Present Situation:

Local Government Authority

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.¹ 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.² 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.³

Local Government Impact Fees

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,⁴ regulatory fees, and special assessments⁵ to pay the cost of providing a facility or service or regulating an activity. As one type of regulatory fee, impact fees are charges imposed by local governments against new development to pay for the cost of capital facilities made necessary by such growth.⁶ 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. With respect to a school impact fee, the fee is imposed by the respective board of county commissioners at the request of the school board.

Section 163.31801(3), F.S., provides requirements and procedures for the adoption of an impact fee. An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

- 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; and

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

³ FLA. CONST. art. VIII, s. 2(b); s. 166.021(1), F.S.

⁴ Office of Economic and Demographic Research, The Florida Legislature, *2019 Local Government Financial Handbook*, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf> (last visited Feb. 12, 2020). Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.

⁵ *Id.* Special assessments are typically used to construct and maintain capital facilities or to fund certain services.

⁶ *See supra* note 4 at p. 13.

- 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.

Some local governments impose impact fees specifically for local school facilities.⁷ School districts have authority to impose ad valorem taxes within the district for school purposes⁸ but are not general purpose governments with home rule power⁹ and are not expressly authorized to impose impact fees.¹⁰ 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.¹¹ Local government ordinances creating the impact fee also typically stipulate that the funds be used only for education capital improvement projects.¹² The credit imposed for impact fees imposed for public educational facilities must be based on the total impact fee assessed and not limited to the impact fee imposed for a particular type of school.¹³

Section 163.31801(5), F.S., provides that if a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under concurrency, developments of regional impact, or otherwise,¹⁴ which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established.¹⁵

Section 163.31801(7), F.S., provides that in any action challenging an impact fee or the government's failure to provide required dollar-for-dollar credits for the payment of impact fees, as provided in s. 163.3180(6) (h) 2.b., F.S.,¹⁶ the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee or credit meets the requirements of state legal precedent and s. 163.31801, F.S. The court may not use a deferential standard for the benefit of the government.

Chapter 2019-165, Laws of Fla., amended s. 163.31801, F.S., to codify the 'dual rational nexus test' for impact fees, as articulated in case law. This test requires an impact fee to be proportional

⁷ See, e.g., Miami-Dade County Code of Ordinances ch. 33K, *Educational Facilities Impact Fee Ordinance* and Orange County Code of Ordinances ch. 23, art. V, *School Impact Fees*.

⁸ FLA. CONST. art. VII, s. 9(a), and art. IX, s. 4(b); See s. 1011.71, F.S.

⁹ See FLA. CONST. art. VIII, ss. 1(f)-(g) and 2

¹⁰ Section 163.31801(2), F.S.

¹¹ 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. See Miami-Dade County Code of Ordinances, ss. 33K-7(a), 33K-10(c). In 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. See Orange County Code of Ordinances, s. 23-142.

¹² See Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).

¹³ Section 163.3180(6)(h)2.b., F.S.

¹⁴ Local governments often specify types of credits and how they operate.

¹⁵ This subsection shall operate prospectively and not retrospectively.

¹⁶ With respect to school concurrency applied by a local government, when a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a specified charter school is used as proportionate-share mitigation, the local government is required to credit such contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by a local ordinance for the same need, on a dollar-for-dollar basis.

and have a reasonable connection, or rational nexus, between 1) the proposed new development and the need and the impact of additional capital facilities, and 2) the expenditure of funds and the benefits accruing to the proposed new development.¹⁷ Local governments are prohibited from requiring the payment of impact fees prior to issuing a property's building permit.¹⁸

Additionally, ch. 2019-165, Laws of Fla., established that impact fee funds must be earmarked for capital facilities that benefit new residents and may not be used to pay existing debt unless specific conditions are met.¹⁹ Provisions also authorized a local government to provide an exception or waiver for an impact fee for affordable housing. If a local government provides such an exception or waiver, it is not required to use any revenues to offset the impact.²⁰ Impact fee provisions in s. 163.31801, F.S., do not apply to water and sewer connection fees.

Concurrency and Proportionate Share

Concurrency requires public facilities and services to be available concurrent with the impacts of new development. 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 (CPA).²¹ Concurrency on a statewide basis is required only for sanitary sewer, solid waste, drainage, and potable water. However, any local government is authorized to extend the concurrency requirement to additional public facilities within its jurisdiction.²² "Area" or "area of jurisdiction" within the CPA means the total area qualifying under the act, whether this be all of the lands lying within the limits of an incorporated municipality, lands in and adjacent to incorporated municipalities, all unincorporated lands within a county, or areas comprising combinations of the lands in incorporated municipalities and unincorporated areas of counties.²³

Many local governments continue to exercise the option to impose concurrency on transportation and school facilities. If a local government elects to apply concurrency to either transportation or school facilities, or both, its comprehensive plan must provide principles, guidelines, standards, and strategies, including adopted levels of service,²⁴ to guide its application of concurrency requirements.²⁵ 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.²⁶ Local governments are charged with setting LOS standards within their jurisdictions. The local comprehensive plan must demonstrate, for required or optional concurrency requirements, that the adopted LOS standards

¹⁷ Section 163.31801(3)(f) and (g), F.S.

¹⁸ Section 163.31801(3)(e), F.S.

¹⁹ Section 163.31801(3)(h) and (i), F.S.

²⁰ Section 163.31801(8), F.S.

²¹ Chapter 2011-139, s. 15, Laws of Fla.

²² Section 163.3180(1), F.S.

²³ Section 163.3164(6), F.S.

²⁴ "Level of service" is defined in s. 163.3164(28), F.S., to mean "an indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of the facility. Level of service shall indicate the capacity per unit of demand for each public facility."

²⁵ See ss. 163.3180(5) and (6), F.S., with respect to concurrency applied to transportation facilities and to public education facilities, respectively.

²⁶ See generally s. 163.3180, F.S.

can be reasonably met, and infrastructure needed to ensure that the LOS standards are achieved and maintained for a five-year period must be identified.²⁷ Generally, 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 notwithstanding a failure to achieve and maintain the adopted LOS standards.²⁸ Proportionate share generally requires developers to contribute to costs, or build facilities, necessary to offset a new development's impacts.²⁹ Local governments may require proportionate share contributions from developers for both transportation and school impacts.³⁰

A local government applying the concurrency requirement to transportation facilities must comply with the statutory requirements in order to achieve and maintain the LOS standard adopted in the comprehensive plan.³¹ A local government that later repeals transportation concurrency is encouraged to apply statutory criteria to an alternative mobility funding system. A mobility fee-based funding system adopted by a local government must comply with the dual rational nexus test applicable to impact fees.³²

With respect to school concurrency applied by a local government, when a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a specified charter school is used as proportionate-share mitigation, the local government is required to credit such contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by a local ordinance for the same need, on a dollar-for-dollar basis.³³

School Per-Student Station Costs

Each district school board must meet all educational plant space needs of its elementary, middle, and high schools.³⁴ Section 1013.64(6)(b)1, F.S., specifies maximum total costs per student station for each school level as of January 2006, adjusted annually to reflect increases or decreases in the Consumer Price Index. Chapter 2019-23, Laws of Fla., directed the Department of Education in conjunction with the Office of Economic and Demographic Research to review and adjust the cost per student station limits to reflect actual construction costs by January 1, 2020, and annually thereafter.

²⁷ Section 163.3180(1)(b), F.S.

²⁸ Florida Department of Community Affairs (now Department of Economic Opportunity), *Transportation Concurrency: Best Practices Guide*, pg. 64 (2007), available at http://www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (last visited Feb. 12, 2020).

²⁹ *Id.*

³⁰ Sections 163.3180(5) and 163.3180(6), F.S.

³¹ Section 163.3180(5), F.S.

³² Section 163.3180(5)(i), F.S.

³³ Section 163.3180(6)(h)2.b., F.S.

³⁴ Section 1013.64(6), F.S.

Capital Assets, Infrastructure and Public Facilities

As used in the Rules of the Auditor General, Chapter 10.550 on Local Government Entity Audits, “generally accepted accounting principles” are those accounting principles generally accepted in the United States of America, as defined by the Governmental Accounting Standards Board (GASB).³⁵ The GASB definition of capital assets and their link to infrastructure assets includes:

...land, improvements to land, easements, buildings, building improvements, vehicles, machinery, equipment, works of art and historical treasures, infrastructure, and all other tangible or intangible assets that are used in operations and that have initial useful lives extending beyond a single reporting period. Infrastructure assets are long-lived capital assets that normally are stationary in nature and normally can be preserved for a significantly greater number of years than most capital assets. Examples of infrastructure assets include roads, bridges, tunnels, drainage systems, water and sewer systems, dams, and lighting systems.³⁶

Section 212.055(2), F.S., authorizes counties to levy a local government infrastructure surtax. For the purposes of the surtax, the term “infrastructure” means any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service.³⁷ An allowable meaning for a public facility is one used in the Community Planning Act: major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities.³⁸

III. Effect of Proposed Changes:

Section 1 amends s. 163.31801, F.S., to provide definitions for both “infrastructure” and “public facility” as they relate to impact fees in this section of law. Infrastructure means:

- Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of a public facility, excluding the cost of repairs or maintenance, that have a life expectancy of 5 or more years;
- Any related land acquisition, land improvement, design, engineering, and permitting costs; and
- All other related construction costs required to bring the public facility into service.

The term public facility is defined similarly to its meaning in the Community Planning Act, i.e., a major capital improvement, including transportation, sanitary sewer, solid waste, drainage,

³⁵ State of Florida Auditor General, *Rules of the Auditor General, Chapter 10.550 Local Government Entity Audits* (Sep. 30, 2019) available at https://flauditor.gov/pages/pdf_files/10_550.pdf (last visited Feb. 12, 2020).

³⁶ See Governmental Accounting Standards Board, *Capital Assets –Project Plan* available at https://www.gasb.org/jsp/GASB/GASBContent_C/ProjectPage&cid=1176173270952 (last visited February 12, 2020).

³⁷ Section 212.055(2)(d)1., F.S.

³⁸ Section 163.3164(39), F.S.

potable water, educational, parks and recreational facilities and would, with the bill, also include a fire and law enforcement facility.

Minimum impact fee requirements are amended to include that:

- The data upon which an impact fee is calculated be collected within the last 36 months and exclude any cost that does not meet the definition of infrastructure.
- The cost per student station established in school impact fee calculations may not exceed the statutory total maximum cost per student station.
- New or increased impact fees may not apply to current or pending permit applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.

This section of the bill also amends s. 163.31801, F.S., to provide that:

- An existing required local government affidavit of compliance with s. 163.31801, F.S., must also state compliance with spending period provisions of an impact fee.
- Factors surrounding an action challenging an impact fee or a government's failure to provide credits for the payment of an impact fee also include a challenge for contributions made and these types of challenges apply within all of ch. 163, F.S.
- Impact fee credits are assignable³⁹ and transferable at any time after establishment from one development or parcel to another within the same impact fee jurisdiction for the same type of public facility for which the impact fee is applicable.
- A local government shall provide impact fee credits or other forms of compensation if a contribution is greater in value than the applicable impact fee.
- Contributions related to a transportation system are creditable against the combined total of all impact fees and exactions charged for mobility.
- The above provisions apply at the time any contribution is accepted, regardless of when the contributions were agreed upon or committed to.

Section 163.31801, F.S., is further amended to require a county or municipality that assesses impact fees to establish an impact fee review committee. Committee members:

- Must be qualified electors of the county or municipality for whom they were appointed;
- Must include:
 - Two county or municipality employees (and an alternate);
 - Two business community members (and an alternate);
 - Two local residential contractors (and an alternate);
 - One at-large member;
- Must serve without compensation at the pleasure of the local government until they are replaced; and
- Automatically forfeit appointment after missing two-thirds of the meetings within a calendar year.

Committees must duly notice committee meetings and committee meetings may not be held unless a quorum is present.

³⁹ Assignability is the quality or attribute which permits a thing to be transferred or negotiated. *See* BLACK'S LAW DICTIONARY (6th ed. 1990).

The committee shall meet as needed to:

- Establish a policy and methodology for determining impact fees on new developments.
- Review proposed impact fees on each new development before the fees becomes final.
- Submit recommendations made by the impact fee consultant to the local government at meetings when impact fees on new development will be discussed and voted upon.

After the adoption of each impact fee, the committee shall review all proposed expenditures of that impact fee to ensure the fee is used for capital projects within the jurisdiction.

Section 2 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18(a) of the Florida Constitution, provides that municipalities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. However, the mandate requirement does not apply to laws having an insignificant impact,⁴⁰ which for Fiscal Year 2020-2021 is forecast at approximately \$2.2 million.^{41,42}

Article VII, Section 18(b) of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that cities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. As in Subsection 18(a), the mandate requirement does not apply to laws having an insignificant impact.

Under this bill, municipalities and counties that assess impact fees will incur costs related to the administration of the newly required impact fee review committees and they may realize a reduction in impact fee collections (revenues) as a result of the newly provided definitions for infrastructure and public facility. If costs are determined to exceed \$2.2 million in the aggregate, and no other exemption or exception applies, in order to be binding on the municipalities and counties, the bill must contain a finding of important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature. If a reduction in authority to raise revenues is found and the reduction exceeds the aggregate threshold, final passage of the bill would require approval by two-thirds of the membership of each house of the Legislature.

⁴⁰ 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 Feb. 5, 2020).

⁴¹ FLA. CONST. art. VII, s. 18(d).

⁴² Based on the Florida Demographic Estimating Conference's December 3, 2019 population forecast for 2020 of 21,555,986. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 5, 2020).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Committee estimates that the bill will have an indeterminate, positive or negative, impact on local revenues.⁴³

B. Private Sector Impact:

The bill's provisions related to assignable and transferable impact fee credits and impact fee contribution crediting may have an indeterminate impact on holders of such credits or contributions.

C. Government Sector Impact:

Local governments will likely incur additional expenses to accommodate the administrative facets of the bill's required impact fee review committee and may incur expenses if their current impact fee calculations are based on data older than 36 months.

VI. Technical Deficiencies:

Lines 78-79 outline provisions when new or increased impact fees apply to "current or pending permit applications." The sponsor may want to clarify whether these are "building permit applications" as referenced elsewhere in s. 163.31801, F.S., or may include other types of permits.

VII. Related Issues:

None.

⁴³ Office of Economic and Demographic Research, *Revenue Estimating Conference Impact Results: CS/CS/HB 637 (Similar SB 1066)*, 414-430 (Feb. 7, 2020), available at http://www.edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/Impact0207.pdf (last visited Feb. 12, 2020).

VIII. Statutes Affected:

This bill substantially amends section 163.31801 of the Florida Statutes.

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

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

CS by Community Affairs on February 10, 2020:

The committee substitute:

- Provides impact fee related definitions for infrastructure and public facility.
- Establishes a 36-month age-of-data requirement for analysis sources used to calculate impact fees.
- Provides that new or increased impact fees may not apply to current or pending permit applications submitted prior to the effective date of an ordinance imposing new or increased fees.
- Includes contributions within exiting impact fee challenge provisions and makes the challenges applicable to all of ch. 163, F.S.
- Clarifies that impact fee credits are assignable and transferrable within the same impact fee jurisdiction.
- Provides directives on how and when contributions in lieu of impact fees are credited.
- Removes a requirement that an impact fee review committee select an impact fee consultant.

B. Amendments:

None.