

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 637 Impact Fees

SPONSOR(S): State Affairs Committee, Ways & Means Committee, Local, Federal & Veterans Affairs Subcommittee, DiCeglie and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1066

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	13 Y, 1 N, As CS	Moehrle	Miller
2) Ways & Means Committee	12 Y, 2 N, As CS	Aldridge	Langston
3) State Affairs Committee	20 Y, 0 N, As CS	Moehrle	Williamson

SUMMARY ANALYSIS

Impact fees are imposed by local governments to fund local infrastructure needed to expand local services to meet the demands of population growth caused by development. An impact fee ordinance enacted by a county, municipality, or special district must meet certain minimum statutory criteria. The calculation of the amount due must have a rational nexus both to the need for additional capital facilities and to the expenditures of funds collected and the benefits accruing to the new construction. The timing of collecting these fees must occur after issuance of the building permit.

The bill requires counties, municipalities, and special districts that adopt, collect, and administer an impact fee, to calculate the fee based on the most recent and localized data collected within the last 36 months and exclude any cost that does not meet the definition of "infrastructure." The local government must segregate the revenues and expenditures of any impact fee that addresses the entity's infrastructure needs in a separate impact fee account. New or increased impact fees may not apply to current or pending permit applications submitted before the effective date of an ordinance imposing a new or increased impact fee. However, reductions in impact fees may apply to current or pending permit applications.

The bill requires each local government chief financial officer to file an affidavit each year stating all impact fees were collected and expended in full compliance with the statute and that the local government complied with the timing for spending impact fees required under the ordinance or regulation creating the fee.

The bill makes impact fee credits assignable and transferable from one development or parcel to another within the jurisdiction of the local government imposing the impact fee for the same type of public facility to which the fee applies. Local governments must provide impact fee credits or other forms of compensation where a contribution is greater in value than the applicable impact fee. Contributions for transportation impacts must be credited against the total of impact fees, mobility fees, and other charges for transportation. The bill defines "mobility plan" and "mobility fee."

The bill requires local governmental entities assessing impact fees to establish an impact fee review committee composed of five members and three alternate members. Local governments may use existing committees provided they contain representation from the building or development community. The bill also provides committee duties and procedures for holding meetings and establishing quorums.

The bill is not expected to have a fiscal impact on the state and may have an indeterminate fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Impact Fees

Impact fees are imposed by local governments¹ to fund local infrastructure needed to expand local services to meet the demands of population growth caused by development.² Impact fees must meet the following minimum criteria when adopted:

- 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.³
- The local government may not require payment of the impact fee before the date of issuance of the building permit for the property that is subject to the fee.⁴
- The impact fee must 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.⁵
- The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction.⁶
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.⁷
- The local government may not use revenues generated by the impact fee to pay existing debt or for previously 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.⁸

The types of impact fees charged and the timing of the collection of such fees after issuance of the building permit are within the discretion of the local government authorities choosing to impose the fees.⁹

The amount of the impact fee must have a rational nexus both to the need for additional capital facilities and to the expenditures of funds collected and the benefits accruing to the new construction.¹⁰ Meeting

¹ See, e.g., *Crocker v. Diland Corp.*, 593 So. 2d 1096 (Fla. 5th DCA 1992); *Pro-Art Dental Lab, Inc. v. V-Strategic Group, LLC*, 986 So. 2d 1244 (Fla. 2008) (approving *Crocker*, 593 So. 2d 1096, and addressing the interplay between the Florida Rules of Civil Procedure and s. 51.011, F.S.).

² S. 163.31801, F.S., 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.

³ S. 163.31801(3), F.S.

⁴ S. 163.31801(3)(e), F.S.

⁵ S. 163.31801(3)(f), F.S.

⁶ S. 163.31801(3)(g), F.S.

⁷ S. 163.31801(3)(h), F.S.

⁸ S. 163.31801(3)(i), F.S.

⁹ See s. 163.31801(2), F.S.

¹⁰ See ch. 2019-106, Laws of Fla, codified as s. 163.31801(3)(f)-(i), F.S. (Under long-standing court decisions, impact fees must have a reasonable connection, or nexus, between the need for additional capital facilities and the population growth generated by the project, and expenditures of the funds collected from the impact fees and the benefits accruing to the subdivision or project. This is known as the dual rational nexus test. See *St. Johns County v. Northeast Florida Builders Association, Inc.*, 583 So. 2d 635, 637 (Fla.

this criterion requires the local government ordinance or resolution imposing the impact fee to earmark the funds collected for acquiring the new capital facilities necessary to benefit the new residents.

Some local governments impose impact fees specifically for local school facilities.¹¹ School districts have authority to impose ad valorem taxes within the district for school purposes¹² but are not general purpose governments with home rule power¹³ and are not expressly authorized to impose impact fees.¹⁴ Local governments imposing specific impact fees for education capital improvements typically collect the fees for deposit directly into a segregated account for those improvements.¹⁵ Ordinances creating an impact fee must require the funds be used only for education capital improvement projects.¹⁶ The credit 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.¹⁷

Local governments may not require payment of impact fees prior to the issuance of a development or building permit.¹⁸ In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.¹⁹ 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.²⁰

Local Government Financial Reporting

Counties, district school boards, municipalities with revenues or total expenditures and expenses exceeding \$250,000, and special districts with revenues or total expenditures and expenses exceeding \$100,000 must have an annual financial audit prepared either by the Auditor General or an independent certified public accountant.²¹ The financial audit must be performed according to specific statutory criteria and the rules of the Auditor General.²² Municipalities with revenues or total expenditures and expenses between \$100,000 and \$250,000, and special districts with revenues or total expenditures and expenses between \$50,000 and \$100,000, must have a financial audit prepared every three years.²³ All local government financial audits must be filed with the Auditor General no later than nine months from the end of the audited entity's fiscal year.²⁴ Municipalities with revenues or total expenditures and expenses less than \$100,000 and special districts with revenues or total expenditures and expenses of less than \$50,000 are not required to have their financial statements audited.²⁵ All local governmental entities are required to file an annual financial report with the Department of Financial Services no later than nine months from the end of the end of the entity's fiscal year.²⁶

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)).

¹¹ 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."

¹² 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.

¹³ See art. VIII, ss. 1(f)-(g) and (2), Fla. Const.

¹⁴ S. 163.31801(2), F.S.

¹⁵ 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 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 are deposited. Orange County Code of Ordinances, ss. 23-142.

¹⁶ See Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).

¹⁷ S. 163.3180(6)(h)2.b., F.S.

¹⁸ S. 163.31801(3)(e), F.S.

¹⁹ S. 553.79, F.S.

²⁰ S. 163.3164(16), F.S.

²¹ S. 218.39(1), F.S.

²² S. 218.39(2)-(7), F.S. See ch. 10.550, Local Governmental Entity Audits (9-30-2019), at https://flauditor.gov/pages/pdf_files/10_550.pdf (last visited Feb. 21, 2020).

²³ S. 218.39(1)(g) and (h), F.S.

²⁴ S. 218.39(7), F.S.

²⁵ *Id.*

²⁶ S. 218.32(1), F.S. Local governments required to have prepare a financial audit file a copy of the audit report. S. 219.32(1)(d) F.S.

The financial audit report of a county, municipality, special district, or district school board filed with the Auditor General must include an affidavit signed by the chief financial officer (CFO)²⁷ of the reporting entity that the local governmental entity or district school board has complied with the requirements of the impact fee statute.²⁸

Concurrency

In the context of comprehensive planning, “concurrency” refers to the concept of timely providing additional public facilities necessary to achieve and maintain standards of service in the community in response to increased demand caused by development.²⁹ All local government comprehensive plans must provide for concurrency in providing public facilities and services for sanitary sewer, solid waste, drainage, and potable water, but local governments may extend concurrency requirements to other public facilities such as transportation and schools.³⁰ When concurrency is applied to other public facilities and services, the local comprehensive plan must provide sufficient principles, standards, and adopted levels of service to guide its implementation.³¹

A local government applying concurrency to transportation facilities must comply with certain requirements in order to achieve and maintain the level of service standard provided in the comprehensive plan.³² 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.³³

Local governments may also apply concurrency to public education facilities.³⁴ With certain exceptions, when establishing such concurrency requirements, the local government must enter into an interlocal agreement with the school district.³⁵ The interlocal agreement may authorize a contribution of land, construction, expansion, or payment for land acquisition, construction or expansion of a public school, or construction of a charter school, as proportionate-share mitigation. If so, the local government must credit such contribution towards any other impact fee or exaction on a dollar-for-dollar basis at fair market value.³⁶ The credit 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.³⁷

Mobility Plans and Fees

A “mobility fee” is a transportation system charge designed to recoup the proportionate costs of transportation demand generated by all new development. The focus is new development due to the fee’s association with transportation concurrency systems and its use to fund planned transportation facilities and services.³⁸ Those portions of local government comprehensive plans containing land use

²⁷ The term “chief financial officer” for a local government is not defined in statute. For counties, the county commission may designate a county budget officer, typically either the county comptroller or the clerk of the circuit court. S. 129.025, F.S. The finances of a municipality are under the authority of the governing body, which may designate a municipal budget officer. S. 166.241, F.S. Special district boards are responsible for district financial management. S. 189.016(3), F.S. District school boards are responsible to manage and oversee district finances. S. 1001.42(12), F.S.

²⁸ S. 163.3180(6), F.S.

²⁹ See s. 163.3180(5)(d), F.S. See also David M. Layman, “Concurrency and Moratoria,” 71 Fla. Bar. J., No. 1 (January 1997).

³⁰ S. 163.3180(1), (5), and (6), F.S.

³¹ S. 163.3180(1)(a), F.S.

³² S. 163.3180(5), F.S.

³³ S. 163.3180(5)(i), F.S.

³⁴ S. 163.3180(6)(a), F.S.

³⁵ Ss. 163.31777(1) and 163.3180(6)(i), F.S.

³⁶ S. 163.3180(6)(h)2.b., F.S.

³⁷ S. 163.3180(6)(h)2.b., F.S.

³⁸ Center for Urban Transportation Research, *Evaluation of the Mobility Fee Concept Final Report*, University of South Florida (Nov. 2009), available at cutr.usf.edu/wp-content/uploads/2012/08/Evaluation-of-the-Mobility-Fee-Concept-CUTR-Webcast-04.21.11.pdf (last visited Feb. 20, 2020).

and transportation strategies and capital improvement projects supporting and funding mobility constitute a “mobility plan.”³⁹

The Community Renewal Act⁴⁰ introduced the concept of “mobility plans” and “mobility fees.” According to the Act, the “existing transportation concurrency system has not adequately addressed the transportation needs of this state in an effective, predictable, and equitable manner...”⁴¹ The Department of Community Affairs⁴² and the Florida Department of Transportation were directed to establish a methodology for implementing a mobility fee and file a joint report that included recommended legislation and a plan to implement the mobility fee as a replacement for transportation concurrency.⁴³ Transportation concurrency is no longer state mandated but is optional for local governments.⁴⁴ Local governments are encouraged to adopt mobility plans and fees as an alternative to transportation concurrency, proportionate share, and road impact fees.⁴⁵

Effect of the Bill

Definitions

The bill revises the definition of “infrastructure” to include “new facilities” as stated in the independent special fire control district statute.⁴⁶ The bill defines the term “public facilities” to include any facility as defined in s. 163.3164(41), F.S.,⁴⁷ and expressly includes public libraries, parks, emergency medical services, and fire and law enforcement facilities. The bill defines the terms “mobility plan” and “mobility fee,” which are currently undefined in statute. “Mobility fee” means in part a local government fee schedule established by ordinance and based on the projects included in the adopted mobility plan. “Mobility plan” means in part an integrated land use and transportation plan adopted into a local government comprehensive plan that promotes compact, mixed-use, and interconnected development served by a multimodal transportation system.

Impact Fee Formula

The bill requires counties, municipalities, and special districts that adopt, collect, and administer an impact fee to calculate the impact fee based on the most recent and localized data collected within the last 36 months and exclude any cost that does not meet the definition of “infrastructure.” The bill defines the term “infrastructure” as any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities, excluding the costs of repair or maintenance, that have a life expectancy of five 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 facilities into service.

The bill limits the cost per student station established in school impact fee calculations to the statutory total maximum cost per student established in s. 1013.64(6), F.S.⁴⁸

³⁹ *Id.*

⁴⁰ S. 163.3161(a), F.S.

⁴¹ Ch. 2009-96, Laws of Fla. The legislation called for a mobility fee process designed to: provide for mobility needs, ensure that development provides mitigation for its impacts on the transportation system in approximate proportionality to those impacts, fairly distribute the fee among the governmental entities responsible for maintaining the impacted roadways, and promote compact, mixed-use, and energy-efficient development.

⁴² The Department of Community Affairs was the state’s land planning and community development agency and was abolished in 2011. *See* ch. 2011-142, Laws of Fla. In that act, the Department of Economic Opportunity was designated as the state land planning agency.

⁴³ Ch. 2009-96, Laws of Fla.

⁴⁴ Ch. 2011-14, Laws of Fla.

⁴⁵ Ch. 2013-78, Laws of Fla.

⁴⁶ S. 191.009(4), F.S.

⁴⁷ S. 163.3164(39), F.S., defines “public facilities” as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks, and recreational facilities. The bill renumbers s. 163.3164(39), F.S., as s. 163.3164(41), F.S.

⁴⁸ Currently, the total maximum costs per student are elementary schools: \$17,952; middle schools: \$19,386, high schools: \$25,181.

The bill requires the local government to segregate the revenues and expenditures of any impact fee that addresses the entity's infrastructure needs in a separate impact fee account.

Collection of Impact Fees

The bill provides that 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. The bill specifies that reductions in impact fees may apply to current or pending permit applications.

Financial Statement Audits

The bill requires the CFO of the local governmental entity or district school board annually to attest in an affidavit under penalty of perjury that all impact fees were collected and expended in full compliance with the statute and confirm the reporting entity complied with the spending period provision in the local ordinance. Additionally, the CFO must attest that the funds were expended only for the uses allowed under the statute: acquiring, constructing, or improving public facilities to meet the specific infrastructure needs caused by the growth. The affidavit must be filed with the governing body of the local governmental entity or the district school board, as applicable, and must be posted on the website of the local government or district school board for at least a year after filing.

Impact Fee Credits

The bill provides that impact fee credits are assignable and transferable at any time after establishment from one development or parcel to another within the jurisdiction of the local government imposing the impact fee for the same type of public facility for which the impact fee is applicable. The bill requires local governments to provide impact fee credits or other forms of compensation where a contribution is greater in value than the applicable impact fee. Contributions relating to the transportation system are creditable against the combined total of all impact fees, mobility fees, and other exactions charged to mitigate transportation impacts.

Impact Fee Review Committee

The bill requires each local governmental entity assessing impact fees to establish an impact fee review committee composed of the following members appointed by the county commission or municipal governing body, none of whom may be an elected official or employee of the appointing entity:

- Two members representing the business community;
- Two members who are local licensed general or residential contractors; and
- One at-large member.

The appointing entity must appoint three alternate members, consisting of one representative from each of the categories described above, who must serve in the absence of their respective member.

Committee members must be qualified electors of the county for at least two years before their appointment and serve at the pleasure of the local government until replaced. The committee must have a quorum present before it may conduct a meeting (alternate members count toward the quorum when a regular member is absent). A member who fails to attend three consecutive meetings, or fails to attend two-thirds of the meetings within a calendar year, automatically forfeits the appointment and the county or city commissioners must promptly fill the vacancy. Committee members serve without compensation.

Each committee meeting must be duly noticed and open to the public as required by s. 286.011, F.S. The committee must meet as needed to:

- Establish a policy and methodology for determining impact fees on new developments;
- Review the proposed impact fee on each new development before the fee becomes final;

- Submit recommendations to the county or city commission, as applicable, and present the recommendations at the meeting when the impact fee on the new development will be discussed and voted upon; and
- After an impact fee is adopted by the local government, review all proposed expenditures of that impact fee to ensure the fee is used for capital projects within the jurisdiction.

In lieu of creating an impact fee review committee, local governments may use existing committees if they contain representation from the building or development community and review building or development projects.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3163, defining “mobility fee” and “mobility plan.”

Section 2: Amends s. 163.31801, F.S., revising conditions that local governments must satisfy before imposing impact fees, providing timeframes for the collection of impact fees, requiring specified entities to file an affidavit attesting that impact fees were appropriately collected and expended, amending the requirements for reporting impact fees, amending the conditions under which impact fees are assignable and transferable, providing definitions, and requiring certain counties and municipalities to establish impact fee review committees.

Section 3. Amends s. 212.055, F.S., correcting a cross-reference.

Section 4: Provides an effective date of July 1, 2020.

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 Revenue Estimating Conference estimates the bill will have an indeterminate fiscal impact on local governments.

2. Expenditures:

The bill may have an impact on local government expenditures for staffing the impact fee review committee; however, such costs should be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

The bill provides that the impact fee review committee is formed by the local governmental entity imposing impact fees and provides that members are appointed and replaced by the county commission or the governing body of the municipality. It is unclear how this requirement would apply to special districts imposing impact fees.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Local, Federal & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised the impact fee calculation to be based on localized data calculated within the last 36 months;
- Removed language relating to Capital Asset under Generally Accepted Accounting Principles (GAAP);
- Removed the requirement that local governments prepare and post an annual financial report for each impact fee trust fund;
- Provided a definition of “infrastructure” for the purposes of impact fees;
- Required local governments to provide impact fee credits or other forms of compensation where a contribution is greater in value than the applicable impact fee;
- Required contributions relating to the transportation system be creditable against the combined total of all impact fees and exactions charged for mobility;
- Removed the requirement that the impact fee review committee hire an impact fee consultant; and
- Required the committee rather than the impact fee consultant submit recommendations to the governing body of the local government.

On February 3, 2020, the Ways & Means Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Amended the definition of “infrastructure” for the purposes of impact fees;
- Specified that each committee meeting must be duly noticed and open to the public as required by s. 286.011, F.S.; and
- Provided other technical and clarifying changes.

On February 20, 2020, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised the definition of “infrastructure” to include “new facilities” as stated in the independent special fire control district statute;
- Revised the definition of “public facility” to include public libraries, parks, and emergency medical services;
- Defined the terms “mobility plan” and “mobility fee;”

- Specified that reductions in impact fees may apply to current or pending permit applications;
- Clarified that impact fee credits are assignable and transferable within the jurisdiction of the local government imposing the fee;
- Required the local government CFO to file annually an affidavit under penalty of perjury attesting that all impact fees were collected and expended in full compliance with the statute and that the local government complied with the timing for spending impact fees required under the ordinance or regulation creating the fee;
- Required the CFO affidavit to be filed with the governing body of the entity no later than nine months after the end of the entity's fiscal year and required the affidavit to be posted on the local government's website for at least a year after filing;
- Reduced the membership of the impact fee review committee from seven to five members, removing local government elected officials and employees from the committee;
- Allowed local governments to use existing committees, which contain representation from the building or development community and that review building or development projects; and
- Corrected a cross-reference in statute.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.