

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 337 Impact Fees

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

TIED BILLS: **IDEN./SIM. BILLS:** SB 750

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|------------------|---------|--|
| 1) Local Administration & Veterans Affairs Subcommittee | 13 Y, 5 N, As CS | Renner | Miller |
| 2) Ways & Means Committee | 15 Y, 2 N, As CS | Curry | Aldridge |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

Impact fees are imposed by counties, municipalities, and some special districts to fund local infrastructure needed to expand local services to meet the demands of population growth caused by development. An impact fee enacted by a local government (county or, municipality) ordinance or special district resolution 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 development construction. Impact fees may not be collected before issuing a building permit for the subject property.

The bill defines the terms “infrastructure” and “public facilities” and clarifies existing statutory text. In addition to local governments, the bill requires special districts to credit against the collection of impact fees any contribution related to public facilities towards impacts on the same type of public facilities for which the contribution was made. All credits against impact fee collections must be made regardless of any provision in local government or special district charter, comprehensive plan policy, ordinance, resolution, or development order or permit.

The bill provides that if a local government, school district, or special district impact fee increases not more than 25 percent above the current rate, the increase must be implemented in two equal annual increments. If a fee is increased between 25 and 50 percent above the current rate, the phase in is four equal installments. No impact fee increase may exceed 50 percent and an impact fee may not be increased more than once every four years. The bill provides an exception to these requirements if a local government, school district, or special district establishes the need for the increased impact fee pursuant to the rational nexus test. Additionally, an impact fee may not be increased retroactively for a previous or current fiscal or calendar year. The impact fee limitations must operate retrospectively to January 1, 2021.

The bill revises a current affidavit requirement by providing that a local government, school district, or special district must submit with its annual financial report or its financial audit report an affidavit signed by its chief financial officer attesting, to the best of his or her knowledge, that all impact fees were collected and expended in compliance with the statute, the reporting entity complied with the spending period provision in the local ordinance or resolution, and that the funds were expended only for the uses allowed under the statute: acquiring, constructing, or improving the specific infrastructure needs.

The Revenue Estimating Conference on March 12, 2021, determined the bill will have a negative indeterminate impact on local government revenues. The bill does not have an impact on state government revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Impact Fees

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

- The fee must be calculated using the most recent and localized data.³
- The local government adopting the impact fee must account for and report impact 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.⁴
- Charges imposed for the collection of impact fees must be limited to the actual costs.⁵
- 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, but need not wait 90 days before decreasing, suspending, or eliminating an impact fee. Unless the result reduces total mitigation costs or impact fees on an applicant, new or increased impact fees may not apply to current or pending applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.⁶
- A local government may not require payment of the impact fee before the date of issuing a building permit for the property that is subject to the fee.⁷
- 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.⁸
- 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.⁹
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.¹⁰
- 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.¹¹

The types of impact fees charged and the timing of their collection after issuing a building permit are within the discretion of the local government or special district authorities choosing to impose the fees.¹²

¹ 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.

² S. 163.31801(2), F.S.

³ S. 163.31801(3)(a), F.S.

⁴ S. 163.31801(3)(b), F.S.

⁵ S. 163.31801(3)(c), F.S.

⁶ S. 163.31801(3)(d), F.S.

⁷ S. 163.31801(3)(e), F.S.

⁸ S. 163.31801(3)(f), F.S.

⁹ S. 163.31801(3)(g), F.S.

¹⁰ S. 163.31801(3)(h), F.S.

¹¹ S. 163.31801(3)(i), F.S.

¹² See s. 163.31801(2), F.S.

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.¹³ Meeting 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.¹⁴ School districts have authority to impose ad valorem taxes within the district for school purposes¹⁵ but are not general purpose governments with home rule power¹⁶ and are not expressly authorized to impose impact fees.¹⁷ Local governments imposing specific impact fees for education capital improvements typically collect the fees for deposit directly into a segregated account for those improvements.¹⁸ Ordinances creating such an impact fee must require the funds be used only for education capital improvement projects.¹⁹ 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.²⁰

Local governments may not require payment of impact fees prior to issuing a development or building permit.²¹ In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.²² 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.²³

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.²⁴ The financial audit must be performed according to specific statutory criteria and the rules of the Auditor General.²⁵ 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.²⁶ 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.²⁷ Municipalities with revenues or total expenditures and expenses less than \$100,000 and special districts with revenues or total expenditures

¹³ See 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. 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)).

¹⁴ 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."

¹⁵ 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.

¹⁶ See art. VIII, ss. 1(f)-(g) and (2), Fla. Const.

¹⁷ S. 163.31801(2), F.S.

¹⁸ 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.

¹⁹ See Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).

²⁰ S. 163.3180(6)(h)2.b., F.S.

²¹ S. 163.31801(3)(e), F.S.

²² S. 553.79, F.S.

²³ S. 163.3164(16), F.S.

²⁴ S. 218.39(1), F.S.

²⁵ 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 Jan. 21, 2021).

²⁶ S. 218.39(1)(g) and (h), F.S.

²⁷ S. 218.39(7), F.S.

and expenses of less than \$50,000 are not required to have their financial statements audited.²⁸ All local governmental entities are required to file an annual financial report with the Department of Financial Services no later than nine months after the end of the entity's fiscal year.²⁹

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)³⁰ of the reporting entity that the local governmental entity or district school board has complied with the requirements of the impact fee statute.³¹

Effect of the Bill

Definitions

The bill defines "infrastructure" as a fixed capital expenditure or fixed capital outlay, excluding the cost of repairs or maintenance, associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of at least five years; related land acquisition, land improvement, design, engineering, and permitting costs; and other related construction costs required to bring the public facility into service. The term also includes a fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, and the equipment necessary to outfit the vehicle for its official use. For the independent special fire control districts, the term includes "new facilities" as stated in the independent special fire control district statute.³² The bill also defines "public facilities" as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks, and recreational facilities,³³ and expressly includes emergency medical, fire, and law enforcement facilities.

Impact Fee Credits

In addition to local governments, the bill requires special districts to credit against the collection of impact fees, on a dollar-for-dollar basis at fair market value, any contribution related to the improvement of public facilities or infrastructure towards impacts on the same type of public facilities for which the contribution was made. All credits against impact fee collections must be made regardless of any provision in local government or special district charter, comprehensive plan policy, ordinance, resolution, or development order or permit.

Impact Fee Increases

The bill provides limitations on impact fee increases imposed by a local government, school district, or special district. An impact fee may increase only pursuant to a plan for the imposition, collection, and use of the increased impact fees that complies with the provisions in the bill. An impact fee may not be increased retroactively for a previous or current fiscal or calendar year. Additionally, the bill limits impact fee increases as follows:

- An increase to a current impact fee rate of not more than 25 percent of the current rate must be implemented in two equal annual increments beginning with the date on which the increased fee is adopted;

²⁸ S. 218.39(1), F.S.

²⁹ S. 218.32(1), F.S. Local governments required to prepare a financial audit must file a copy of the audit report. S. 219.32(1)(d) F.S.

³⁰ 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.

³¹ S. 163.31801(6), F.S.

³² S. 191.009(4), F.S.

³³ See s. 163.3164(39), F.S. The bill expressly cross-references to s. 163.3164, F.S.

- If the increased rate is between 25 and 50 percent of the current rate, the increase must be implemented in four equal installments;
- No impact fee increase may exceed 50 percent of the current impact fee rate; and
- An impact fee may not be increased more than once every four years.

The bill provides an exception to these four specific requirements if a local government, school district, or special district increases an impact fee rate by first establishing the need for the increase pursuant to the rational nexus test.

These requirements must operate retrospectively to January 1, 2021.

Financial Statement Audits

The bill provides that a local government, school district, or special district must submit with its annual financial report or its financial audit report an affidavit signed by its CFO attesting, to the best of his or her knowledge, that all impact fees were collected and expended in compliance with the statute, that the reporting entity complied with the spending period provision in the local ordinance or resolution, and that the funds were expended only for the uses allowed under the statute: acquiring, constructing, or improving the specific infrastructure needs.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.31801, F.S., relating to impact fees.

Section 2. Provides that the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) estimated that the bill will not impact state government revenues.

2. Expenditures:

The bill does not appear to have an impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The REC estimated the bill will have a negative indeterminate impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill limits impact fee increases imposed by a municipalities and counties. However, an exception may apply as a law having an insignificant fiscal impact, exempt from the requirements of Art. VII, s. 18 of the Florida Constitution. The bill provides that impact fee increase limitations in the bill do not apply if a municipality or county establishes a rational nexus between the fiscal impacts of public infrastructure costs caused by development and the impact fee increases being imposed.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2021, the Local Administration & Veterans Affairs Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from HB 337 in the following ways:

- Provides that a cap on impact fees increases for local governments, school districts, or special districts must be implemented in two equal amounts if the impact fee increase is not more than 25 percent above the current rate, or in four equal installments if the impact fee increase is between 25 and 50 percent of the current rate;
- Prohibits impact fee increases by more than 50 percent;
- Provides that impact fees may not be increased more than once every four years;
- Provides an exception to the requirement limiting impact fee increases if the local government, school district, or special district establishes the need for the increased impact fee pursuant to the rational nexus test;
- Prohibits impact fees from being increased retroactively for a previous or current fiscal or calendar year; and
- Provides that impact fee limitations will operate retrospectively to Jan. 1, 2021.
- Revises the required information and filing criteria for the mandatory affidavit filed annually by local governments, school districts, and special districts on the collection and use of impact fees but does not require a separate, second affidavit.

This analysis is drafted to the committee substitute adopted by the Local Administration & Veterans Affairs Subcommittee.

On March 31, 2021, the Ways and Means Committee adopted two amendments and reported the bill favorably. The amendments:

- Expands the definition of “infrastructure to include a fire department vehicle, an emergency medical service vehicle, a sheriff’s office vehicle, a police department vehicle, and the equipment necessary to outfit the vehicle for its official use.
- Requires local governments and special districts to credit against the collection of impact fees, on a dollar-for-dollar basis at fair market value, the amount of any contribution, related to improvements of public facilities or infrastructure towards impacts on the same type of public facilities for which the contribution was made.

- Clarifies the role of the CFO in regards to the current affidavit requirements by requiring the CFO to attest in a signed affidavit, to the best of his or her knowledge, rather than providing absolute assurance, that all impact fees were collected and expended by, or collected and expended on behalf of the local government, school district, or special district in compliance with the provisions of the statutes.

This analysis is drawn to the bill as amended by the Ways and Means Committee.