

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 Rules

BILL: CS/SB 688

INTRODUCER: Rules Committee and Senator Martin

SUBJECT: Alternative Mobility Funding Systems

DATE: February 27, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Johnson</u>	<u>Vickers</u>	<u>TR</u>	Favorable
3.	<u>Hackett</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 688 revises provisions concerning impact fees and concurrency and provides additional guidance concerning mobility fees. The bill:

- Provides definitions for “mobility fee” and “mobility plan” to be used within the Community Planning Act;
- Provides that local governments adopting and collecting impact fees by ordinance or resolution must use localized data based on a regularly updated study;
- Provides that after an applicant makes its contribution or constructs its proportionate share, the project must be allowed to proceed;
- Requires local governments charging overlapping transportation impact fees to coordinate calculation and collections through interlocal agreement
- Provides method for collection and distribution with penalty where no interlocal agreement has been executed; and
- Provides that holders of transportation or road impact fee credits, which existed before the adoption of the mobility fee-based funding system, are entitled to the full benefit of the intensity and density prepaid.

The bill takes effect July 1, 2024.

II. Present Situation:

Transportation Impact Fees

The Community Planning Act requires counties and municipalities to produce and maintain a comprehensive plan for future development and growth.¹ Each comprehensive plan must include a transportation element, the purpose of which is to plan for a multimodal transportation system emphasizing feasible public transportation, addressing mobility issues pertinent to the size and character of the local government, and designed to support all other elements of the comprehensive plan.² The transportation element must address traffic circulation, including the types, locations, and extent of existing and proposed major thoroughfares and transportation routes, including bicycle and pedestrian ways.³

In furtherance of comprehensive planning, local governments charge impact fees, generally as a condition for the issuance of a project's building permit, to maintain various civic services amid growth. The principle behind the imposition of impact fees is to transfer to new users of a government-owned system a fair share of the costs the new use of the system involves.⁴ Impact fees have become an accepted method of paying for public improvements that must be constructed to serve new growth.⁵ In order for an impact fee to be a constitutional user fee and not an unconstitutional tax, the fee must meet a dual rational nexus test, through which the local government must demonstrate the impact fee is proportional and reasonably connected to, or has a rational nexus with:

- The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
- The expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.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.

Local governments must credit against impact fee collections any contribution related to public facilities or infrastructure on a dollar-for-dollar basis at fair market value for the general category or class of public facilities or infrastructure for which the contribution was made. If no impact fee is collected for that category of public facility or infrastructure for which the contribution is made, no credit may be applied.⁷ Credits for impact fees may be assigned or transferred at any time once established, from one development or parcel to another within the same impact fee

¹ Part II, chapter 163, F.S.

² Section 163.3177(6)(b), F.S.

³ Section 163.3177(6)(b)1., F.S.

⁴ *Contractors & Builders Ass'n of Pinellas County v. City of Dunedin*, 329 So. 2d 314, 317-318 (Fla. 1976).

⁵ *St. Johns County v. Ne. Florida Builders Ass'n, Inc.*, 583 So. 2d 635, 638 (Fla. 1991); section 163.31801(2), F.S.

⁶ See *St. Johns County* at 637. Codified as s. 163.31801(3)(f) and (g), F.S.

⁷ Section 163.31801(5), F.S.

zone or district or within an adjoining impact fee zone or district within the same local government jurisdiction.⁸

Concurrency and Proportionate Share

“Concurrency” is a phrase referring to a set of land use regulations requiring local governments to ensure that new development does not outstrip a local government’s ability to provide necessary services. Developments meet concurrency requirements when the local government has the infrastructure capacity to serve the new growth.

A concurrency requirement is a law stating that certain infrastructure must be in place and available to serve new development before the local government may allow new citizens to live in the new development.⁹ For example, before a local government can approve a building permit to allow a new development, it must consult with its water suppliers to ensure adequate supplies to serve the new development will be available by the time citizens can move in.¹⁰ Certain services are subject to concurrency statewide (sanitary sewer, solid waste, drainage, and potable water) while other services, such as public transportation or schools, may optionally be subjected to concurrency by a local government.¹¹

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 level of service standards.¹² Proportionate share generally requires developers to contribute to costs, or build facilities, necessary to offset a new development’s impacts.¹³

Transportation Concurrency

Local governments utilizing transportation concurrency must use professionally accepted studies to evaluate levels of service and techniques to measure such levels of service when evaluating potential impacts of proposed developments.¹⁴ While local governments implementing a transportation concurrency system are encouraged to develop and use certain tools and guidelines, such as addressing potential negative impacts on urban infill and redevelopment¹⁵ and adopting long-term multimodal strategies,¹⁶ such local governments must follow specific concurrency requirements including consulting with the Florida Department of Transportation if proposed amendments to the plan affect the Strategic Intermodal System, exempting public

⁸ Section 163.31801(10), F.S. In an action challenging an impact fee or a failure to provide proper credits, the local government has the burden of proof to establish the imposition of the fee or the credit complies with the statute, and the court may not defer to the decision or expertise of the government. S. 163.31801(9), F.S.

⁹ Section 163.3180(2), F.S.

¹⁰ *Id.*

¹¹ Section 163.3180(1), F.S.

¹² Florida Department of Community Affairs (now Department of Economic Opportunity), *Transportation Concurrency: Best Practices Guide*, pg. 64 (2007), retrieved from http://www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (last visited Jan. 5, 2024).

¹³ *Id.*

¹⁴ Section 163.3180(5)(b)-(c), F.S.

¹⁵ Section 163.3180(5)(e), F.S.

¹⁶ Section 163.3180(f), F.S.

transit facilities from concurrency requirements, and allowing a developer to contribute a proportionate share to mitigate transportation impacts for a specific development.¹⁷

Mobility Plans and Fees

In the Community Renewal Act¹⁸ of 2009 (Act), the Legislature found that the concept and application of transportation concurrency was “complex, inequitable, lack(ed) uniformity among jurisdictions, (was) too focused on roadways to the detriment of desired land use patterns and transportation alternatives, and frequently prevent(ed) the attainment of important growth management goals.”¹⁹ The Act required completion and submission of a mobility fee methodology study²⁰ and stated the Legislature’s intent that a mobility fee “should be 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.”²¹ In 2013, the concept of a mobility fee-based funding system was added to the comprehensive planning statutes as an encouraged alternative to transportation concurrency.²²

Alternative mobility funding systems using a mobility fee are encouraged to incorporate one or more of the statutory tools and techniques, including:

- Adoption of long-term strategies to facilitate development patterns that support multimodal solutions, including urban design, appropriate land use mixes, intensity and density;
- Adoption of an area wide level of service not dependent on any single road segment function;
- Exempting or discounting impacts of locally desired development;
- Assigning secondary priority to vehicle mobility and primary priority to ensuring a safe, comfortable, and attractive pedestrian environment with convenient interconnection to transit;
- Establishing multimodal level of service standards that rely primarily on non-vehicular modes of transportation where existing or planned community design will provide adequate a level of mobility; and
- Reducing impact fees or local access fees to promote development within urban areas, multimodal transportation districts, and a balance of mixed-use development in certain areas or districts, or for affordable or workforce housing.²³

Some local governments have adopted mobility plans and mobility fees.²⁴

¹⁷ Section 163.3180(5)(h), F.S.

¹⁸ Chapter 2009-96, s. 1, Laws of Fla.

¹⁹ Chapter 2009-96, s. 13(1)(a), Laws of Fla.

²⁰ Center for Urban Transportation Research, *Evaluation of the Mobility Fee Concept Final Report*, University of South Florida (Nov. 2009), available at <https://cutr.usf.edu/wp-content/uploads/2012/08/Evaluation-of-the-Mobility-Fee-Concept-CUTR-Webcast-04.21.11.pdf> (last visited Jan. 5, 2024).

²¹ Chapter 2009-96, s. 13(1)(b), Laws of Fla.

²² Chapter 2013-78, s. 1, Laws of Fla.

²³ Section 163.3180(5)(f), F.S.

²⁴ See Hillsborough County Code of County Ordinances, ch. 40, art. III, div. 2, *Mobility Fees*; Pasco County Code of Ordinances, Land Development Code, ch. 1300, s. 1302.2; City of Port St. Lucie Code of Ordinances, Title XV, ch. 159, s. 159.101, *Port St. Lucie Mobility Fee Ordinance*.

III. Effect of Proposed Changes:

The bill revises provisions concerning impact fees and concurrency while providing additional guidance concerning mobility fees.

Section 1 amends s. 163.3164, F.S., to provide definitions for “mobility fee” and “mobility plan” to be used within the Community Planning Act.

Section 2 amends s. 163.3180, F.S., to provide that, pursuant to a transportation concurrency agreement, after an applicant makes its contribution or constructs its proportionate share, the project shall be considered to have mitigated its transportation impacts and must be allowed to proceed if all other development requirements have been met. The section also provides that local governments may not prevent a single applicant from proceeding after the applicant has satisfied its proportionate-share contribution.

The section provides that a county and municipality charging overlapping transportation impact fees must create and execute a coordinating interlocal agreement. The agreement must:

- Ensure that new development or redevelopment is not charged twice for the same impacts;
- Establish methodology for determining fees to be charged;
- Require that one party collect the fee; and
- Provide the method for proportionate distribution between the parties of fees collected.

If no such interlocal agreement exists by October 1, 2025, the bill provides backup methods of collection and distribution, with the caveat that the developer shall receive a 10 percent reduction in the total fee calculated.

The interlocal agreement provisions do not apply to Miami-Dade County, or any county or municipality which has entered into or otherwise updated an existing interlocal agreement as of October 1, 2024 which coordinates the mitigation of transportation impacts, so long as such agreement remains valid.

Section 3 amends s. 163.31801, F.S., to provide that local governments adopting and collecting impact fees must use localized data available such that an impact fee study is based on data generated within 4 years after adoption of a revised impact fee. After increasing impact fees, a local government must adopt a new impact fee study within 12 months. A local government must also credit against the collection of the impact any contribution identified in the development order or any form of exaction, including monetary contributions.

The section also provides that holders of transportation or road impact fee credits which existed before the adoption of the mobility fee-based funding system, are entitled to the full benefit of the intensity and density prepaid by the credit balance as of the date it was first established.

Section 4 amends s. 212.055, F.S., to correct a statutory cross-reference.

Section 5 provides that the bill takes effect July 1, 2024.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Ideally, local governments in cooperation will continue to collect the full amount of expected transportation and mobility related impact fees. Local governments may nonetheless see costs implementing the provision of the bill requiring only the building permit issuing local government to collect such fees before dispersing them to other affected governments to the extent that current administration, such as operation through interlocal agreement, differs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 163.3164, 163.3180, 163.31801, and 212.055 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 Rules on February 26, 2024:

The CS introduces a new requirement that a county and municipality charging overlapping transportation-related impact fees must execute an interlocal agreement, subject to certain requirements, to coordinate mitigation and administration of impact fees. If no such interlocal agreement exists by October 2025, the bill prescribes certain administrative requirements and a reduction in fees.

The CS also clarifies that a developer must meet all local government development regulations before being permitted to proceed with development, and revises the provision related to impact fee data timing to provide that impact fee studies must be based on data generated within 4 years of a revised impact fee.

B. Amendments:

None.