

REVENUE ESTIMATING CONFERENCE

Tax: Local Taxes and Fees

Issue: Requires an impact fee adopted by ordinance of a county or municipal government or by resolution of a special district to specify that the collection of impact fees may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee.

Bill Number(s): SB 144 / HB 207 (The House bill is similar, but not identical to the Senate bill.)

Entire Bill

Partial Bill:

Sponsor(s): Senator Bean / Representative Donalds

Month/Year Impact Begins: July 1, 2019

Date of Analysis: January 24, 2019

Section 1: Narrative

a. **Current Law:** 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. 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. 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.

Given these constitutional and statutory powers, local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization. Impact fees, special assessments, franchise fees, and user fees or service charges are examples of these home rule revenue sources.

Impact fees are enacted by local ordinance. These fees are tailored to pay the cost of additional infrastructure necessitated by new development. As a result, 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.

Impact fees have their roots in the common law. A number of court decisions have addressed challenges to the legality of impact fees. As developed under case law, an impact fee must have the following characteristics to be legal:¹

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportionate share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions toward the cost of the increased capacity for public facilities

Current law does not specify when a local government must collect impact fees. As a result, the applicable local government makes this decision, and the time of collection varies and may differ, depending on the type of impact fee.

Section 163.31801, F.S., is known as the "Florida Impact Fee Act" and states that 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 governmental entity imposes an impact fee to address its infrastructure needs, the entity shall 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.
- Require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee. A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.

¹ The Florida Senate, Issue Brief 2010-310, 4 (Sept. 2009), available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-310ca.pdf

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- b. Proposed Change:** Although the drafting styles differ, the bills amend s. 163.31801, F.S., to specify that an impact fee adopted by ordinance of a county or municipal government or by resolution of a special district may not require payment of impact fees before the date of issuance of the building permit for the property that is subject to the fee.

The bills require that an impact fee 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 as well as the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction. Also, the local government must specifically earmark revenues generated by the impact fees to acquire, construct, or improve capital facilities to benefit new users. Additionally, the bills prohibit the use of impact fee revenues 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. Furthermore, both bills also specify that the provisions of s. 163.31801, F.S., do not apply to water and sewer connection fees.

HB 207 includes a provision that specifies that a challenger who prevails in an action challenging an impact fee under s. 163.31801, F.S., may recover attorney fees. SB 144 does not include this provision.

Section 2: Description of Data and Sources

Impact Fee Revenue Collections Reported in Local Governments' Annual Financial Reports (AFRs)

Fiscal Year	Counties	Municipalities	Special Districts	Totals
2002-03	\$479,479,595	\$183,843,818	\$21,711,285	\$685,034,698
2003-04	\$560,496,789	\$232,910,041	\$20,337,344	\$813,744,174
2004-05	\$812,732,909	\$308,009,057	\$31,681,665	\$1,152,423,631
2005-06	\$1,060,597,975	\$342,267,200	\$25,405,434	\$1,428,270,609
2006-07	\$736,339,197	\$312,321,512	\$23,433,726	\$1,072,094,435
2007-08	\$484,141,722	\$222,508,702	\$20,311,517	\$726,961,941
2008-09	\$206,819,386	\$139,307,822	\$8,552,553	\$354,679,761
2009-10	\$212,423,990	\$123,304,422	\$7,420,750	\$343,149,162
2010-11	\$185,664,703	\$107,753,843	\$8,213,352	\$301,631,898
2011-12	\$246,882,772	\$113,956,207	\$8,773,028	\$369,612,007
2012-13	\$305,043,650	\$146,917,768	\$11,288,627	\$463,250,045
2013-14	\$422,384,294	\$167,987,620	\$16,218,908	\$606,590,822
2014-15	\$503,921,835	\$225,734,604	\$17,357,595	\$747,014,034
2015-16	\$557,292,553	\$279,285,751	\$21,012,502	\$857,590,806
2016-17 (preliminary)	\$629,120,806	\$279,765,125	\$21,367,807	\$930,253,738

Note: The local FY 2016-17 data are still preliminary because not all local government AFRs have been submitted or processed; however, 35 counties, 194 municipalities, and 51 special districts reported impact fee revenues.

Section 3: Methodology (Include Assumptions and Attach Details)

Enactment of this proposed legislation could result in the delay of a local government's ability to collect impact fees, if such fees are required to be paid before the date of issuance of the building permit for the property that is subject to the fee. Please see accompanying spreadsheet for explanation of methodology and estimated fiscal impacts.

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Section 4: Proposed Fiscal Impact (Millions \$)

	High		Middle		Low	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2019-20	(\$15.5)	(\$15.5)	(\$11.7)	(\$11.7)	(\$7.9)	(\$7.9)
2020-21	(\$17.9)	(\$17.9)	(\$13.5)	(\$13.5)	(\$9.1)	(\$9.1)
2021-22	(\$20.6)	(\$20.6)	(\$15.5)	(\$15.5)	(\$10.5)	(\$10.5)
2022-23	(\$23.7)	(\$23.7)	(\$17.9)	(\$17.9)	(\$12.1)	(\$12.1)
2023-24	(\$27.4)	(\$27.4)	(\$20.7)	(\$20.7)	(\$13.9)	(\$13.9)

List of Affected Trust Funds:

Local funds only.

Section 5: Consensus Estimate (Adopted: 01/24/2019): The Conference adopted a negative indeterminate impact for the first year’s cash impact and plus/minus indeterminate as the cash impact for all other years and for all recurring years. The plus/minus indeterminate estimate reflects the uncertainty of the magnitude of the net impact resulting from incoming prior year impacts and outgoing current year impacts.

	GR		Trust		Local/Other		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2019-20	0.0	0.0	0.0	0.0	(**)	+/-	(**)	+/-
2020-21	0.0	0.0	0.0	0.0	+/-	+/-	+/-	+/-
2021-22	0.0	0.0	0.0	0.0	+/-	+/-	+/-	+/-
2022-23	0.0	0.0	0.0	0.0	+/-	+/-	+/-	+/-
2023-24	0.0	0.0	0.0	0.0	+/-	+/-	+/-	+/-

	A	B	C	D	E	F	G	H	I	J	K	L
1	Fiscal Impact Analysis of SB144 & HB207 - Impact Fees											
2	Issue: Payment of Impact Fee May Be No Earlier Than the Date of Issuance of the Building Permit for the Property Subject to the Fee											
3												
4	I. EDR Survey of County and Municipal Governments Having Reported FY 2016-17 Impact Fee Revenues Greater Than \$1 Million											
5	County		2018 Population Estimate	Reported FY 2016-17 Revenue	Fiscal Impact in FY 2019-20	Comment						
6	Alachua		263,291	\$ 1,392,824	No Impact	Impact fees collected immediately before issuing a Certificate of Occupancy.						
7	Bay		181,199	\$ 1,687,366	No Impact	The county currently collects impact fees at the building permit issuance.						
8	Brevard		583,563	\$ 14,923,564	No Impact							
9	Broward		1,897,976	\$ 10,040,000	\$ (6,533,333)	Assumption: Two month delay in collecting impact fees.						
10	Charlotte		177,987	\$ 3,654,306	No Impact	Impact fees are not collected until final inspections, which are prior to issuance of a Certificate of Occupancy.						
11	Collier		367,347	\$ 35,099,713	Yes	Fire impact fees are paid prior to issuance of the building permit.						
12	Hernando		185,604	\$ 2,733,272	\$ (1,040,151)	Assumption: Two month delay in collecting impact fees.						
13	Hillsborough		1,408,864	\$ 37,184,406	No Impact							
14	Indian River		151,825	\$ 5,703,909	Yes	Impact fees are paid prior to issuance of a building permit, mobile home set-up permit, or initial concurrency certificate.						
15	Lake		342,917	\$ 5,729,372	No Impact	Current practice is to collect impact fees at the issuance of the building permit.						
16	Lee		713,903	\$ 6,361,666	Yes	Impact fees are paid prior to issuance of a building permit.						
17	Manatee		377,826	\$ 24,116,000	No Impact	Impact fees are currently collected prior to issuance of a Certificate of Occupancy.						
18	Marion		353,898	\$ 1,232,777	No Impact	Impact fees are not required to be paid until the final electrical inspection.						
19	Martin		155,556	\$ 1,640,301	Yes	In general, a residential developer will pay mandatory impact fees at the time of the development approval.						
20	Miami-Dade		2,779,322	\$ 110,556,738	Yes	Impact fees are required to be paid prior to the issuance of any building permit for development activity.						
21	Nassau		82,748	\$ 2,626,944	Yes	Impact fees are required to be paid prior to the issuance of any building permit.						
22	Orange		1,349,597	\$ 192,093,197	No Impact	Impact fees are generally charged at the issuance of a project's building permit.						
23	Osceola		352,496	\$ 11,865,809	Yes	Mobility, fire, and school impact fees are paid prior to building permit issuance. Waiting on additional feedback.						
24	Palm Beach		1,433,417	\$ 44,904,704	No Impact	Our ordinance currently requires payment of impact fees no later than building permit issuance.						
25	Pasco		515,077	\$ 35,701,403	No Impact	Impact fees collected immediately before issuing a Certificate of Occupancy.						
26	Pinellas		970,532	\$ 1,939,914	No Impact	Payment of impact fees is not required prior to issuance of Certificate of Occupancy.						
27	Polk		673,028	\$ 8,172,671	No Impact	Impact fees must be paid prior to issuance of a Certificate of Occupancy.						
28	Sarasota		417,442	\$ 34,276,195	No Impact	It appears impact fees are due at the issuance of the Certificate of Occupancy.						
29	Seminole		463,560	\$ 4,553,334	No Impact	Impact fee collections occur after the issuance of a building permit.						
30	St. Johns		238,742	\$ 12,362,813								
31	St. Lucie		302,432	\$ 8,087,079								
32	Sumter		124,935	\$ 3,347,638	No Impact	Impact fee ordinance specifies that payment is due upon issuance of the building permit.						
33	Volusia		531,062	\$ 5,549,309	No Impact	Impact fees are due before the issuance of a Certificate of Occupancy (CO) or Business Tax Receipt (BTR).						
34	Total Survey		17,396,146	\$ 627,537,224	\$ (7,573,484)							
35	Statewide County			\$ 629,120,806								
36	Survey % of Statewide			99.7%								
37												
38	Population of County Responders		9,280,646									
39	Population of County Non-Responders		8,115,500									
40												
41	Estimated Fiscal Impact of County Non-Responders				\$ (6,622,665)	Methodology: Applied county responders' fiscal impact / population ratio to county non-responders.						
42												
43												
44	Municipality	Respective County	2018 Population Estimate	Reported FY 2016-17 Revenue	Fiscal Impact in FY 2019-20	Comment						
45	Apopka	Orange	51,676	\$ 9,010,193								
46	Boca Raton	Palm Beach	93,417	\$ 4,441,809								
47	Bonita Springs	Lee	51,181	\$ 5,567,624								
48	Bradenton	Manatee	56,157	\$ 1,782,004	No Impact	Payment of impact fees not required until issuance of Certificate of Occupancy.						
49	Cape Coral	Lee	180,204	\$ 20,994,024								
50	Cocoa	Brevard	19,286	\$ 1,706,308								
51	Coconut Creek	Broward	58,344	\$ 2,056,863								
52	Davenport	Polk	5,602	\$ 2,270,788								

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	A	B	C	D	E	F	G	H	I	J	K	L
53	Daytona Beach	Volusia	66,267	\$ 1,845,907								
54	DeLand	Volusia	34,106	\$ 4,317,894	No Impact	The City collects impact fees at the time of building permit issuance.						
55	Doral	Miami-Dade	68,244	\$ 1,971,620	No Impact	The City collects impact fees at the time of building permit issuance.						
56	Estero	Lee	31,806	\$ 2,596,943	No Impact	The City collects impact fees at the time of building permit issuance.						
57	Fort Lauderdale	Broward	182,827	\$ 5,316,008	No Impact							
58	Fort Myers	Lee	81,868	\$ 6,508,465								
59	Fruitland Park	Lake	8,963	\$ 1,072,818								
60	Groveland	Lake	16,407	\$ 1,682,582								
61	Gulf Breeze	Santa Rosa	5,849	\$ 1,060,185								
62	Haines City	Polk	24,298	\$ 1,709,815								
63	Hialeah	Miami-Dade	238,906	\$ 2,189,895								
64	Homestead	Miami-Dade	73,863	\$ 2,563,710								
65	Islamorada	Monroe	5,990	\$ 1,173,105								
66	Jacksonville	Duval	907,093	\$ 5,469,249								
67	Kissimmee	Osceola	72,369	\$ 3,046,791								
68	Lakeland	Polk	105,586	\$ 5,105,817	No Impact	The City collects impact fees at the time of building permit issuance.						
69	Leesburg	Lake	23,297	\$ 1,049,727								
70	Lynn Haven	Bay	21,201	\$ 1,184,316								
71	Melbourne	Brevard	82,040	\$ 4,171,141								
72	Miami	Miami-Dade	481,333	\$ 25,347,222								
73	Miami Beach	Miami-Dade	92,502	\$ 4,705,814								
74	Miami Lakes	Miami-Dade	31,118	\$ 1,201,429	No Impact	The City collects impact fees at the time of building permit issuance.						
75	Minneola	Lake	12,348	\$ 1,812,772								
76	Miramar	Broward	137,107	\$ 4,249,840	No Impact	The City allows payment on the day of building permit issuance so it should not delay our collection.						
77	Mount Dora	Lake	14,536	\$ 2,219,952	No Impact	The City collects impact fees at the time of building permit issuance.						
78	North Miami Beach	Miami-Dade	45,612	\$ 3,979,128								
79	North Port	Sarasota	70,631	\$ 6,561,087								
80	Ocoee	Orange	45,694	\$ 3,741,581								
81	Orlando	Orange	285,099	\$ 17,854,782								
82	Ormond Beach	Volusia	41,140	\$ 1,513,814	No Impact							
83	Palm Bay	Brevard	112,703	\$ 2,963,444	No Impact	While early payment is encouraged, payment of impact fees are not required until issuance of a building permit.						
84	Palm Beach Gardens	Palm Beach	53,800	\$ 2,934,013								
85	Palm Coast	Flagler	84,575	\$ 7,892,173								
86	Panama City Beach	Bay	13,099	\$ 3,194,365								
87	Plant City	Hillsborough	38,938	\$ 1,166,192								
88	Plantation	Broward	89,595	\$ 1,163,981								
89	Port Orange	Volusia	61,009	\$ 3,067,526								
90	Port St. Lucie	St. Lucie	185,843	\$ 8,323,840	No Impact	The City collects impact fees at the time of building permit issuance.						
91	Punta Gorda	Charlotte	19,487	\$ 2,273,171	No Impact							
92	Sanford	Seminole	59,033	\$ 1,751,095	No Impact	Impact fee collections occur concurrently with the issuance of a building permit.						
93	Sarasota	Sarasota	55,832	\$ 1,392,390								
94	St. Cloud	Osceola	46,519	\$ 13,821,477								
95	Tampa	Hillsborough	378,531	\$ 1,838,793								
96	Tavares	Lake	17,353	\$ 2,432,006	No Impact	The City collects impact fees at the time of building permit issuance.						
97	Winter Garden	Orange	44,935	\$ 5,896,876								
98	Winter Haven	Polk	42,828	\$ 1,696,630	\$ (300,000)	At a minimum, August and September fees would be delayed beyond the end of the fiscal year.						
99	Winter Park	Orange	30,212	\$ 2,821,952	No Impact	The City collects impact fees at the time of building permit issuance.						
100	Winter Springs	Seminole	37,639	\$ 3,231,087	No Impact	Impact fee collections occur concurrently with the issuance of a building permit.						
101	Total Survey		5,195,898	\$ 242,914,033	\$ (300,000)							
102	Statewide Municipal			\$ 279,765,125								
103	Survey % of Statewide			86.8%								
104												
105	Population of Municipal Responders		1,207,725									
106	Population of Municipal Non-Responders		3,988,173									
107												
108	Estimated Fiscal Impact of Municipal Non-Responders				\$ (990,666)	Methodology: Applied municipal responders' fiscal impact / population ratio to municipal non-responders.						

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	A	B	C	D	E	F	G	H	I	J	K	L
109												
110												
111	II. Historical Impact Fee Revenue Collections Reported in Local Governments' Annual Financial Reports (Post-Great Recession)											
112												
113	FY	Counties	Municipalities	Special Districts	Total							
114	2009-10	\$ 212,423,990	\$ 123,304,422	\$ 7,420,750	\$ 343,149,162							
115	2010-11	\$ 185,664,703	\$ 107,753,843	\$ 8,213,352	\$ 301,631,898							
116	2011-12	\$ 246,882,772	\$ 113,956,207	\$ 8,773,028	\$ 369,612,007							
117	2012-13	\$ 305,043,650	\$ 146,917,768	\$ 11,288,627	\$ 463,250,045							
118	2013-14	\$ 422,384,294	\$ 167,987,620	\$ 16,218,908	\$ 606,590,822							
119	2014-15	\$ 503,921,835	\$ 225,734,604	\$ 17,357,595	\$ 747,014,034							
120	2015-16	\$ 557,292,553	\$ 279,285,751	\$ 21,012,502	\$ 857,590,806							
121	2016-17	\$ 629,120,806	\$ 279,765,125	\$ 21,367,807	\$ 930,253,738							
122	Data Source: Compiled from Annual Financial Reports (AFR) submitted by counties, municipalities, and special districts to the Department of Financial Services (i.e., Revenue Account series #324.xxx Impact Fees).											
123												
124												
125	III. FY 2019-20 Impact Projected into the Forecast Period Using a Compound Annual Growth Rate (CAGR) Calculated from Historical Total Revenue Collections											
126												
127	CAGR:	Total										
128	2009-10 to 2016-17	15.3%										
129												
130	FY	High				Low						
131	2019-20	\$ (15,486,815)				\$ (7,873,484)						
132	2020-21	\$ (17,858,138)				\$ (9,079,063)						
133	2021-22	\$ (20,592,555)				\$ (10,469,238)						
134	2022-23	\$ (23,745,664)				\$ (12,072,276)						
135	2023-24	\$ (27,381,572)				\$ (13,920,769)						
136												
137												
138	IV. Proposed Fiscal Impact											
139												
140		High		Middle		Low						
141	State FY	Cash	Recurring	Cash	Recurring	Cash	Recurring					
142	2019-20	\$ (15,486,815)	\$ (15,486,815)	\$ (11,680,149)	\$ (11,680,149)	\$ (7,873,484)	\$ (7,873,484)					
143	2020-21	\$ (17,858,138)	\$ (17,858,138)	\$ (13,468,600)	\$ (13,468,600)	\$ (9,079,063)	\$ (9,079,063)					
144	2021-22	\$ (20,592,555)	\$ (20,592,555)	\$ (15,530,897)	\$ (15,530,897)	\$ (10,469,238)	\$ (10,469,238)					
145	2022-23	\$ (23,745,664)	\$ (23,745,664)	\$ (17,908,970)	\$ (17,908,970)	\$ (12,072,276)	\$ (12,072,276)					
146	2023-24	\$ (27,381,572)	\$ (27,381,572)	\$ (20,651,171)	\$ (20,651,171)	\$ (13,920,769)	\$ (13,920,769)					
147												
148	Methodologies:											
149	Low: Sum of separate county and municipal fiscal impacts from survey responders (see Section I above).											
150	Middle: Average of the High and Low Impacts.											
151	High: Low Impact plus sum of separate county and municipal fiscal impacts from survey non-responders (see Section I above).											