

## REVENUE ESTIMATING CONFERENCE

**Tax:** Local Taxes and Fees

**Issue:** Section 5 of the legislation makes a number of changes to the Florida Impact Fee Act (i.e., s. 163.31801, F.S.). Section 14 of the legislation amends s. 553.791(2)(b), F.S., to provide that a local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider; however, the local jurisdiction may charge a reasonable administrative fee.

**Bill Number(s):** CS/CS/HB 7103

**Entire Bill**

**Partial Bill:** (Sections 5 and 14 only)

**Sponsor(s):** House State Affairs Committee

**Month/Year Impact Begins:** Upon becoming law

**Date of Analysis:** June 12, 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:<sup>1</sup>

- 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.

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<sup>1</sup> 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](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-310ca.pdf)

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**b. Proposed Changes:**

Section 5 of the legislation makes the following changes to s. 163.31801, F.S., (i.e., the Florida Impact Fee Act).

1. It specifies 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.
2. It requires that an impact fee must be proportional and 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 funds collected and the benefits accruing to the new residential or nonresidential construction.
3. It requires that a local government must specifically earmark funds collected from the impact fees to acquire, construct, or improve capital facilities to benefit new users.
4. It specifies that impact fee revenues cannot be used, in whole or in part, 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 nonresidential construction.
5. It requires a local government to credit against the collection of the impact fee any contribution, whether identified in a proportionate share agreement or other form of exaction, related to public education facilities, including land dedication, site planning and design, or construction. Any contribution must be applied to reduce any education-based impact fees on a dollar-for-dollar basis at fair market value.
6. It provides that if a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, F.S., or s. 380.06, F.S., or otherwise, 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. This change shall operate prospectively only.
7. It provides that in any action challenging the government's failure to provide the required dollar-for-dollar credits for the payment of impact fees as provided in s. 163.3180(6)(h)2.b., F.S., (i.e., school concurrency), the government has the burden of proving by a preponderance of the evidence that the amount of the credits meets the requirements of state legal precedent and the provisions of this section of law. The court is prohibited from using a deferential standard for the benefit of the government.
8. It provides that a county, municipality, or special district may provide an exception or waiver for an impact fee for the development or construction of affordable housing, as defined in s. 420.9071, F.S. If the local government provides such an exception or waiver, it is not required to use any revenues to offset the impact.
9. It specifies that the provisions of s. 163.31801, F.S., do not apply to water and sewer connection fees.

Section 14 of the legislation amends s. 553.791(2)(b), F.S., to provide that a local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider; however, the local jurisdiction may charge a reasonable administrative fee.

**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

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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

***Building Inspection Fee Revenue Collections Reported in Local Governments’ Annual Financial Reports (AFRs)***

The Uniform Accounting System Manual’s Uniform Chart of Accounts does not include a unique revenue account for the reporting of building inspection fees. The local reporting of such fees would be included in Revenue Account #329.000 Other Permits, Fees, and Special Assessments. As defined in the Manual, this account is used in those instances when the particular permit, fee, or special assessment is not categorized by any other revenue account code. This account includes, at a minimum, inspection fees, stormwater fees, green utility fees, and vessel registration fees. From the available data, it is not possible to determine building inspection fees’ proportional share of total account revenues.

**Section 3: Methodology (Include Assumptions and Attach Details)**

At its January 24, 2019 meeting, the REC considered SB 144/HB 207, which contained many of the same changes as Section 5 of this legislation (see summary of items #1-4 & 9 under Proposed Changes). For SB 144/HB 207, the REC 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 REC reasoned that 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. Section 5 of this legislation includes new changes not previously considered (see summary of items #5-8 under Proposed Changes). Several local governments contacted by EDR staff indicated that the fiscal impact of these new changes could not be quantified.

At its January 26, 2018 meeting, the REC considered Section 3 of CS/HB 987, which would have prohibited a local government from charging an impact fee for the development or construction of affordable housing, as defined in s. 420.9071, F.S., for the five-year period: SFY 2018-19 through SFY 2022-23. For the five-year period, the REC adopted a fiscal impact of (\$5.4) million increasing to (\$5.9) million. However, in Section 5 of this legislation, the authority for a local government to provide an impact fee exception or waiver for the development or construction of affordable housing is permissive rather than mandatory.

Section 14 of the legislation does prohibit a local jurisdiction from charging fees for building inspections if the fee owner or contractor hires a private provider. However, the local jurisdiction is authorized to charge a reasonable administrative fee, which may partially offset the revenue loss resulting from the prohibition.

Given the uncertainty of the magnitude of the net fiscal impact to local governments resulting from the various changes in Sections 5 & 14 of this legislation, EDR staff is recommending the plus/minus indeterminate impact.

**Section 4: Proposed Fiscal Impact (Millions \$)**

	High		Middle		Low	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2019-20			+/-	+/-		
2020-21			+/-	+/-		
2021-22			+/-	+/-		
2022-23			+/-	+/-		
2023-24			+/-	+/-		

**List of Affected Trust Funds:**

Local funds only.

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**Section 5: Consensus Estimate (Adopted: 06/12/2019):** The Conference adopted the proposed estimate.

	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	+/-	+/-	+/-	+/-