

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1022

SPONSOR: Finance and Taxation Committee and Senator Wasserman-Schultz

SUBJECT: Statewide Impact Fee

DATE: March 27, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	_____	_____	CP	Withdrawn
2.	_____	_____	ED	Withdrawn
3.	_____	_____	FT	Withdrawn
4.	Fournier	Johansen	FT	Fav/CS
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

## I. Summary:

This committee substitute imposes a statewide impact fee on instruments relating to real property, and prohibits counties, municipalities, and school boards from levying certain impact fees.

This bill creates section 210.032 and amends section 201.11, Florida Statutes.

## II. Present Situation:

### Impact Fees<sup>1</sup>

Under Florida's Constitution, local governments possess strong home rule powers. Given these powers, local governments may impose a variety of revenue sources for funding services and improvements without express statutory authorization.<sup>2</sup> Special assessments, impact fees, and franchise fees, and user fees or service charges are examples of these home rule revenue sources.

Impact fees are charges imposed by local governments against new development. Such charges represent a total or partial reimbursement for the cost of additional facilities or services necessary as the result of the new development. Rather than imposing the cost of these additional facilities or services upon the general public, the purpose of impact fees is to shift the capital expense burden of growth from the general public to the developer and new residents.

<sup>1</sup> This information is from the Legislative Committee on Intergovernmental Relations (LCIR) publication *Local Government Financial Information Handbook, 2002 Edition*.

<sup>2</sup> The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution, general law, or special law regarding the power at issue. Counties and municipalities cannot levy a tax without express statutory authorization because the constitution specifically prevents them from doing so. However, local governments may levy special assessments and a variety of fees absent any general law prohibition provided such home rule source meets the relevant legal sufficiency tests.

Local governments, in conjunction with their power to regulate land use and their statutory responsibility to adopt and enforce comprehensive planning, impose impact fees. Impact fees have successfully been levied to fund the expansion of water and sewer facilities, the construction of road improvements, the construction of school facilities, and park expansion.

Impact fees are a unique product of local governments' home rule powers, and the development of such fees has occurred in Florida via home rule ordinance rather than by direct statutory authorization or mandate. Therefore, the characteristics and limitations of impact fees are found in Florida case law rather than statute.

As developed under case law, an impact fee levied by a local government must meet what is referred to as the "dual rational nexus test" in order to withstand legal challenge. First, there must be a reasonable connection, or rational nexus, between the anticipated need for additional capital facilities and the growth in population generated by the new development. Second, the government must show a reasonable connection between the expenditures of the funds collected and the benefits accruing to the new development from those expenditures.

The four characteristics of legally sufficient impact fees are listed as follows:

- The fee is levied on *new development* or *new expansion* of existing development.
- The fee is a *one-time charge*, although collection may be spread out over time.
- The fee is *earmarked for capital outlay only*; operating costs are excluded.
- The fee *represents a proportional share* of the cost of the facilities needed to serve the new development.

### **Impact Fee Revenues**

The Legislative Committee on Intergovernmental Relations (LCIR) provided committee staff with a summary of Total Reported County and Municipal Impact Fee Revenues for Fiscal Years 1993-94 to 1999-00.<sup>3</sup>

As shown in TABLE 1, counties reported \$324.2 million in impact fee revenues in FY 1999. By county, such revenue collections ranged from \$23,620 in Baker County, to \$58.2 million in Palm Beach County. Thirty-four of Florida's 67 counties reported impact fee revenues in FY 1999-00.

As shown in TABLE 1, municipalities reported \$83.7 million in impact fee revenues in FY 1999. By municipality, revenue collections ranged from \$200 in Micanopy (Alachua County), to \$16.6 million in Orlando (Orange County). One Hundred forty-six of Florida's 405 municipalities reported impact fee revenues in FY 1999-00. TABLE 1 also shows the impact fee revenues by category for FY 1999.

As shown in TABLE 2, seventeen counties currently levy school impact fees on new construction to finance the construction of new schools. These levies raised approximately \$71.5 million in school impact fees during 1999.

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<sup>3</sup> This information was presented 1/21/03, and is compiled from information found on the LCIR's website at <http://fcn.state.fl.us/lcir/databank/revenues.html>.

**TABLE 1: Impact Fee Revenues, FY 1999.**

CATEGORY	COUNTIES	% of TOTAL	CITIES	% of TOTAL
Public Safety	\$ 21.3m	6.6%	\$10.7m	12.8%
Physical Environment	\$ 50.0m	15.1%	\$34.3m	41.0%
Transportation	\$ 165.2m	51.0%	\$24.5m	29.3%
Economic Environment	\$ 0.3m	0.1%	\$8,600	0.0%
Human Service	\$ 22.2m	6.8%	\$6,900	0.0%
Culture and Recreation	\$ 40.0m	12.3%	\$11.8m	14.1%
Other	\$ 26.3m	8.1%	\$2.4m	2.8%
<b>TOTALS</b>	<b>\$324,233,477</b>		<b>\$83,703,239</b>	

**TABLE 2: School Impact Fee Revenues, FY 1999.**

Counties with School Impact Fees	FY 1999*	Most recent Fiscal Year**	Enactment Date	Updated	Fee Structure		
					Single family residence	Multi family residence	Mobile Home
Broward	\$8,240,045	\$12,500,000	1979	1997	\$1,697	\$1,497	\$1,237
Citrus	\$206,610	\$876,597	1986	2001	\$636	\$165	\$447
Collier	\$8,043,865	\$9,916,845	1992		\$1,178	\$827	\$1,234
Miami-Dade	\$19,685,638	\$27,628,567	1995		\$612 per unit +\$.918 per sq. ft.		
Hernando	\$1,512,925	\$3,219,826	1986	2002	\$2,406	\$1,858	\$2,169
Hillsborough	\$1,586,915	\$2,205,252	1986	2001	\$196	\$286	\$237
Lake	\$2,733,503	\$3,548,107	1991	1996	\$1,232	\$244	\$77
Lee		\$10,911,056	2001		\$2,232	\$691	\$425
Martin	\$1,227,484	\$1,314,329	1995		\$628 - \$1006 based on sq. ft.		
Orange	\$11,592,731	\$29,641,359	1998	2001	\$2,828	\$1,907	\$2,329
Osceola	\$1,831,981	\$1,800,000	1992	2000	\$2,828	\$1,003	\$1,582
Palm Beach	\$7,013,959	\$11,071,000	1989	2001	\$272 - \$1544 based on sq. ft.		
Pasco		\$6,826,693	2001		\$1,652	\$704	\$1,157
Seminole	\$3,613,573	\$3,393,046	1992		\$1,384	\$639	\$955
St Johns	\$641,732	\$1,609,787	1987	1999	\$729	\$422	\$729
St Lucie	\$1,054,128	\$1,800,000	1988	1993	\$800	\$608	\$182
Volusia	\$2,486,164	\$5,300,000	1992	1999	\$1139 per dwelling unit		

\* Data from LCIR Survey      \*\*Data from Sen. F&T Survey, FY 2001-02 except for Hillsborough and Broward which is FY 2000-01  
 Collection amounts do not reflect contributions in lieu of impact fees.  
 Compiled by Senate Committee on Finance and Taxation, January 2003.

**Excise Tax on Documents**

Section 201.02, F.S., imposes an excise tax (Doc Stamp tax) on deeds, instruments, or writings, whereby any real estate, or any interests in real estate, is conveyed to or vested in the purchaser, or any other person by his or her direction. The tax attaches at the time the deed or other instrument of conveyance is delivered, irrespective of the time when the sale is made. A separate documentary stamp tax is also assessed on notes at the rate of 35 cents per hundred dollars. The total of all Doc Stamp taxes under ch. 201, F.S., collected in fiscal year 2001-02 was \$1,572,532,151.

Currently, the Doc Stamp tax on deeds is 70 cents on each \$100 of the consideration paid or to be paid. "Consideration" under s. 201.02, F.S., includes,

"...money paid or agreed to be paid; the discharge of an obligation; and the amount of any mortgage, purchase money mortgage lien, or other encumbrance, whether or not the underlying indebtedness is assumed."

Where property other than money is exchanged for interests in real property, there is the presumption that the consideration is equal to the fair market value of the real property interest being transferred.

Section 201.11, F.S., requires DOR to administer and enforce the Doc Stamp tax. Subsection (2) designates the county comptroller or clerk of the circuit court as the agent for the collection of the tax. These agents are authorized 0.5% of the tax proceeds as compensation for collecting the tax.

Section 201.15, F.S., provides for the distribution of Doc Stamp proceeds. After deducting the General Revenue service charge, distributions are then made as follows:

- 62.63 percent to the General Revenue Fund (Debt service for Preservation 2000 and Florida Forever bonds and distributions to the Ecosystem Management and Restoration Trust Fund and the Marine Resources Conservation Trust Fund are made out of the General Revenue distribution.);
- 11.3425 to the Local Government Housing Trust Fund;
- 9.5 percent to the Land Acquisition Trust Fund;
- 4.8475 percent to the State Housing Trust Fund;
- 4.2 percent to the Water Management Lands Trust Fund;
- 3.801 percent to the Conservation and Recreation Lands Trust Fund;
- 2.28 percent to Aquatic Plant Control;
- 0.899 percent to the State Game Trust Fund;
- 0.25 percent to Water Quality Assurance Trust Fund; and
- 0.25 percent to the Department of Agriculture and Consumer Services General Inspection Trust Fund.

Section 163.3164, F.S., defines a development permit as "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."

### III. Effect of Proposed Changes:

**Section 1** creates s. 201.032, F.S., to impose a statewide impact fee, levied and collected as a surtax on documents taxed under s. 201.02, F.S.<sup>4</sup> It provides that the fee rate is set by law and fee proceeds are appropriated by the Legislature. In State fiscal year 2003-04 each school district must receive at least three-fourths of the amount it received in state fiscal year 2002-2003 from impact fees or other forms of exaction for the construction or remodeling of public educational facilities which were in effect before July 1, 2003, and state fiscal years 2004-05 through 2007-08 it must receive at least as much as it received from these sources during local fiscal year 2002-03.

Subsection (3) of the new section provides that the Doc Stamp distribution formula in s. 201.15, F.S., does not apply to the statewide impact fee imposed by this act. Like the Doc Stamp tax, the clerk of the circuit court is required to collect all proceeds of the fee levied under this section and, after retaining the collection allowance, remit the proceeds to the Department of Revenue in the same manner as the proceeds from the Doc Stamp tax.

Subsection (4) repeals

“Any impact fee or other form of exaction for the construction or remodeling of public educational facilities imposed as a condition to or in conjunction with the issuance of any development permit as defined in s. 163.3164, F.S. which was in effect before October 1, 2003...”

If repealed impact fee proceeds were obligated to pay outstanding bonds for the construction or remodeling of public educational facilities bonds, fee proceeds from the statewide impact fee must be used to pay such bonds. Furthermore, counties, municipalities, or school districts are prohibited, prospectively, from levying an impact fee for the construction or remodeling of educational facilities. Finally, any ordinance that conflicts with this provision is superseded, and any conflicting special or general law is superseded to the extent of the conflict.

**Section 2** amends s. 201.11 to clarify that the clerks of the circuit court receive the .5% collection allowance on the surtax.

**Section 3** provides that this act shall take effect October 1, 2003, contingent on the passage of a law setting a rate for the statewide impact fee.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

This committee substitute repeals the authority of any county, school district, or municipality to levy an impact fee for the construction or remodeling of educational facilities. Section 18 (b) of art. VII of the Florida Constitution requires any such

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<sup>4</sup> Section 201.02, F.S., imposes a Documentary Stamp (Doc Stamp) tax on deeds, instruments, or writings, whereby any lands, tenements, or other realty, or any interests therein is granted, assigned, transferred, or otherwise conveyed to, or vested in the purchaser, or any other person by his or her direction.

provision that reduces the authority of municipalities or counties to raise revenues, as such authority existed on February 1, 1989, to be approved by two-thirds of the membership of each house of the legislature.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

The statewide impact fee imposed by this committee substitute will be based on documents currently taxed under s. 201.02, F.S. This base is estimated at \$134,745 million for FY 2003-04. A tax of 50 cents per \$100 value, for example, would generate \$675 million.

Existing education impact fees, which are repealed by this committee substitute, generated approximately \$134 million in FY 2001-02.

**B. Private Sector Impact:**

All real estate transactions would be subject to the statewide impact fee, which would increase the cost of those transactions. New residential construction in counties with existing education impact fees would become less costly under this committee substitute.

**C. Government Sector Impact:**

The legislature will appropriate proceeds of the statewide impact fee. Districts which received education impact fee revenue in FY 2002-03 would be held harmless with revenue from the statewide impact fee through fiscal year 2007-08.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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