IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

ALACHUA COUNTY, FLORIDA,
COLLIER COUNTY, FLORIDA,
LAKE COUNTY, FLORIDA, LEE
COUNTY, FLORIDA, LEVY COUNTY,
FLORIDA, NASSAU COUNTY,
FLORIDA, PASCO COUNTY, FLORIDA,
ST. LUCIE COUNTY, FLORIDA, and
SARASOTA COUNTY, FLORIDA,
all of which are political subdivisions of
the State of Florida; the FLORIDA
ASSOCIATION OF COUNTIES, INC.,
the FLORIDA LEAGUE OF CITIES, and
the FLORIDA SCHOOL BOARDS
ASSOCIATION, all of which are
corporations not for profit established
under Florida law,

CASE NO. 2010 CA 0478

Plaintiffs,

vs.

LARRY CRETUL, in his official
capacity as Speaker of the Florida
House of Representatives;
JEFF ATWATER, in his official
capacity as President of the Florida
Senate,

Defendants.
_______________________________/

FILED
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BOB INZER
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA
COPY - not verified against original

**AMENDED COMPLAINT FOR DECLARATORY
AND SUPPLEMENTAL RELIEF**

Plaintiffs, ALACHUA COUNTY, FLORIDA, COLLIER COUNTY, FLORIDA, LAKE COUNTY, FLORIDA, LEE COUNTY, FLORIDA, LEVY

COUNTY, FLORIDA, NASSAU COUNTY, FLORIDA, PASCO COUNTY, FLORIDA, ST. LUCIE COUNTY, FLORIDA, SARASOTA COUNTY, FLORIDA and GILCHRIST COUNTY, FLORIDA all of which are political subdivisions of the State of Florida; the FLORIDA ASSOCIATION OF COUNTIES, INC., the FLORIDA LEAGUE OF CITIES, and the FLORIDA SCHOOL BOARDS ASSOCIATION, which are corporations not for profit established under Florida law, by and through their undersigned counsel, sue Defendants, LARRY CRETUL, in his official capacity as Speaker of the Florida House of Representatives; and JEFF ATWATER, in his official capacity as President of the Florida Senate, and state as follows:

I. JURISDICTION AND VENUE

1. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes, seeking to declare Chapter 2009-49, Laws of Florida unconstitutional and invalid.

2. Venue is proper in Leon County, Florida, pursuant to section 47.011, Florida Statutes, as Leon County is the seat of government for the State of Florida, and the principal place of business of the Speaker of the Florida House of Representatives and the President of the Florida Senate.

II. PARTIES

3. Plaintiffs, ALACHUA COUNTY, FLORIDA, COLLIER COUNTY, FLORIDA, LAKE COUNTY, FLORIDA, LEE COUNTY, FLORIDA, LEVY COUNTY, FLORIDA, NASSAU COUNTY, FLORIDA, PASCO COUNTY, FLORIDA, ST. LUCIE COUNTY, FLORIDA, SARASOTA COUNTY, FLORIDA and GILCHRIST COUNTY, FLORIDA (hereafter, collectively the "Counties"), are political subdivisions of the State of Florida, duly organized and validly existing under the Constitution and laws of the State of Florida. Each of the Counties have adopted ordinances imposing impact fees upon new development seeking to have that development pay its fair share of the necessary infrastructure to support it. Each of these impact fee ordinances fall under the purview of Chapter 2009-49, Laws of Florida and are directly and adversely affected by this legislation.

4. Plaintiff, FLORIDA ASSOCIATION OF COUNTIES, INC. (hereafter, "FAC"), is a statewide association and corporation not for profit organized and existing under Chapter 617 of the Florida Statutes for the purpose of representing county government in Florida and protecting, promoting, and improving the mutual interests of all counties in the State. Among the express purposes for which FAC was organized is to defend the "rights . . . of county government under any constitutional provision [and] statute. . . ." FAC currently

has 66 of the 67 counties within the State of Florida as members and a substantial number of its members have enacted impact fee ordinances which fall under the purview of Chapter 2009-49, Laws of Florida and are directly and adversely affected by this legislation.

5. Plaintiff, FLORIDA LEAGUE OF CITIES (hereafter, the "League of Cities"), is a statewide association and corporation not for profit organized and existing under Chapter 617 of the Florida Statutes for the purpose of representing municipal government in Florida and protecting, promoting, and improving the mutual interests of all cities in the State. Among the express purposes of the League of Cities is to ". . . represent its members before various legislative, executive and judicial branches of government on issues pertaining to the welfare of its members." The League of Cities currently represents over 400 municipalities within the State of Florida and a substantial number of its members have enacted impact fee ordinances which fall under the purview of Chapter 2009-49, Laws of Florida and are directly and adversely affected by this legislation.

6. Plaintiff, FLORIDA SCHOOL BOARDS ASSOCIATION (the "School Boards Ass'n"), is a statewide association and corporation not for profit organized and existing under Chapter 617 of the Florida Statutes for the purpose of representing school districts in Florida and protecting, promoting, and improving the mutual interests of all school districts in the State. It represents all School

Board members within the State of Florida and has been the collective voice for all School Districts in the State since 1930. A substantial number of the members of the School Boards Ass'n have specifically requested the respective county, within which they are located, to adopt school impact fee ordinances which impose impact fees to help fund needed educational infrastructure. Those counties within which they are located, and pursuant to the School Boards' request, have adopted school impact fees which impose impact fees upon new development requiring that development to pay its fair share of the costs for the educational facilities necessary to serve it. The School Boards receive the proceeds of those impact fees and utilize such revenues solely for the provision of capital improvements needed to serve new development within their jurisdiction. Each School Board is the intended beneficiary of each educational impact fee collected pursuant to those county ordinances. These school impact fee ordinances fall under the purview of Chapter 2009-49, Laws of Florida and are directly and adversely affected by the provisions of 2009-49, Laws of Florida.

7. Defendant, LARRY CRETUL ("Speaker Cretul"), is a duly elected member of the Florida Legislature, a body created and operating pursuant to Article III of the Florida Constitution and the laws of the State of Florida, with its principal place of business in Leon County, Florida. Representative Cretul

currently serves as Speaker of the Florida House of Representatives, and he is sued in his official capacity as the head of the Florida House of Representatives.

8. Defendant, JEFF ATWATER ("President Atwater"), is a duly elected member of the Florida Legislature, a body created and operating pursuant to Article III of the Florida Constitution and the laws of the State of Florida, with its principal place of business in Leon County, Florida. Senator Atwater currently serves as President of the Florida Senate, and he is sued in his official capacity as the head of the Florida Senate. (Collectively, Mssrs. Cretul and Atwater and their respective legislative bodies will hereafter be referred to as the "Legislature.")

III. GENERAL ALLEGATIONS

9. During the 2009 Legislative Session, the Legislature adopted Council Substitute for Committee Substitute for House Bill No. 227 ("HB 227") and the Governor signed the bill into law on May 21, 2009. A copy of HB 227 is attached hereto as Exhibit "A" and incorporated by reference. That legislation was codified as Chapter 2009-49, Laws of Florida (the "Act"). A copy of Chapter 2009-49 is attached hereto as Exhibit "B" and incorporated by reference.

10. The Act amended section 163.31801, Florida Statutes, and imposed significant restrictions on the ability of local governments to impose impact fees for the funding of growth related infrastructure in the aggregate. The language of the Act reads as follows:

(5) In any action challenging an impact fee, the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee meets the requirements of state legal precedent or this section. The court may not use a deferential standard.

11. Prior to its adoption, legislative staff for both the Florida House of Representatives and the Florida Senate performed an analysis of their respective bills and their potential impact. The staff analysis of both the Florida House of Representatives and the Florida Senate determined that the legislation implicated the provisions of Article VII, Section 18 of the Florida Constitution, and that the approval of each House of the Legislature by two-thirds of its membership was required for it to be enacted. A copy of the Florida Senate Bill Analysis and Fiscal Impact Statement for CS/SB 580, the Senate companion bill, is attached hereto as Exhibit "C" and incorporated by reference. A copy of the House of Representatives Staff Analysis of CS/CS/HB 227, the House bill, is attached hereto as Exhibit "D" and incorporated by reference. Notwithstanding that the analyses provided that the approval of each House of the Legislature by two-thirds of its membership was required for it to be enacted, the Legislature failed to do so. The House of Representatives of the Legislature approved HB 227 by the requisite two-thirds vote but the Senate did not approve HB 227 by the requisite two-thirds vote.

12. The rights, status and legal relations of the Plaintiffs are or will be adversely affected by the Act, and the Plaintiffs seek this Court's determination and declaration of the validity of said law, as well as supplemental relief.

13. All conditions precedent to the filing of the action have occurred or otherwise have been waived.

COUNT I
VIOLATION OF ARTICLE V, SECTION 2, FLORIDA CONSTITUTION
(UNAUTHORIZED ADOPTION BY LEGISLATURE OF COURT RULE)

14. Plaintiffs reassert the allegations contained in Paragraphs 1 through 13, inclusive.

15. The Counties, FAC, the League of Cities, and the School Boards Ass'n sue Speaker Cretul and President Atwater, in their official capacities, for a judicial declaration of the constitutionality of the Act.

16. Under the provisions of Article V, Section 2 of the Florida Constitution, the Supreme Court is the exclusive province for the adoption of rules relating to practice and procedure in all state courts. The burden of proof established for the judicial determination of the validity of impact fees and concept of judicial deference to their legislative implementation by ordinance are well established court rules of practice and procedure ingrained in clear precedent.

17. The determinations as to the respective burdens of proof that apply in courts of the State of Florida are matters of procedure, which therefore may not be established by the Legislature.

18. The provisions of the Act require that a governmental entity sued in a court of the State of Florida over the validity of its impact fees must now assume the burden of proving that its actions were lawful. The provisions of the Act now require that the Defendants and not the Plaintiffs must meet the burden of establishing the validity of its impact fees. Such provisions constitute a court rule of practice and procedure.

19. The power of the Legislature over rules of court practice and procedure is constitutionally limited in Article V, section 2, Florida Constitution, to general law repealer of a court rule if enacted by 2/3 vote of the membership of each house of the Legislature. The repeal of court rules on practice and procedures in the judicial construction of valid impact fees did not receive the requisite 2/3 vote in the Florida Senate.

20. The Act seeks to either establish a new court rule of practice and procedure relating to the burden of proof beyond the constitutional power of the Legislature or to repeal the existing court rules on the constitutional validity of impact fees imposed by county or municipal ordinance without the requisite 2/3

vote of the membership of each house of the Legislature in violation of Article V, section 2, Florida Constitution.

WHEREFORE, Plaintiffs respectfully request the Court declare that the Act is unconstitutional, as a violation of Article V of the Florida Constitution.

COUNT II
VIOLATION OF THE SEPARATION OF POWERS PROVISIONS OF THE FLORIDA CONSTITUTION (ARTICLE II, SECTION 3 OF THE FLORIDA CONSTITUTION)

21. Plaintiffs reassert the allegations contained in Paragraphs 1 through 13, inclusive.

22. The Counties, FAC, the League of Cities and the School Boards Ass'n sue Speaker Cretul and President Atwater, in their official capacities, for a judicial declaration as to the constitutionality of the Act.

23. Under the provisions of the Act, courts of the State of Florida are directed to not apply a deferential standard in considering the validity of impact fees adopted or imposed by cities and counties.

24. In the context of impact fees, this deferential standard is applied in two contexts. The first is that findings of fact made by the governing bodies of counties and cities acting in their legislative context are entitled to deference by the courts. The second deferential standard is that impact fee ordinances, like all

legislative acts, are presumed to be valid by the courts. These deferential standards as applied to impact fee ordinances are eliminated by the Act.

25. The basis of the deferential standard is derived from the separation of powers among the Executive, Legislative and Judicial branches of government as provided for by the Constitution of the State of Florida. Each branch of government is separate but equal unit of government. The deference to be applied between the respective branches of government is based upon this separation of powers.

26. Such deferential standard is constitutionally strengthened in the 1968 constitutional revision by the power of local self-government provided to or contemplated for counties and municipalities. Such constitutional power of home rule powers has been comprehensively implemented in section 125.01, Florida Statutes, for counties and section 166.021, Florida Statutes, for municipalities. In the exercise of their constitutional and statutory home rule powers, a county or municipal ordinance is a legislative act entitled to the same separation of powers protections as a special act or general law enacted by the Legislature.

27. The requirement of applying a deferential standard by the judicial to a legislative enactment is not derived by statute, but rather the Constitution itself. As such, the Legislature has no authority to amend the Constitution by statute and

direct the Courts of the State of Florida to ignore the deferential standard to be applied to legislative enactments.

WHEREFORE, Plaintiffs respectfully request the Court issue a final judgment declaring that the Act is unconstitutional in violation of Article V of the Florida Constitution.

COUNT III
VIOLATION OF ARTICLE VII, SECTION 18(b), FLORIDA CONSTITUTION
(RESTRICTIONS ON ABILITY TO RAISE REVENUES)

28. Plaintiffs reassert the allegations contained in Paragraph 1 through 13, inclusive.

29. The Counties, FAC and the League of Cities sue Speaker Cretul and President Atwater, in their official capacities, for a judicial declaration as the constitutionality of the Act.

30. Article VII, Section 18(a) of the Florida Constitution states, in pertinent part, as follows:

> (a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1,

> 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

31. The provisions and requirements of the Act require counties and municipalities which adopt impact fees, or currently have impact fees in effect, to spend funds and take actions requiring the expenditure of funds, in that they mandate that they must assume additional burdens which would not normally exist prior to the adoption of that provision.

32. The Legislature failed to find that this law fulfills an important State interest. Further, none of the other additional conditions required by Article VII, Section 18(a) to make this provision effective were present.

WHEREFORE, Plaintiffs respectfully request the Court declare that the Act is unconstitutional in violation of Article VII, Section 18 of the Florida Constitution, and that no county or city is bound by its provisions.

COUNT IV
VIOLATION OF ARTICLE VII, SECTION 18(a), FLORIDA CONSTITUTION
(UNFUNDED MANDATE)

33. Plaintiffs reassert the allegations contained in Paragraphs 1 through 13, inclusive.

34. The Counties, FAC, and the League of Cities sue Speaker Cretul and President Atwater, in their official capacities, for a judicial declaration as to the constitutionality of the Act.

35. Article VII, Section 18(b) of the Florida Constitution states, in pertinent part, as follows:

> (b) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

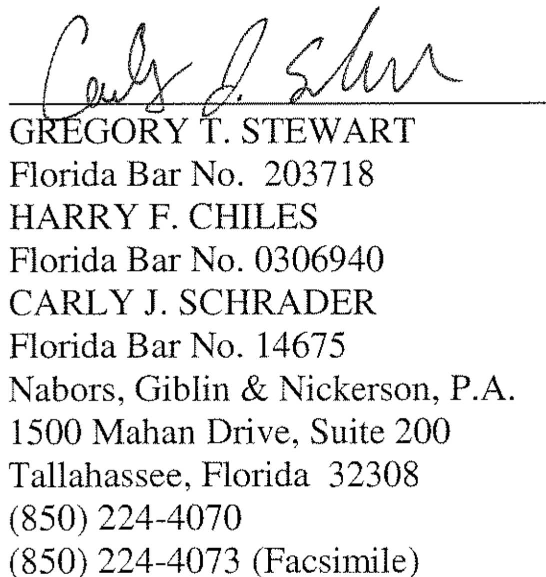
36. The Act requires that in any challenge of an impact fee, the respective governmental entity will have the burden of proving by a preponderance of the evidence that the imposition of the amount of the fee meets the requirements of state legal precedent or section 163.31801, Florida Statutes. The provision of the Act applies to both new and existing impact fees adopted by counties and cities.

37. The Act substantially alters the ability of local governments to impose or collect impact fees and places significant restrictions on the ability of cities and counties to raise revenue through impact fees in the aggregate.

38. The Act was not adopted by the requisite two-thirds vote of both the House of Representatives and the Florida Senate, and therefore, it is not valid and enforceable and constitutes an unlawful mandate.

WHEREFORE, Plaintiffs respectfully request the Court issue a final declaration determining that the Act is unconstitutional in violation of Article VII, Section 18 of the Florida Constitution.

DATED this 19th day of February, 2010.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to JONATHAN A. GLOGAU, ESQUIRE, Chief, Complex Litigation, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, this 19th day of February, 2010.

CARLY J. SCHRADER

1 A bill to be entitled
2 An act relating to impact fees; amending s. 163.31801,
3 F.S.; requiring the government to prove certain elements
4 of an impact fee by a preponderance of the evidence;
5 prohibiting a court from using a deferential standard in a
6 court action; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsections (5) and (6) are added to section
11 163.31801, Florida Statutes, to read:
12 163.31801 Impact fees; short title; intent; definitions;
13 ordinances levying impact fees.--
14 (5) In any action challenging an impact fee, the
15 government has the burden of proving by a preponderance of the
16 evidence that the imposition or amount of the fee meets the
17 requirements of state legal precedent or this section. The court
18 may not use a deferential standard.
19 Section 2. This act shall take effect July 1, 2009.

Exhibit "A"

CHAPTER 2009-49

Council Substitute for Committee Substitute for House Bill No. 227

An act relating to impact fees; amending s. 163.31801, F.S.; requiring the government to prove certain elements of an impact fee by a preponderance of the evidence; prohibiting a court from using a deferential standard in a court action; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (5) and (6) are added to section 163.31801, Florida Statutes, to read:

163.31801 Impact fees; short title; intent; definitions; ordinances levying impact fees.—

(5) In any action challenging an impact fee, the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee meets the requirements of state legal precedent or this section. The court may not use a deferential standard.

Section 2. This act shall take effect July 1, 2009.

Approved by the Governor May 21, 2009.

Filed in Office Secretary of State May 21, 2009.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Exhibit "B"

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 Transportation and Economic Development Appropriations Committee

BILL: CS/SB 580

INTRODUCER: Judiciary Committee, Senator Haridopolos and others

SUBJECT: Impact Fees/Challenges

DATE: April 17, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Fav/1 amendment**
2.	Treadwell	Maclure	JU	**Fav/CS**
3.	Fournier	McKee	FT	**Favorable**
4.	Weaver	Noble	TA	**Pre-meeting**
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [x] Statement of Substantial Changes
B. AMENDMENTS........................ [ ] Technical amendments were recommended
[ ] Amendments were recommended
[ ] Significant amendments were recommended

I. Summary:

This bill creates a "preponderance of the evidence" burden of proof for the government in cases challenging the imposition or amount of an impact fee. In effect, the government will be required to prove by a preponderance of the evidence that the imposition or amount of the impact fee meets the requirements of state legal precedent or the statute governing impact fees. In addition, the bill precludes the court from using a deferential standard.

This bill substantially amends section 163.31801, Florida Statutes.

II. Present Situation:

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.[1] 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

[1] FLA. CONST. art VIII, s. 1(f).

Exhibit "C"

electors.[2] 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.[3] Current law enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.[4] Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Municipalities are afforded broad home rule powers except: annexation, merger, exercise of extraterritorial power, and subjects prohibited by the federal, state, or county constitutions or law.[5]

Given these constitutional and statutory powers, local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization.[6] Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.[7]

Impact Fees

Impact fees are enacted by local home rule ordinance. These fees require total or partial payment to counties, municipalities, special districts, and school districts for the cost of additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. 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 of the fee's earmarked purposes.

Florida Impact Fee Review Task Force

In 2005, the Legislature created the Florida Impact Fee Review Task Force (Task Force). The 15-member Task Force was charged with surveying the current use of impact fees, reviewing current impact fee case law, and making recommendations as to whether statutory direction was necessary with respect to specific impact fee topics. The Task Force concluded that:

- Impact fees are a growing source of revenue for infrastructure in Florida;

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[2] FLA. CONST. art VIII, s. 1(g).
[3] FLA. CONST. art VIII, s. 2(b). *See also* s. 166.021(1), F.S.
[4] Section 125.01, F.S.
[5] Section 166.021, F.S.
[6] 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. *See* FLA. CONST. art. VII, s. 1. 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.
[7] For a catalogue of such revenue sources, see the most recent editions of the Legislative Committee on Intergovernmental Relations *Local Government Financial Information Handbook* and the *Florida Tax Handbook* published jointly by the Florida Senate Finance and Taxation Committee, the House of Representatives Committee on Fiscal Policy and Resources, the Office of Economic and Demographic Research, and the Florida Department of Revenue.

- Local governments in Florida do not have adequate revenue generating resources with which to meet the demand for infrastructure within their jurisdictions;
- Without impact fees, Florida's growth, vitality, and levels of service would be seriously compromised;
- Impact fees are a revenue option for Florida's local governments to meet the infrastructure needs of their residents;
- Because Florida comprises a wide variety of local governments – small and large, urban and rural, high growth and stable, built out and vacant land – each with diverse infrastructure needs, a uniform impact fee statute would not serve the state;
- Impact fees must remain flexible to address the infrastructure needs of the specific jurisdiction; and
- Statutory direction on impact fees is needed to address and clarify certain issues regarding impact fees.

The Task Force voted against recommending statutory guidance regarding the legal burden of proof for impact fee ordinance challenges.

Statutory Authority for Impact Fees

In 2006, the Legislature enacted s. 163.31801, F.S., to provide requirements and procedures to be followed by a county, municipality, or special district when it adopts an impact fee. By statute, an impact fee ordinance adopted by local government must, at a minimum, include the following elements:

- 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 government imposes an impact fee to address its infrastructure needs, the entity must 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 at least 90 days before the effective date of a new or amended impact fee; and
- Address whether credits should be granted for future local tax payments for capital improvements, outside funding sources, and in-kind contributions from developers.

Existing law encourages "the use of innovative land development regulations which include provisions such as transfer of development rights, incentive and inclusionary zoning, planned-unit development, impact fees, and performance zoning."[8]

Current law also provides that an independent special fire control district that has been authorized to impose an impact fee by special act or general law may establish a schedule of impact fees, in compliance with standards set by law for new construction, to pay for the cost of new facilities and construction.[9] These fees must be kept separate from the other revenues of the district and used exclusively to acquire, purchase, or construct the facilities needed to provide fire protection and emergency services to new construction. The district's board is required to

[8] Section 163.3202(3), F.S.
[9] Section 191.009(4), F.S.

maintain adequate records to ensure the fees are expended only for permissible facilities and equipment.

Section 380.06, F.S., governs developments of regional impact (DRI). [10] If the development order for a DRI requires a developer to contribute land or a public facility, to construct or expand the facility, or to pay for the acquisition or expansion or construction, and the developer is also subject to an impact fee imposed by local ordinance, the local government must establish and implement a procedure for the developer to receive a credit of the development order fee toward the impact fee for the same need. Also, if the local government imposes or increases an impact fee after the development order for a DRI has been issued, the developer may petition the local government for a credit for any contribution required by the development order toward the impact fee for the same need. This section authorizes the local government and a developer to enter into "capital contribution front-ending agreements" as part of a development order for a DRI that allows a developer or his or her successor to be reimbursed for voluntary contributions paid in excess of his or her fair share.[11]

Dual Rational Nexus Test

There have been a number of court decisions that address impact fee challenges.[12] For example, in *Hollywood, Inc. v. Broward County*,[13] the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if it offsets needs that are sufficiently attributable to the new development and the fees collected are adequately earmarked for the benefit of the residents of the new development.[14] In order to show the impact fee meets those requirements, the local government must demonstrate a rational nexus between the need for additional public facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.[15] Because the ordinance at issue satisfied these requirements, the court affirmed the circuit court's validation of the impact fee ordinance.[16]

The Florida Supreme Court addressed the application of impact fees for school facilities in *St. Johns County v. Northeast Builders Association, Inc.*[17] The ordinance at issue conditioned the issuance of a new building permit on the payment of an impact fee. Those fees that were collected were placed in a trust fund for the school board to expend solely "to acquire, construct,

[10] Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a process to provide state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.

[11] Section 380.06(16)(c), F.S.

[12] *See, e.g., Contractors & Builders Ass'n v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 1983).

[13] *Hollywood, Inc. v. Broward County*, 431 So. 2d 606 (Fla. 4th DCA 1983).

[14] *Id.* at 611.

[15] *Id.* at 611-12.

[16] *Id.* at 614.

[17] *St. Johns County v. Northeast Builders Association, Inc.*, 583 So. 2d 635 (Fla. 1991).

expand and equip the educational sites and educational capital facilities necessitated by new development."[18] Also, the ordinance provided for a system of credits to fee-payers for land contributions or the construction of educational facilities. This ordinance required funds not expended within six years to be returned, along with interest on those funds, to the current landowner upon application.[19]

The court applied the dual rational nexus test and found the county met the first prong of the test, but not the second. The builders in *Northeast Builders Association, Inc.*, argued that many of the residences in the new development would have no impact on the public school system. The court found the county's determination that every 100 residential units would result in the addition of 44 students in the public school system was sufficient and, therefore, concluded the first prong of the test was satisfied. However, the court found that the ordinance did not restrict the use of the funds to sufficiently ensure that such fees would be spent to the benefit of those who paid the fees.[20]

Recent decisions have further clarified the extent to which impact fees may be imposed. In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when a residential development has no potential to increase school enrollment, public school impact fees may not be imposed.[21] In the *City of Zephyrhills v. Wood*, the district court upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.[22]

As developed under case law, a legally sufficient impact fee has the following characteristics:

- 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 proportional 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.

Burden of Proof and Standard of Review

The obligation to prove a material fact in issue is known as the burden of proof. Generally, in a legal action the burden of proof is on the party who asserts the proposition to be established and

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[18] *Id.* at 637 (citing St. Johns County, Fla., Ordinance 87-60, s. 10(B) (Oct. 20, 1987)).
[19] *Id.* at 637.
[20] *Id.* at 639. Because the St. Johns County ordinance was not effective within a municipality absent an interlocal agreement between the county and municipality, there was the possibility that impact fees could be used to build a school for development within a municipality that is not subject to the impact fee.
[21] *Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126, 134 (Fla. 2000). Volusia County had imposed a school impact fee on a mobile home park for persons aged 55 and older.
[22] *City of Zephyrhills v. Wood*, 831 So. 2d 223 (Fla. 2d DCA 2002).

the burden can shift between parties as the case progresses. The level or degree of proof that is required as to a particular issue is referred to as the standard of proof. In most civil actions, the party asserting a claim or affirmative defense must prove the claim or defense by a preponderance of the evidence.[23] The preponderance of the evidence (also known as the "greater weight of evidence") standard of proof requires that the factfinder determine whether a fact sought to be proved is more probable than not.

For impact fee cases, the dual rational nexus test states that the government must prove:

- a rational nexus between the need for additional capital facilities and the growth in population generated by the development; and
- a rational nexus between the expenditures of the funds collected and the benefits accruing to the development.[24]

Although the challenger has to plead his or her case and allege a cause of action, it appears that beyond the pleading phase, the court has placed the burden of proof on the local government to satisfy the dual rational nexus test. Some parties have argued that the standard evolving in Florida is that an impact fee will be upheld if it is "fairly debatable" that the fee satisfies the dual rational nexus test.[25] In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court rephrased the standard as a "reasonableness" test.[26] Although the standard is not clearly defined, the courts have generally not required a local government to defend its impact fee by a preponderance of the evidence.

III. Effect of Proposed Changes:

The bill amends s. 163.31801, F.S., to codify the burden of proof for impact fee ordinance challenges. The bill places the burden of proof on the government to prove by a preponderance of the evidence that the imposition or amount of the fee meets the requirements of state legal precedent or s. 163.31801, F.S. Some courts may not consistently place the burden on the government in impact fee challenges. The bill makes it clear that the government bears the burden of proof in impact fee challenges.

Currently, in impact fee challenges, the government has the burden of satisfying the dual rational nexus test and the statutory requirements associated with impact fees. However, the bill provides that the government has the burden of establishing that the impact fee meets the requirements of state precedent *or* the statutory requirements. If it is the intent of the Legislature to require the government to satisfy both the substantive tests established by the judiciary and the relevant statutory requirements, it may wish to change the conjunction "or" to "and."

The bill also prohibits the courts from applying a deferential standard. In practice, courts will be precluded from using the "fairly debatable" standard when evaluating impact fee challenges. The fairly debatable standard is most widely applicable in land use cases and is a "highly deferential

[23] 5 Fla. Prac., Civil Practice s. 16:1 (2009 ed.).
[24] *See St. Johns County v. Northeast Florida Builders Ass'n, Inc.*, 583 So. 2d 635 (Fla. 1991).
[25] *See* the Florida Impact Review Task Force, *Final Report & Recommendations* (Feb. 1, 2006), *available at* http://www.floridalcir.gov/taskforce.cfm (last visited Mar. 17, 2009).
[26] *Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126 (Fla. 2000).

standard requiring approval of a planning action if reasonable persons could differ as to its propriety."[27] This standard requires deference to the policy-making function of a board when acting in a legislative capacity, providing that its actions will be sustained as long as they are fairly debatable.[28]

It is not clear if the bill's reference to "state legal precedent" will only capture case law as it now stands, or if it will capture the evolving state of the law as cases regarding impact fee challenges are decided by the courts. When a general cross-reference appears in a statute, courts will treat the cross-reference as incorporating future amendments. Specific references included in statutes will usually be treated as a reference to the other statute or law as it existed at the time the reference was adopted. A court's interpretation of this provision will likely turn on its conclusion of whether the reference to "state legal precedent" is specific or general.

The bill provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repel any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. Because this bill does not qualify for one of the exceptions or exemptions provided in s. 18, Art. VII, State Constitution, and reduces the authority of local governments to impose impact fees, the bill does fall under the mandate provisions of s. 18, Art. VII, State Constitution, and may require a two-thirds vote 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:

In a federal or state constitutional case, standards of review and burdens of proof can become constitutional issues. The argument might be made that it is within the purview of the courts and not the Legislature to interpret the constitution. This raises a constitutional separation of powers issue. In this bill, the language forbidding the courts to use a more deferential standard of review, though reasonable in general, may emphasize the separation of powers problem if an impact fee is challenged on a

[27] *Island, Inc. v. City of Bradenton Beach*, 884 So. 2d 107 (Fla. 2d DCA 2004).
[28] 7 FLA. JUR 2d *Building, Zoning, and Land Controls* s. 246.

constitutional basis. Impact fees are open to being challenged on a number of state and federal constitutional grounds including: federal and state takings claims,[29] challenges that it is an improperly enacted tax,[30] and challenges that it violates the state constitutional requirement for free public schools.[31]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that this bill has a negative but indeterminate impact on local government revenue.

B. Private Sector Impact:

The bill clarifies that the government bears the burden of proof in impact fee cases. In addition, courts will be precluded from applying a deferential standard to the challenge, which usually favors the local government. As a result, in some instances, individuals and developers may be more successful in suits challenging the assessment of these fees.

C. Government Sector Impact:

The preponderance of the evidence burden of proof is likely less deferential to local governments than the inconsistent deference courts currently afford impact fees. Therefore, there may be an increase in litigation challenging impact fees, and those impact fees that do not have data and analysis to show that they meet the dual rational nexus test are more likely to be struck down on constitutional grounds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 1, 2009:

The committee substitute incorporates the traveling amendment adopted in the Committee on Community Affairs (Barcode 666974). The committee substitute:

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[29] U.S. CONST. amend. V; FLA. CONST. art. I, s. 9.

[30] FLA. CONST. art. VII, s. 1.

[31] FLA. CONST. art. IX, s. 1.

- Provides that the government, not the challenger, bears the burden of proof by a preponderance of the evidence in impact fee challenge cases; and
- Specifies that the "court may not use a deferential standard" rather than the "court may not use a deferential standard *that favors either party.*"

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 227 Impact Fees
SPONSOR(S): Economic Development & Community Affairs Policy Council, Aubuchon, and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 580

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	12 Y, 0 N, As CS	Fudge	Hoagland
2)	Civil Justice & Courts Policy Committee	10 Y, 0 N	Bond	De La Paz
3)	Economic Development & Community Affairs Policy Council	15 Y, 0 N, As CS	Fudge	Tinker
4)				
5)				

SUMMARY ANALYSIS

An impact fee is a cost imposed on new construction to account for the impact of such construction on the community's infrastructure. Impact fees are created and amended by local ordinance. Under current law, the courts will uphold an ordinance adopted by a local government against a person challenging the adoption of the ordinance if there is any "fairly debatable" cause for upholding the ordinance. This fairly debatable standard of review is considered difficult to overcome by a challenger.

This bill requires that, should any person challenge an impact fee, the government entity that enacted the ordinance must show, by a preponderance of the evidence, that the imposition or amount of the fee meets the requirements of state legal precedent or law. This bill also provides that the court may not use a deferential standard of review. The bill prohibits any increase in impact fees, except when the impact fee is pledged to the retirement of debt. This limitation expires July 1, 2011.

The Revenue Estimating Conference has determined that the provisions of this bill will have a negative indeterminate impact on local governments.

This bill may be a mandate requiring a two-thirds vote of the membership to be enacted.

Exhibit "D"

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Impact fees are enacted by local home rule ordinance. They require total or partial payment to counties, municipalities, special districts, and school districts for the cost of additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee.

2005 Impact Fee Review

In 2005, the Legislature created the Florida Impact Review Task Force. The 15-member Task Force was charged with surveying the current use of impact fees, reviewing current impact fee case law and making recommendations as to whether statutory direction was necessary with respect to specific impact fee topics. The Task Force concluded that:

- Impact fees are a growing source of revenue for infrastructure in Florida.
- Local governments in Florida do not have adequate revenue generating resources with which to meet the demand for infrastructure within their jurisdictions.
- Without impact fees, Florida's growth, vitality and levels of service would be seriously compromised.
- Impact fees are a revenue option for Florida's local governments to meet the infrastructure needs of their residents.
- Because Florida comprises a wide variety of local governments – small and large, urban and rural, high growth and stable, built out and vacant land – each with diverse infrastructure needs, a uniform impact fee statute would not serve the state.
- Impact fees must remain flexible to address the infrastructure needs of the specific jurisdictions.
- Statutory direction on impact fees is needed to address and clarify certain issues regarding impact fees.

The Task Force voted against recommending a statutory guidance to the legal burden of proof for impact fee ordinance challenges.

Current Law on Impact Fees

In 2006, the Legislature enacted s. 163.31801, F.S., to provide requirements and procedures to be followed by a county, municipality, or special district when it adopts an impact fee. By statute, an impact fee ordinance adopted by local government must, at a minimum, include the following elements:

- 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 government imposes an impact fee to address its infrastructure needs, the entity must 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 at least 90 days before the effective date of a new or amended impact fee.
- Address whether credits should be granted for future local tax payments for capital improvements, outside funding sources, and in-kind contributions from developers.

Section 163.3202(3), F.S., encourages "the use of innovative land development regulations which include provisions such as transfer of development rights, incentive and inclusionary zoning, planned-unit development, impact fees, and performance zoning."

Section 191.009(4), F.S., provides that an independent special fire control district that has been authorized to impose an impact fee by special act or general law may establish a schedule of impact fees, in compliance with standards set by law for new construction, to pay for the cost of new facilities and construction. These fees must be kept separate from the other revenues of the district and used exclusively to acquire, purchase, or construct the facilities needed to provide fire protection and emergency services to new construction. The district's board is required to maintain adequate records to ensure the fees are only expended for permissible facilities and equipment.

Section 380.06, F.S., governs developments of regional impact (DRI).[1] If the development order for a DRI requires a developer to contribute land or a public facility, to construct or expand such facility, or to pay for the acquisition or expansion or construction, and the developer is also subject to an impact fee imposed by local ordinance, the local government must establish and implement a procedure for the developer to receive a credit of the development order fee towards the impact fee for the same need. Also, if the local government imposes or increases an impact fee after the development order for a DRI has been issued, the developer may petition the local government for a credit for any contribution required by the development order towards the impact fee for the same need. This section authorizes the local government and a developer to enter into "capital contribution front-ending agreements" as part of a development order for a DRI that allows a developer or his or her successor to be reimbursed for voluntary contributions paid in excess of his or her fair share.

Case Law on Impact Fees

There have been a number of court decisions that address impact fees.[2] In *Hollywood, Inc. v. Broward County,*[3] the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if it offsets needs that are sufficiently attributable to the new development and the fees collected are adequately earmarked for the benefit of the residents of the new development.[4] In order to show the impact fee meets those requirements, the local government must demonstrate a rational nexus between the need for additional public facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.[5] Because the ordinance at issue satisfied these requirements, the court affirmed the circuit court's validation of the ordinance.[6]

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[1] Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a process to provide state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.

[2] *See, e.g., Contractors & Builders Ass'n v. City of Dunedin*, 329 So.2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So 2d 140 (Fla. 4th DCA 1983).

[3] 431 So.2d 606 (Fla. 4th DCA 1983).

[4] *See id.* at 611.

[5] *See id.* at 611-12.

[6] *See id.* at 614.

The Florida Supreme Court addressed the issue of impact fees for school facilities in *St. Johns County v. Northeast Builders Association, Inc.*[7] The ordinance at issue conditioned the issuance of a new building permit on the payment of an impact fee. Those fees that were collected were placed in a trust fund for the school board to expend solely "to acquire, construct, expand and equip the educational sites and educational capital facilities necessitated by new development."[8] Also, the ordinance provided for a system of credits to fee-payers for land contributions or the construction of educational facilities. This ordinance required funds not expended within six years to be returned, along with interest on those funds, to the current landowner upon application.[9]

The court applied the dual rational nexus test and found the county met the first prong of the test, but not the second. The builders in *Northeast Builders Association, Inc.* argued that many of the residences in the new development would have no impact on the public school system. The court found the county's determination that every 100 residential units would result in the addition of forty-four students in the public school system was sufficient and, therefore, concluded the first prong of the test was satisfied. However, the court found that the ordinance did not restrict the use of the funds to sufficiently ensure that such fees would be spent to the benefit of those who paid the fees.[10]

Recent decisions have further clarified the extent to which impact fees may be imposed. In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when residential development has no potential to increase school enrollment, public school impact fees may not be imposed.[11] In the *City of Zephyrhills v. Wood*, the district court upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.[12]

As developed under case law, a legally sufficient impact fee has the following characteristics:

- 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 proportional 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 towards the cost of the increased capacity for public facilities.

Burden of Proof and Standard of Review

The obligation of a party in litigation to prove a material fact in issue is known as the burden of proof. Generally, in a legal action the burden of proof is on the party who asserts the proposition to be established and the burden can shift between parties as the case progresses. The level or degree of proof that is required as to a particular issue is referred to as the standard of proof or standard of review. In most civil actions, the party asserting a claim or affirmative defense must prove the claim or defense by a preponderance of the evidence.[13] The preponderance of the evidence (also known as the "greater weight of evidence") standard of proof requires that the factfinder determine whether a fact sought to be proved is more probable than not.

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[7] 583 So.2d 635 (Fla. 1991).

[8] *See id.* at 637, *citing*, St. Johns County, Fla., Ordinance 87-60, § 10(B) (Oct. 20, 1987).

[9] *See id.* at 637.

[10] *See id.* at 639. Because the St. Johns County ordinance was not effective within a municipality absent an interlocal agreement between the county and municipality, there was the possibility that impact fees could be used to build a school for development within a municipality that is not subject to the impact fee.

[11] 760 So.2d 126 (Fla. 2000), at 134. Volusia County had imposed a school impact fee on a mobile home park for persons aged 55 and older.

[12] 831 So.2d 223 (Fla. 2d DCA 2002).

[13] 5 Fla. Prac., Civil Practice § 16:1 (2009 ed.).

For impact fee cases the dual rational nexus test states that the government must prove: (1) a rational nexus between the need for additional capital facilities and the growth in population generated by the development and (2) a rational nexus between the expenditures of the funds collected and the benefits accruing to the development.[14] Although the challenger has to plead their case and allege a cause of action, beyond the pleading phase the court's language seems to place the burden of proof on the local government. Some parties have argued that the standard being adopted by Florida courts is that an impact fee will be upheld if it is "fairly debatable" that the fee satisfies the dual rational nexus test.[15] In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court rephrased the standard as a "reasonableness" test.[16] Although the standard is not clearly defined, the courts have generally not required a local government to defend its impact fee by as high of a standard as preponderance of the evidence.

Effect of Proposed Changes

This bill amends s. 163.31801, F.S., to require that, should a person challenge an impact fee ordinance, the government that enacted the ordinance must show, by a preponderance of the evidence, that the imposition or amount of the fee meets the requirements of state legal precedent or statute.

The bill provides that the court may not use a deferential standard. The effect of this change is that the court will not use the "fairly debatable" standard of review when evaluating the legality of an impact fee ordinance.

The bill also prohibits any increase in impact fees, except when the impact fee is pledged to the retirement of debt. This limitation expires July 1, 2011.

B. SECTION DIRECTORY:

Section 1 amends s. 163.31801, F.S., regarding impact fees.

Section 2 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Negative Indeterminate, see Fiscal Comments.

2. Expenditures:

   Indeterminate, see Fiscal Comments.

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[14] *See St. Johns County v. Northeast Florida Builders Ass'n, Inc.*, 583 So.2d 635 (Fla. 1991).
[15] *See* THE FLORIDA IMPACT REVIEW TASK FORCE, February 1, 2006 Final Report & Recommendations, *available at* http://www.floridalcir.gov/taskforce.cfm.
[16] 760 So.2d 126 (Fla. 2000).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate, see Fiscal Comments.

D. FISCAL COMMENTS:

The Revenue Estimating Conference (REC) met on April 3, 2009, and determined that the bill would ultimately result in counties, municipalities and special districts being less successful in defending legal challenges. However, the extent to which this will occur is unknown and the impact is determined to be negative indeterminate.

In addition, the REC determined that the impact of the amendment, limiting the ability of counties, municipalities and special districts to increase impact fees, is also negative indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision appears to apply because the bill reduces the authority that counties, municipalities and special districts have to raise revenue as that authority existed on February 1, 1989. The reduction in authority comes from limitation on an increase in impact fees except for those pledged to the retirement of debt. The bill does not appear to qualify for an exception or exemption.

   If the mandates provision applies, and in the absence of an applicable exemption or exception, Article VII, section 18(b), of the Florida Constitution provides that, "except upon approval by a two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989."

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 4, 2009, the Military & Local Affairs Policy Committee adopted one amendment to this bill that shifted the burden of proof from the challenger to the local government. The bill was then reported favorably with a committee substitute.

On April 1, 2009, the Economic Development & Community Affairs Policy Council adopted an amendment to limit increases in impact fees except for impact fees pledged to the retirement of debt.