CUA-04 RURAL TRANSPORTATION IMPACT FEE FLEXIBILITY
STAFF ANALYSIS

PROPOSAL INFORMATION			
SUBMITTING COUNTY:	Hendry County		
SPONSOR CONTACT:	Ramon Iglesias, Commissioner; bocc4@hendryfla.net; 863-599-0460		
FAC COMMITTEE:	Community & Urban Affairs	**CROSS-CLAIMS:**	None identified
FAC STAFF:	J. Scala	**DATE:**	September 30, 2026

This staff analysis is based on the proposal as submitted and does not reflect an adopted position of the Florida Association of Counties.

POLICY PROPOSAL:

FAC supports legislation amending Florida's impact fee laws to allow fiscally constrained counties greater flexibility to use transportation impact fee revenues for the reconstruction, rehabilitation, resurfacing, widening, and structural improvement of existing county roads serving and impacted by new development, while maintaining the required reasonable connection between the development generating the fees and the transportation improvements receiving those revenues.

I. SUMMARY:

Hendry County asks FAC to support amending the Florida Impact Fee Act, s. 163.31801, F.S., to allow fiscally constrained counties to spend transportation impact fee revenues on reconstruction, **rehabilitation, resurfacing**, widening, and structural improvement of existing county roads serving new development, preserving the nexus between fee-paying development and the improvements funded.

Current law defines eligible "infrastructure" to exclude the cost of repairs or maintenance (s. 163.31801(3)(b), F.S.) and requires fee expenditures to benefit new users, leaving resurfacing and rehabilitation of existing roads ineligible even where development-generated traffic drives the deterioration.

Recent legislation has tightened fee adoption and increases, while not amending expenditure eligibility. The proposal solely benefits fiscally constrained counties, does not contain an unfunded mandate and is protective of home rule.

II. PRESENT SITUATION:

Impact Fees

Counties adopt impact fees by ordinance as an exercise of home rule; the Impact Fee Act recognizes them as an important revenue source for funding "the infrastructure necessitated by new growth" (s. 163.31801(2), F.S.). Florida courts sustain impact fees as regulatory fees rather than taxes only where they satisfy the dual rational nexus test:

1. a reasonable connection between the need for additional capital facilities and the fee-generating growth, and
2. between expenditure of the funds and benefits accruing to the fee payers.

Contractors & Builders Ass'n of Pinellas County v. City of Dunedin, 329 So. 2d 314 (Fla. 1976); St. Johns County v. Northeast Fla. Builders Ass'n, 583 So. 2d 635 (Fla. 1991). Both prongs are codified at s. 163.31801(4)(f)–(g), F.S.; fee revenue may fund the capital facilities new growth necessitates but may not cure deficiencies existing independent of new development.

Section 163.31801(3)(b), F.S., defines "infrastructure" as "a fixed capital expenditure or fixed capital outlay, excluding the cost of repairs or maintenance, associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of at least 5 years," plus related land acquisition, design, engineering, permitting, and other costs to bring the facility into service. Complementary controls reinforce the exclusion: earmarking for capital facilities "to benefit new users" ((4)(h)); a bar on funding existing debt or previously approved projects absent a nexus to new construction ((4)(i)); separate-fund accounting ((4)(b)); and an annual chief financial officer attestation that fees were expended only to acquire, construct, or improve specific infrastructure needs ((8)). The combined effect of these provisions is that capital work that creates or expands an asset serving new users can qualify. Resurfacing and rehabilitation of existing roads are ordinarily repairs or maintenance and ineligible regardless of what caused the wear.

Roadway Damage Mitigation

Current law supplies narrower tools against development-generated road damage. Special permits for oversize or overweight movements on county-maintained roads, with conditions of operation, fees carrying the force of law, and "such undertaking or other security as may be deemed necessary to compensate for any damage to any roadway or road structure" (s. 316.550(2), (6), F.S.); posted lower weight limits on roads, bridges, and culverts liable to damage (s. 316.555, F.S.); a civil action against owner and driver for all damage from illegal operation (s. 316.560, F.S.); and development-order conditions and statutory development agreements (ch. 163, pt. II) binding haul routes, restoration, and maintenance security project by project. These instruments reach identifiable construction-phase damage movement by movement — with weight enforcement vested by s. 316.545, F.S., in Florida Highway Patrol officers and Department of Transportation weight inspectors rather than county staff — and do not reach the cumulative operational loading buildout places on a network.

Section 218.67(1), F.S., defines a fiscally constrained county as one entirely within a rural area of opportunity designated under s. 288.0656, F.S., or one for which a mill raises no more than $5 million; the Department of Revenue currently identifies 29 such counties, including Hendry (entirely within the South Central Rural Area of Opportunity). For existing-road preservation these counties rely principally on general revenue, fuel taxes, and the state's small-county grant programs — the Small County Road Assistance Program (s. 339.2816, F.S.) and Small County Outreach Program (s. 339.2818, F.S.), which fund resurfacing and reconstruction of county roads. Impact fee collections in this class are recent and modest: Hendry reinstated its program in 2025, and several neighbors are only now adopting or considering fees.

III. EFFECT OF THE PROPOSAL:

The proposal amends s. 163.31801, F.S., to authorize a fiscally constrained county to expend transportation impact fee revenues on the reconstruction, rehabilitation, resurfacing, widening, and structural improvement of existing county roads serving and impacted by new development, retaining the reasonable-connection requirement. Two drafting mechanisms are available — a class-limited exception to the repairs-or-maintenance exclusion in (3)(b), or a freestanding authorization cross-referencing the (4)(f)–(g) nexus standards — and either requires conforming language in (4)(h) and (4)(i) so the authorization is not nullified by the expenditure controls.

Reconstruction, widening, and structural improvement of existing roads already fall within the definition where the work is capital in nature and the nexus standards are met; the operative expansion is resurfacing and rehabilitation, together with relief from the benefit-to-new-users framing where the benefit is preservation of capacity serving new development. Chapter 163 defines neither "reconstruction" nor "repairs or maintenance," and pavement work runs a continuum between them; that classification uncertainty — enforced through the s. 163.31801(8) affidavit and the s. 163.31801(9) burden of proof — suppresses county use even of the eligible categories. Part of the proposal's effect is accordingly certainty rather than new authority; the implementing bill should define its covered work rather than restate the submission's terms.

Fee-versus-tax jurisprudence sustains impact fees only within the dual rational nexus, which the proposal preserves on its face; the development-generated heavy-vehicle traffic the submission identifies supplies the nexus theory a county's fee study would document. Expenditures drifting toward routine maintenance untethered from new development carry challenge exposure under s. 163.31801(9), F.S., which places the burden of proof on the government without judicial deference — an administration consideration, not an impediment. Sheetz v. County of El Dorado, 601 U.S. 267 (2024), extends nexus and proportionality review to legislatively imposed fees — a federal floor independent of state authorization — and adding an existing-road component to an adopted schedule would likely effect an "increase" subject to ch. 2026-161's demonstrated-need study requirements.

Three scope decisions are flagged for the committee: (1) the covered class — as submitted; with municipalities within those counties; a population-tiered small-county class on the ss. 339.2816–339.2818, F.S., model; or statewide conditioned on the enhanced study, the built-out platted-network condition not being unique to the fiscally constrained class; (2) the covered work — the full list as submitted, or a narrower authorization limited to resurfacing and rehabilitation, the categories current law actually excludes; and (3) the mechanism — definitional exception versus standalone authorization. An authorization keyed to s. 218.67, F.S., status also requires transition treatment for a county that graduates during a fee-funded program.

IV. COUNTY IMPACT:

- Counties may apply transportation impact fee revenue to the enumerated existing-road work where the fee study and capital plan document the connection to new development — of greatest value in built-out platted networks where growth loads existing roads rather than requiring new ones.
- Local authority is permissive. A county electing to use it must document the nexus in its fee study and continue separate-fund accounting and the annual expenditure affidavit (s. 163.31801(4)(b), (8), F.S.).
- Counties should prepare for fee-study updates adding existing-road demand components and defensibility under the s. 163.31801(9), F.S., no-deference standard.
- Scope: As proposed, the 29 fiscally constrained counties; no change to other counties' authority; no preemption; no duty for counties that do not opt in.

Protective of Home Rule: Yes — the proposal expands county discretion over the expenditure of locally imposed fees, is entirely permissive, and imposes no preemption.

V. FISCAL IMPACT:

- No state revenue effect; no Revenue Estimating Conference estimate is expected for a permissive local expenditure authorization.
- No new county revenue: the proposal broadens eligible uses of existing and future collections, which in the fiscally constrained class are modest and often recent — Hendry reinstated its program in 2025.
- Where exercised, the flexibility relieves general revenue and fuel tax maintenance budgets by an indeterminate amount; the trade-off is that dollars applied to preservation are unavailable for capacity projects. Both effects are county-determined and unquantifiable.
- An electing county bears the consultant cost of the demonstrated-need study component for existing-road expenditures.
- The proposal imposes no duty or expenditure on municipalities or other counties and reduces no revenue-raising authority or share of state taxes.

Unfunded Mandate (Art. VII, s. 18, Fla. Const.): No — the proposal is permissive, requires no expenditure by any county or municipality, and does not reduce revenue-raising authority or state tax shares.

VI. LEGISLATIVE & FAC HISTORY:

- Enacted: the Impact Fee Act (ch. 2006-218, Laws of Fla.) has been amended every recent session — ch. 2021-63 (increase caps and phase-in); HB 479 (2024), ch. 2024-266 (transportation impact fee and mobility fee overhaul); CS/HB 579 (2025), ch. 2025-177, and ch. 2025-190 (unanimous vote to exceed caps; further increase restrictions); CS/CS/HB 1329 (2026), ch. 2026-161 (demonstrated-need studies; extraordinary-circumstances pathway; infrastructure definition redesignated to (3)(b); effective January 1, 2027). Each addressed adoption, calculation, increases, or accounting; none altered the repairs-or-maintenance exclusion or expenditure eligibility.
- Prior vehicles: no recent bill proposing impact fee expenditure flexibility for existing-road preservation, for fiscally constrained counties or generally.
- Adjacent rural-roads track: the Senate's rural infrastructure packages — CS/SB 110 (2025), passed 39–0, died in returning Messages (6/16/2025); SB 250 (2026), passed 39–0 (1/14/2026), died in House Messages at sine die (narrower companion CS/HB 273 enacted, ch. 2026-167) — each expanded SCRAP, SCOP, and fiscally constrained county support.
- Past FAC statements: 2024–25—ARA—Small County Road Programs (support increased SCRAP, SCOP, and Farm-to-Market funding); 2026—ARA—Fiscally Constrained Counties Distribution Formula Revision; 2026—ARA—Fiscally Constrained County Definition (raise the one-mill threshold). No prior FAC statement addresses impact fee expenditure eligibility.
- Guiding Principles: Community & Urban Affairs—Growth Management GP F, Fiscal Impact and Infrastructure (new development bears its proportionate share of the infrastructure costs it creates, with fees based on actual local cost conditions), and Community & Urban Affairs—Transportation GP A, County Road Authority and Transportation Funding (county authority over county roads, including maintenance); see also ARA—Rural Affairs GP B (recurring SCOP and SCRAP investment).

BoCC action: the Hendry County BoCC voted to support the proposal, as stated in the submission.

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