

Possible statewide impact fee freeze chills some Southwest Florida government officials

By I.M. STACKEL

Wednesday, April 22, 2009

COLLIER COUNTY — Florida legislation, passed last week, freezes impact fees for two years at current levels and prohibits local governments from imposing any new impact fees.

House Bill 227 would wrest control from Florida's 67 counties, more than 400 cities, and thousands of special taxing districts. It passed 92 to 26.

Up for a vote in the next few days, Senate Bill 580 seems to be heading in the same direction, having gained approval from committees.

The new law would take effect July 1.

"We are watching this very closely. It will take both House and Senate to pass and we understand that Sen. Mike Bennett (R-Bradenton) is withdrawing (a third, similar, bill) from the Senate," Bonita Spring City Manager Gary Price said on Monday evening.

"It would break the city as we bonded that fund to complete Imperial/Livingston and have no funds to replace it."

His statement refers to massive improvements on Imperial Street and Livingston Road.

An impact fee, imposed on new development, pays for the impact – or effects – the additional construction will have on its environment. That could include schools, utilities, road capacity and green space.

Collier County spokesman John Torre said any freeze or change in impact fees, at this time, runs counter to the county's 2009 legislative priorities, especially since

county officials already froze some impact fees for two years.

On the list of Collier's legislative priorities: "Support maintaining home rule authority over administration of the county's existing impact fee program," Torre said.

Two months ago, Collier Commission approved a two-year freeze of change-of-use impact fees, and, in February, lowered the transportation impact fees for residential uses, and most commercial uses. County decreases take effect June 8.

Florida governments already took a hit last year when the Legislature passed a mandated tax rollback. The rollback affected existing — and upcoming — budget discussions so Collier officials had to cut \$7.2 million from their current general revenue budget because of money it will not be receiving from the state.

Marco Island City Manager Steve Thompson was somewhat philosophical about the implications of the new legislation.

"We're pretty much built out," Thompson said Monday. "We don't generally do that much in impact fees."

Lee County Commissioner Bob Janes was a little more concerned.

While he hadn't heard that HB 227 passed, he took issue with state interference in local government, said Commissioner Bob Janes.

"I don't think (freezing impact fees) is something the Legislature ought to get into," Janes said. With state-mandated budget cutbacks, growing counties need every penny they can get, even for basic services, Janes said.

He also is not wild about the competitive advantage, down the line, for people paying fees at frozen rates.

When that burden is lifted, new applicants will pay more to develop the same kind of projects, and, in the interim, taxpayers will have to pick up the slack.

Janes anticipates a rush to approve projects at the lower fees.

Bonita Springs City Attorney Audrey Vance said that an unintended consequence of an impact freeze is that most impact ordinances work both ways; not only is a fee paid, but developers can obtain a credit for any road improvements that are above and beyond their impact. In other words, where work is performed off-site,

a developer is entitled to a credit, which after the legislation, may not have much value, putting that developer at an uneven competitive disadvantage with other developers.

That's the position taken by the Florida Association of Counties.

The bill could result in a nightmare of legal disputes between counties and former developers, and redefine case law, said spokeswoman Cragin Mosteller.

Right now, if a developer disputes an impact fee, it is that developers' responsibility to prove why it is unjust.

The new legislation would place that onus on the county.

"It represents a fundamental shift in the way business is conducted," Mosteller said. Understanding that legislators are buried under thousands of bills, and can't see the unintended consequences of every piece of legislation -- especially when they're trying to take the burden off of taxpayers in a rough economy -- Florida Association of Counties officials are doing their best to educate legislators and taxpayers.

If it's about to change case law, the law needs to slow down, Mosteller said.

Take it to the next level, she suggested. What if a developer today challenges the impact fees from 2002. Are any of the elected officials still around? Who was on staff at the time? Mosteller asked.

It would be impossible to put a dollar figure on the immediate run on legal challenges should developers take up the cause. It could definitely change the way court cases are decided, and it could cost cities and counties a lot of money in legal expenses, Mosteller said.

Even though this is a "fairly abstract concept," local governments need to take notice, Mosteller said.

Impact fee money is used for a wide variety of projects: fixing a pothole in the road, development of a community park, expansion of government health services in any given needy city.

Vance noted that several roads -- and other facets of growth -- were built in Bonita by developers' credit entitlements.

"The unintended consequence is that we have agreements where we provide an impact fee credit, of which the value was diminished by the legislation if no fees are collected," she said.

For instance, during the Bonita Beach Road Expansion, road impact fee credits totaled 50 percent of the \$9.6 million project. Such road impact fee credits were not to exceed \$4.8 million, and the amount of those fees may not increase over time, even if road impact fees increases, Vance said.

"The Legislature may have impacted the value of their assets for the purpose of helping development, but in certain matters, made it worse," Vance said.

Even if the Senate bill fails, portions of the legislation could be grafted onto other bills, Mosteller said Monday.

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