

Impact Fee Challenges in Florida: Legislature Moving to Neutralize Local Governments | FlaglerLive

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Builders' cost-free impacts.

Attempting to render moot a legal challenge, a House panel on Wednesday passed a measure to re-enact provisions of a 2009 law that makes it more difficult for local governments to impose impact fees for new development.

The proposed committee bill (PCB 11-03) was approved 14-1 by the House Community and Military Affairs Subcommittee, with Rep. Mark Pafford, D- West Palm Beach, voting against the bill. The original 2009 law is facing a challenge in circuit court by a coalition of county and city governments that contend it constitutes an unfunded mandate by shifting the burden of proof from developers to governments in impact fee challenges.

The House measure approved by the committee Wednesday adds language to the original law saying that the shift in the burden of proof fulfills a compelling state interest, a threshold that gives state lawmakers more leeway in passing bills that financially impact local governments. Legislative leaders are also hoping that the bill will pass by more than two-thirds margins in both chambers, which would allow them to pass on the costs of the bills to local governments anyway.

“We’re not adding anything new here,” said Rep. Ed Hooper, R-Clearwater. “This is existing law.”

Passed by the Legislature in 2009, the new law changed the way courts handle lawsuits over impact fees. In many municipalities, local government officials order developers to pay a fee that helps pay for public services like schools or other public facilities that are impacted by population changes caused by a new development.

Backers said the law making it harder for government to prevail in disputes over the fees was a response to a 2006 report by the Legislature’s Florida Impact Fee Review Task Force, which found the fees had grown 505 percent from 1993 to 2004 and were continuing to rise as communities sought to respond to explosive growth throughout the state.

The 2009 change was hailed by its supporters as a check on local governments that wanted to use impacts fees as a way to raise revenue – without having to sell an actual tax increase to voters.

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But county and city officials have said the new burden of proof making it harder for local governments to win impact fee disputes is essentially an unfunded mandate, because it could reduce their ability to raise needed money to cope with development.

Alachua County was joined by Collier, Lake, Lee, Levy, Nassau, Pasco, St. Lucie and Sarasota counties, as well as the Florida League of Cities, the Florida School Boards Association and the Florida Association of Counties in filing the lawsuit against the bill in early 2010.

“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,” the suit read.

The case is pending.

—Michael Peltier, News Service Florida

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