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PETER GADDY: Eyes Only - HB 227 - a sweetheart deal for industry

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Article VII of the Florida State Constitution is probably not the most read or discussed article of our State Constitution. It is the section of our Constitution that limits the authority of the legislature to prohibit municipalities -- like cities, counties, and school districts -- from raising the revenue they need to conduct their operations. This part of the Constitution is often described as a restriction on mandates.

The idea here is that municipalities that have a responsibility to build roads, sewage plants and schools need to be able to raise the revenue they need to get the job done. Any mandates limiting the ability of municipalities to do their job have to be approved by a two-thirds vote of the Florida House and Senate.

Last year, the Florida legislature, in its eagerness to jump-start the depressed housing industry, enacted a number of sweetheart benefits for the industry. One of these measures was a bill known as House Bill 227. At least 15 development industry lobbyists spoke before one of the House committees that considered the bill. Even though the Bill failed to achieve a two-thirds vote in the Senate, it was signed into law by Gov. Charlie Crist.

For years, municipalities have been imposing impact fees on new development; those fees are supposed to be designed to pay for new public facilities that that are directly related to the needs of new development. The fee is supposed to be fair and earmarked for capital outlay only, and not to be expended for operating costs. For years, the courts have reviewed these fees and upheld them when appropriate and struck them down when they are found to be inappropriate or unfair.

In any litigation, the concept of “burden of proof” is extremely important. For example, in any criminal case, the defendant is “presumed innocent” until proven guilty. What House Bill 227 tried to do was to shift the “burden of proof” from someone objecting to an impact fee to the municipality that has established such a fee. In effect, municipalities must now prove their innocence in establishing an impact fee.

This February, the Florida Association of Counties, the Florida League of Cities, the Florida School Boards Association, and nine counties, including Collier, are challenging HB 227 as it relates to impact fees, arguing that the bill is an unconstitutional unfunded mandate, in violation of Article VII of the Constitution and that it violates the separation of powers provision of the state constitution.

The reason this suit was filed was spelled out by the House Revenue Estimating Conference even before the bill was passed, they concluded: "…the bill would ultimately result in counties, municipalities, and special districts being less successful in defending legal challenges." The Conference went on to describe the fiscal impact on municipalities as "negative indeterminate."

Although, not being an economist, I am not completely sure what a negative indeterminate is, I am confident that it is not good. If existing residents are forced to pay a larger share of future growth, ad valorem taxes will increase and Florida could become a less desirable destination and place to live.

Of course, the taxpayers in the counties with the highest impact fees will stand to lose the most if House Bill 227 is upheld. Collier, of course, happens to be one of those counties; in fact Collier has the highest impact fees in the State.