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Counties sue Legislature over impact fee law

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Highlands Today

It's the cities and counties versus the Legislature.

On Wednesday, the Florida Association of Counties sued House Speaker Larry Cretul and Senate President Jeff Atwater in Leon County Circuit Court over a new law that revises how impact fees can be challenged.

Whether impact fees are fair is at the heart of the issue. The cities, counties and school boards, which impose the fees, say new residents and businesses should pay for new roads, fire departments, schools, parks, EMS and law enforcement facilities.

The Florida League of Cities, the Florida Association of School Boards and nine individual counties joined the counties in the suit.

It would be up to the county commissioners as to whether Highlands County joins the suit. So far, none of the five have asked that the item be placed on the agenda, said Assistant Administrator Rick Helms.

Fairness

Highlands County studied impact fees for years, and paid Tindale Oliver & Associates \$415,000 to come up with a formula.

"That is our proof that they are fair," said Commissioner Guy Maxcy. Additionally, the county is spending more money - as required by the state - to prove that formula implemented in January 2007 remains correct.

House Bill 227, passed in 2009, shifts the proof of fairness from the litigant to the government.

That's wrong, said Maxcy, who voted for impact fees in 2006. "We spent our money. Now they have to spend their money to prove they're not fair."

Otherwise, Maxcy pointed out, "We get challenged, we gotta prove it. We get challenged, we got to prove it. It's a black hole. It behooves them to keep challenging it, just to see if they can luck up."

State Rep. Denise Grimsley, R-Lake Placid, voted for HB 227.

"There is some burden of proof on the government," Grimsley countered.

The local impact fee on a convenience store with gas pumps and food is \$114,000.

"Think of yourself as a consumer," Grimsley said. The government studies say the convenience store builder should pay; the builder suggests a lower fee is appropriate.

Who's right?

A 2006 report by the Legislature's Florida Impact Fee Review Task Force found impact fees grew 505 percent from 1993 to 2004, and were continuing to rise as communities responded to the housing boom.

"I think the government got a little overzealous," Grimsley said, while pointing out she was talking about the entire state, not just Highlands County.

Grimsley introduced a House bill in February 2009 to impose a three-year moratorium on impact fees. Which is where she and Maxcy find agreement. He voted for a one-year countywide moratorium, which expires this summer.

"I think it's a good idea," Maxcy said about Grimsley's bill at the time it was proposed.

"They recognized there were problems with impact fees," Grimsley said. Otherwise, she pointed out, "Why did they feel a need to put a moratorium on them?"

Rep. Dave Murzin, R-Pensacola, chairman of a House panel that steered HB 227 through last year's session, said local officials are arrogantly trying to make developers accept whatever growth-management levies they impose.

Under the new law, the burden of proof unconstitutionally shifts from the developers to local government officials, something that the association is saying is unconstitutional. "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 reads.

County and city officials have said it would allow judges to second guess decisions of lawmakers.

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