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Impact fee bill clears second hurdle in Senate

TALLAHASSEE -- A controversial bill that would require Florida counties to document how and where they spend impact fees paid by builders for new construction -- and issue refunds if the fees aren't spent appropriately -- passed its second hearing in the Senate Monday.

By a vote of 8-1, the measure, sponsored by Sen. Michael Bennett, R-Bradenton, was approved by the Regulated Industries Committee. With a previous unanimous nod from the Community Affairs Committee already under its belt, the bill is slated for a third and final hearing in the Government Efficiency Appropriations Committee before it goes to the Senate floor for a vote.

Counties see the proposed legislation as an attack on their home-rule right to fund new growth as they see fit, complaining that the bill's attempt to unify the way they calculate and spend the fees statewide would ultimately cut available funding for their growing infrastructure needs.

Builders, developers, cities and many state lawmakers complain the current long-standing impact fee system has gone largely unmonitored, resulting in a hodgepodge of conflicting and cumbersome processes that can bushwhack new homebuilders and buyers with an unexpectedly high fee after they've already secured financing.

Proponents also complain that some counties are abusing the system by diverting collected impact fees to pay for past and future infrastructure needs that are far removed and unrelated to payees' construction projects, rendering later taxes levied by the counties on those homes to pay for nearby projects -- the equivalent of double-taxation and, are therefore, illegal.

Impact fees charged to builders of new homes are supposed to target infrastructure needs directly related to the services that will be required by the new residents who will live in those homes. The fees are typically passed on to homebuyers in the purchase price.

The issue is a hot one in a legislative session where Gov. [Jeb Bush](#) and leaders of both chambers have all declared lagging infrastructure needs related to growth -- more than \$35 billion in unbuilt roads, schools, water systems, lighting, sewers and other current community-based necessities, according to state analysts -- as a top priority to be addressed.

"It seems to me that if this bill passes, the counties will have less revenue and have to get it from other sources," testified Sarah Blakely of the Florida Association of Counties to the committee. "That leaves only three possible outcomes. First, the state can provide us with more money and, of course, we'd like that. Second, we could increase ad valorem taxes. And third, we can just not build the infrastructure."

"You've got 67 counties and 67 school boards and hundreds of cities," said Wayne Blanton of the Florida School Boards Association. "They'll all implement it differently, and it'll be in litigation for 10 years the day after it's adopted. This will create growth chaos, not growth management."

John Smith, of the Florida League of Cities, spoke in favor of the measure, which will also allow impact fees to be used to secure bonds to pay for growth-related projects.

"This makes it a much more flexible source of revenue," he said. "We recommend this bill move forward. We support it."

"What is happening here is you have some counties and school districts with all these revenues diverting people's tax dollars away from schools and roads to paper backlog," said Douglas Buck of the Florida Home Builders Association. "We think most governments are doing it fairly and equitably, but we need this to make the others comply."

A number of clarifying amendments added to the bill by Bennett appeared to secure solid backing for the measure from the Florida League of Cities, and one drafted by committee staff during discussion of the bill -- making clear that the proposed legislation would only apply to future impact fees imposed after the legislation becomes law -- nailed down support from several wavering committee members.

One of those members, Sen. Steven Geller, D-Hallandale Beach, explained why he decided to approve the measure.

"This is a simple bill," he said. "All it really says is if you do the work, you get the credit."

William Broughton, lobbyist for Sarasota County, and Cari Roth, who represents Charlotte and Manatee counties on legislative issues, both waived their scheduled time to comment on the bill before the committee Monday, but indicated their opposition to it.

Roth later said that even with the amendments, the counties she represents will still have a problem with the details of crediting and refunding builders for impact fees under the bill.

"It's really all about who's going to pay," she said. "It's a very complex issue. We see a gap between what the bill intends and what it does."

After the vote, Bennett, whose district includes Charlotte, DeSoto, Lee, Manatee and Sarasota counties, refuted complaints by some local county commissioners that they were not consulted about the bill before it was filed.

"I represent five county commissions, five school districts and dozens of cities, towns and fire districts in my district," he said. "They all have my home phone, my cell phone and my office phone. Before this bill was filed, I worked closely with the Florida Association of Counties and Florida League of Cities to make it a good bill, and I'm continuing to work closely with them. The FAC is their association. You have to work through associations because these bills affect everyone in the entire state, and that's how it's supposed to be done. If they aren't communicating with their own association, I don't know what to do about that."

Because the bill's companion legislation in the House has yet to receive a full hearing, Rep. Michael Grant, R-Port Charlotte, who heads the Charlotte delegation, said he could not comment on the bill's specifics.

However, he said, it is an issue that is long overdue for a public airing.


"I applaud Sen. Bennett for bringing a fresh perspective to it," he said. "It's about time we got all the stakeholders to the table to deal with it. We have a huge deficit in infrastructure spending, and if the builders, developers, cities and legislators all say there's something wrong with the system, there's a problem there that needs to be addressed."

"Let's talk about growth planning, not growth management," he said. "It looks like Senator Bennett is doing that."

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