ANDREW J. MEYERS, County Attorney
115 S. Andrews Avenue, Room 423 • Fort Lauderdale, Florida 33301 • 954-357-7600 • FAX 954-357-7641

MEMORANDUM

TO: Josie Sesodia, Director, Urban Planning Division

THROUGH: Maite Azcoitia, Deputy County Attorney */s/ MA*

FROM: Alexis Marrero Koratich, Assistant County Attorney */s/ AMK*

DATE: May 23, 2024

RE: **HB 479 - Alternative Mobility Funding Systems (2024 Legislative Session) and Impact on Impact Fees in Broward County**

HB 479, Alternative Mobility Funding Systems ("HB 479"), is currently ordered enrolled and is expected to become law effective as of October 1, 2024. Our office has provided you with a summary of HB 479. In response to our summary, you have asked our office to research (i) the effect of HB 479 on existing developments; (ii) the impact of HB 479 on new developments; (iii) whether Transportation Concurrency assessments calculated pursuant to Section 5-182.1 of the Broward County Code of Ordinances ("Code") are considered impact fees subject to the requirements of HB 479; and (iv) the refunds, if any, that Urban Planning Division staff is legally required to issue. For purposes of this memorandum, "existing development" shall mean development that has been issued a building permit prior to October 1, 2024, and "new development" shall mean development for which a building permit is obtained on or after October 1, 2024.

I. Brief Summary of HB 479 and the Current Situation in Broward County

HB 479 requires local governments collecting impact fees by ordinance or resolution to ensure that the calculation of an impact fee is based on a study using the most recent and localized data available within four (4) years of the current impact fee update. The new study must be adopted by the local government within twelve (12) months of the initiation of the new impact fee study if the local government increases the impact fee.

Broward County ("County") currently assesses transportation concurrency, road impact, recreational (regional park), local park (applicable in the Broward Municipal Services Districts "BMSD" only), and public school impact fees, all of which will be affected by the bill as the studies that support these impact fees were conducted more than four (4) years ago:

- Transportation concurrency fee study conducted in 2005;
- Road impact fee study conducted in 2004;
- Recreational (regional park) fee study conducted in 2010;

- Local park fee (applicable in the BMSD only) conducted in 2010; and
- Public school impact fee study conducted in 2017 with the final report issued on July 23, 2019.

It is important to note that the Broward County School Board ("School Board") is in process of updating the public school impact fee study. The School Board anticipates transmitting the study to the County following the School Board meeting on July 23, 2024. The Board may subsequently direct staff to amend the Land Development Code with updated public school impact fees. This process will require public hearings before the Broward County Planning Council and the Board and is anticipated to be completed in early 2025.

In Fiscal Year 2023, the Urban Planning Division assessed eight thousand five hundred (8,500) development projects $24.9 million in impact fees. The breakdown of the FY 2023 fees collected is as follows:

Fee Type:	**Amount Collected:**	**Percentage of Total FY 2023 Impact Fees:**
Transportation concurrency fee	$6,600,000	26%
Road impact fee	$131,000	1%
Recreational (regional park) fee and Local park fee (applicable in the BMSD only)	$824,000	3%
Public school impact fee	$17,400,000	70%
Total FY 2024 Fees Collected:	**$24,955,000**	**100%**

Where both counties and municipalities charge the developer a fee for transportation capacity impacts, HB 479 requires the county and municipality(ies) to enter into an interlocal agreement ("ILA") by October 1, 2025, in order to coordinate the mitigation of their respective transportation capacity impacts. If a county and a municipality fail to enter into an ILA by October 1, 2025, the bill provides for an alternative method of collection and disposition of the fee for transportation capacity impacts.

Chapter No. 2011-139, Laws of Florida eliminated the state requirement for transportation concurrency but allowed local governments the option of continuing to apply transportation concurrency locally within their jurisdictional boundaries. HB 479 provides that local governments, which elect to repeal transportation concurrency, may adopt an alternative transportation system that is mobility-plan and fee-based or that is not mobility-plan and fee-based.

The County's Transportation Concurrency Management System divides the County into ten (10) concurrency districts. The district boundaries, as well as the transit improvements within the districts, are the result of extensive consultations with the municipalities. Transportation Concurrency Assessments are based on a five-year Transit Development Plan ("TDP") adopted by the County Commission. The Transportation Concurrency

Assessment is calculated as the total peak-hour trip generation of the proposed development, multiplied by a constant dollar figure for each District, that represents the cost per trip of all the TDP enhancements in that District. The revenues from Transportation Concurrency Assessments must be used to fund transit enhancements in the district. The revenue generated from the Transportation Concurrency Assessments is used to build bus shelters.

It is important to note that the County is essentially built-out with very little developable land left in the County and with most growth stemming from redevelopment. Moreover, regardless of the County's ability to charge impact fees, concurrency determinations will still be required for all new development in the County.

II. Analysis of the Impact to Existing Developments in Broward County

As mentioned in Section I of this memorandum, the County assesses transportation concurrency, road impact, recreational (regional park), local park (applicable in the BMSD only), and public school impact fees against new developments at the time the building permit is obtained. You have asked our office to confirm the effect of HB 479 on the impact fees assessed by the County against existing developments.

The proposed amendment to Section 163.31081(4)(a), F.S., reads as follows:

> (4) At a minimum, each local government that adopts and collects an impact fee by ordinance and each special district that adopts, collects, and administers an impact fee by resolution must:
>
> (a) Ensure that the calculation of the impact fee is based on a study using the most recent and localized data available within 4 years of the current impact fee update. The new study must be adopted by the local government within 12 months of the initiation of the new impact fee study if the local government increases the impact fee.

The proposed amended language requires that the *calculation* of the impact fee be based on a study meeting the specified criteria. So long as the *calculation* of the impact fees for existing developments has already been completed in compliance with the current provisions of Section 163.31081(4)(a), F.S., it is our opinion that no further action is necessary to comply with this portion of HB 479 and the transportation concurrency, road impact, recreational (regional park), local park (applicable in the BMSD only), and public school impact fees calculated against existing developments are unaffected.

The amended language in Section163.31081(5)(a), F.S., reads as follows:

> (5)(a) Notwithstanding any charter provision, comprehensive plan policy, ordinance, development order, development permit, or resolution, the local government or special district that requires any improvement or contribution must credit against the collection of the impact fee any contribution, whether identified

> in a development order, proportionate share agreement, or any ~~other~~ form of exaction~~,~~ related to public facilities or infrastructure, including monetary contributions, land dedication, site planning and design, or construction. Any contribution must be applied on a dollar-for-dollar basis at fair market value to reduce any impact fee collected for the general category or class of public facilities or infrastructure for which the contribution was made.

Therefore, at the time the County is *collecting* the transportation, recreational (regional park), or public school impact fees assessed against a previously-approved development, any contribution identified in the development order or any form of exaction, including monetary contribution, must be credited to the developer.

Moreover, the amended language in Section 163.3180(5)(j), F.S., requiring an interlocal agreement would not apply in Broward County as the amended language specifically applies only if a county and municipality charge the developer of a new development a fee for transportation impacts:

> (j)1. If a county and municipality charge the developer of a new development or redevelopment a fee for transportation capacity impacts, the county and municipality must create and execute an interlocal agreement to coordinate the mitigation of their respective transportation capacity impacts.

Since the threshold requirement for entering into the interlocal agreement required under HB 479 is that both the County and the municipalities charge a fee for transportation capacity impacts, the County will not be subject to the interlocal agreement requirement. The municipalities within the County do not charge fees for transportation capacity impacts.

III. Analysis of the Impact to New Developments in Broward County

HB 479 will have a number of impacts on new developments and redevelopments in Broward County. As more fully described in Section II of this memorandum, the amended language in Section163.31081(5)(a), F.S., requires that the calculation (or assessment) of the impact fee be based on a study meeting certain specified criteria. If the studies do not meet the specified criteria, there is no legal basis for Urban Planning Division staff to assess the impact fees.[1] As per the information regarding existing studies obtained Urban Planning Division staff and set forth on pages 1 and 2 above, the existing studies do not meet the requirements outlined in the bill. If the studies are not updated to meet the requirements of the bill by October 1, 2024, the County will not be able to collect those impact fees commencing on October 1, 2024.

Therefore, in order to ensure continuity of charging the impact fees after October 1, 2024, studies updating all of the corresponding impact fee studies would need to be performed

[1] However, as noted in Section I above, regardless of the County's ability to charge impact fees, concurrency determinations will still be required for all new development in the County.

and an ordinance ratifying or reducing the existing impact fees must be effective prior to October 1, 2024. So long as (i) the impact fees are not increased as a result of the revised studies and (ii) the expedited studies are completed before October 1, 2024, Urban Planning Division staff will be able to continue to assess the impact fees. For the avoidance of doubt, the bill allows, but does not require, the County to adopt an alternative transportation system that is mobility-plan and fee-based or an alternative transportation system that is not mobility-plan and fee-based. Currently, the County has not adopted an alternative transportation system.

IV. Analysis of whether Transportation Concurrency Assessments Calculated Pursuant to Section 5-182.1 of the Code are Considered Impact Fees Subject to the Requirements of HB 479

The Transportation Concurrency assessments are calculated pursuant to Section 5-182.1 of the Code and appear to be a dollar figure for each District, that represents the aggregate cost per trip of achieving all the LOS Standards for that District listed in the County's adopted Capital Program. This method of calculating the Transportation Concurrency assessment is arguably an alternative impact fee.[2,3]

Urban Planning Division staff has confirmed that the Transportation Concurrency fee study conducted in 2005 established a fixed rate that is applied across all ten (10) concurrency districts. Therefore, given the fact that HB 479 requires that that "the calculation of the impact fee is based on a study using the most recent and localized data available within 4 years of the current impact fee update," there is no legal basis for the County to assess Transportation Concurrency fees after October 1, 2024.

V. Refunds

Because the language of HB 479 only requires that the *calculation* of the impact fee be based on a study meeting the specified criteria, and that, as a consequence, existing development is not impacted by the study requirement, our office does not find a legal basis for Urban Planning Division staff to refund any amounts related to existing development.

---

[2] Section 163.31801(2), F.S., states that, "[t]he Legislature finds that impact fees are an important source of revenue for a local government to use in funding the **infrastructure necessitated by new growth**." Section 163.31801(3)(a), F.S., defines infrastructure as, "a fixed capital expenditure or fixed capital outlay, excluding the cost of repairs or maintenance, associated with the construction, reconstruction, or improvement of **public facilities** that have a life expectancy of at least 5 years . . ." and Section 163.3164(39) defines public facilities as "major capital improvements, including **transportation**, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities."

[3] Although outside of the scope of this memorandum, Urban Planning Division staff should be aware that if the studies are not updated by October 1, 2024, the impact fees that do not meet the requirements of the bill will be eliminated, however, student station costs will remain unaffected and will be able to be collected which may result in disparate treatment of developments across the County.

Notwithstanding, County staff should also be aware that if the County were to elect to adopt an mobility fee structure in lieu of impact fees, HB 479 provides that the holder of any transportation or road impact fee credits in existence prior to the adoption of an alternative transportation system would be entitled to the full benefit of the intensity and density prepaid by the credit balance as of the date that the alternative transportation system was first established.

VI. Conclusion and Recommendations

In sum, based on our reading of HB 479, it is our opinion that there is no impact on existing developments. However, effective as of October 1, 2024, absent an update to the current studies, there is no legal basis for the County to calculate (or assess) transportation concurrency, road impact, recreational (regional park), local park (applicable in the BMSD only), and school impact fees for new developments and redevelopments as the County's studies do not meet the minimum requirements outlined in the statute.

As stated in Section III above, this result can be avoided by expediting studies meeting the requirements of the bill to update all of the corresponding impact fee studies. Finally, it is important to note that HB 479 does not affect Urban Planning Division staff's ability to conduct a concurrency analysis, rather HB 479 will affect staff's ability to calculate (or assess) the impact fees for studies that do not meet the requirements of the bill.