

By the Committee on Community Affairs; and Senator Gruters

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1 A bill to be entitled
2 An act relating to impact fees; amending s. 163.31801,
3 F.S.; providing definitions; revising requirements for
4 counties and municipalities that adopt, collect, or
5 administer an impact fee by ordinance and for special
6 districts that adopt, collect, or administer an impact
7 fee by resolution; providing timeframes for the
8 collection of impact fees by local governments;
9 providing that impact fee credits are assignable and
10 transferable under certain conditions; requiring local
11 governments to provide impact fee credits or other
12 forms of compensation under certain conditions;
13 providing applicability; requiring certain counties
14 and municipalities to establish impact fee review
15 committees; providing for membership; providing
16 procedures for holding meetings and establishing
17 quorums; providing committee duties; providing an
18 effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 163.31801, Florida Statutes, is amended
23 to read:

24 163.31801 Impact fees; short title; intent; minimum
25 requirements; audits; challenges.—

26 (1) This section may be cited as the "Florida Impact Fee
27 Act."

28 (2) The Legislature finds that impact fees are an important
29 source of revenue for a local government to use in funding the

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30 infrastructure necessitated by new growth. The Legislature
31 further finds that impact fees are an outgrowth of the home rule
32 power of a local government to provide certain services within
33 its jurisdiction. Due to the growth of impact fee collections
34 and local governments' reliance on impact fees, it is the intent
35 of the Legislature to ensure that, when a county or municipality
36 adopts, collects, or administers an impact fee by ordinance or a
37 special district adopts, collects, or administers an impact fee
38 by resolution, the governing authority complies with this
39 section to ensure a consistent statewide process.

40 (3) For purposes of this section:

41 (a) The term "infrastructure" means any fixed capital
42 expenditure or fixed capital outlay associated with the
43 construction, reconstruction, or improvement of a public
44 facility, excluding the cost of repairs or maintenance, that
45 have a life expectancy of 5 or more years; any related land
46 acquisition, land improvement, design, engineering, and
47 permitting costs; and all other related construction costs
48 required to bring the public facility into service.

49 (b) The term "public facility" means any facility as
50 defined in s. 163.3164(39), and includes any fire and law
51 enforcement facility.

52 (4) At a minimum, each county and municipality that adopts,
53 collects, or administers an impact fee by ordinance and each
54 special district that adopts, collects, or administers an impact
55 fee by resolution ~~an impact fee adopted by ordinance of a county~~
56 ~~or municipality or by resolution of a special district~~ must
57 satisfy all of the following conditions:

58 (a) Require that the calculation of the impact fee ~~must~~ be

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59 based on the most recent and localized data collected within the
60 last 36 months and excludes any cost that does not meet the
61 definition of infrastructure.

62 (b) Account for the revenues and expenditures of such
63 impact fee in a separate impact fee account, if the local
64 governmental entity imposes an impact fee to address its
65 infrastructure needs ~~The local government must provide for~~
66 ~~accounting and reporting of impact fee collections and~~
67 ~~expenditures. If a local governmental entity imposes an impact~~
68 ~~fee to address its infrastructure needs, the entity must account~~
69 ~~for the revenues and expenditures of such impact fee in a~~
70 ~~separate accounting fund.~~

71 (c) Limit administrative charges for the collection of
72 impact fees ~~must be limited to actual costs.~~ The cost per
73 student station established in school impact fee calculations
74 may not exceed that statutory total maximum cost per student
75 station calculated under s. 1013.64(6).

76 (d) ~~The local government must~~ Provide notice not less than
77 90 days before the effective date of an ordinance or resolution
78 imposing a new or increased impact fee. New or increased impact
79 fees may not apply to current or pending permit applications
80 submitted before the effective date of an ordinance or
81 resolution imposing a new or increased impact fee. A county or
82 municipality is not required to wait 90 days to decrease,
83 suspend, or eliminate an impact fee.

84 (e) ~~Collection of the impact fee may not be required to~~
85 ~~occur earlier than the date of issuance of the building permit~~
86 ~~for the property that is subject to the fee.~~

87 ~~(f)~~ Ensure that the impact fee is ~~must be~~ proportional and

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88 reasonably connected to, or has ~~have~~ a rational nexus with, the
89 need for additional infrastructure ~~capital facilities~~ and the
90 increased impact generated by the new residential or commercial
91 construction.

92 (f) ~~(g)~~ Ensure that the impact fee is ~~must be~~ proportional
93 and reasonably connected to, or has ~~have~~ a rational nexus with,
94 the expenditures of the funds collected and the benefits
95 accruing to the new residential or nonresidential construction.

96 (g) ~~(h)~~ ~~The local government must~~ Specifically earmark funds
97 collected under the impact fee for use in acquiring,
98 constructing, or improving infrastructure ~~capital facilities~~ to
99 benefit new users.

100 (5) Collection of the impact fee may not be required to
101 occur earlier than the date of issuance of the building permit
102 for the property that is subject to the fee.

103 (6) ~~(i)~~ Revenues generated by the impact fee may not be
104 used, in whole or in part, to pay existing debt or for
105 previously approved projects unless the expenditure is
106 reasonably connected to, or has a rational nexus with, the
107 increased impact generated by the new residential or
108 nonresidential construction.

109 (7) ~~(4)~~ The local government must credit against the
110 collection of the impact fee any contribution, whether
111 identified in a proportionate share agreement or other form of
112 exaction, related to public education facilities, including land
113 dedication, site planning and design, or construction. Any
114 contribution must be applied to reduce any education-based
115 impact fees on a dollar-for-dollar basis at fair market value.

116 (8) ~~(5)~~ If a local government increases its impact fee

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117 rates, the holder of any impact fee credits, whether such
118 credits are granted under s. 163.3180, s. 380.06, or otherwise,
119 which were in existence before the increase, is entitled to the
120 full benefit of the intensity or density prepaid by the credit
121 balance as of the date it was first established. This subsection
122 shall operate prospectively and not retrospectively.

123 (9)~~(6)~~ Audits of financial statements of local governmental
124 entities and district school boards which are performed by a
125 certified public accountant pursuant to s. 218.39 and submitted
126 to the Auditor General must include an affidavit signed by the
127 chief financial officer of the local governmental entity or
128 district school board stating that the local governmental entity
129 or district school board has complied with this section and the
130 spending period provision in the local ordinance or resolution.

131 (10)~~(7)~~ In any action challenging an impact fee or the
132 government's failure to provide required dollar-for-dollar
133 credits for the payment of impact fees or for contributions made
134 as provided in this chapter s. 163.3180(6)(h)2.b., the
135 government has the burden of proving by a preponderance of the
136 evidence that the imposition or amount of the fee or credit
137 meets the requirements of state legal precedent and this
138 section. The court may not use a deferential standard for the
139 benefit of the government.

140 (11) Impact fee credits are assignable and transferable at
141 any time after establishment from one development or parcel to
142 any other development or parcel within the same impact fee
143 jurisdiction for the same type of public facility for which the
144 impact fee applies.

145 (12)~~(8)~~ A county, municipality, or special district may

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146 provide an exception or waiver for an impact fee for the
147 development or construction of housing that is affordable, as
148 defined in s. 420.9071. If a county, municipality, or special
149 district provides such an exception or waiver, it is not
150 required to use any revenues to offset the impact. To ensure
151 impact fees or equivalent contributions are only collected once,
152 a local government shall provide impact fee credits or other
153 forms of compensation if a contribution is greater in value than
154 the applicable impact fee. Contributions related to the
155 transportation system are creditable against the combined total
156 of all impact fees and exactions charged for mobility. This
157 subsection applies at the time any contribution is accepted,
158 regardless of when the contributions were agreed upon or
159 committed to.

160 (13) (a) Each county and municipality that assesses impact
161 fees must establish an impact fee review committee.

162 (b) 1. The committee shall be composed of the following
163 members appointed by the county commission or the governing body
164 of the municipality, as applicable:

165 a. Two members who are employed by the county or
166 municipality.

167 b. Two members who represent the business community.

168 c. Two members who are local licensed general or
169 residential contractors.

170 d. One at-large member.

171 2. The county commission or the governing body of the
172 municipality, as applicable, shall appoint three alternate
173 members, consisting of one representative from each of the
174 categories described in sub-subparagraphs 1.a., b., and c., who

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175 shall serve in the absence of their respective member.

176 3. Members and alternate members must be qualified electors
177 of the county or municipality, as applicable, for at least 2
178 years before their appointment.

179 4. Committee members shall serve at the pleasure of the
180 local government and shall serve until they are replaced.

181 (c)1. Each committee meeting must be duly noticed and open
182 to the public as required by s. 286.011.

183 2. A meeting may not be held unless a quorum is present. A
184 quorum consists of a majority of members of the committee, but
185 an alternate member shall count toward the quorum when a regular
186 member is absent.

187 3. A member who fails to attend three consecutive meetings
188 or fails to attend two-thirds of the meetings within a calendar
189 year automatically forfeits the appointment, and the county
190 commissioners or members of the governing body of the
191 municipality, as applicable, shall promptly fill the vacancy.

192 4. Members of the committee shall serve without
193 compensation.

194 (d) The committee shall meet as needed to:

195 1. Establish a policy and methodology for determining
196 impact fees on new developments.

197 2. Review the proposed impact fee on each new development
198 before the fee becomes final.

199 3. Submit recommendations made by the impact fee committee
200 to the county commission or governing body of the municipality,
201 as applicable. The recommendations must be presented at the
202 meeting when the impact fee on the new development will be
203 discussed and voted upon.

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204 4. After each impact fee is adopted by the local
205 government, review all proposed expenditures of that impact fee
206 to ensure the fee is used for capital projects within the
207 jurisdiction.

208 (14) ~~(9)~~ This section does not apply to water and sewer
209 connection fees.

210 Section 2. This act shall take effect July 1, 2020.