

By Senator Bennett

21-1582-04

1                                   A bill to be entitled  
2           An act relating to financing public facilities;  
3           providing a short title; providing legislative  
4           policy; defining terms; authorizing local  
5           governments, by ordinance, to impose an impact  
6           fee as a condition of a development order;  
7           providing requirements for the contents of the  
8           ordinance; providing restrictions on the  
9           imposition, any increase in the amount, and the  
10          expenditure of impact fees; requiring that  
11          certain credits be given against the payment of  
12          impact fees; requiring the refund of impact  
13          fees that have been collected but not  
14          encumbered within a reasonable time period;  
15          providing accounting requirements; providing  
16          for administrative appeals; providing rights of  
17          a developer who pays an impact fee during the  
18          pendency of an appeal; providing for voluntary  
19          binding arbitration; providing rights of  
20          property owners, developers, and governmental  
21          entities; providing that this act does not  
22          repeal existing laws or ordinances; providing  
23          that existing ordinances must comply with the  
24          act by a specified date; creating s. 201.032,  
25          F.S.; allowing county governing authorities, by  
26          ordinance, to levy a surtax on deeds and other  
27          documents taxed under s. 201.02, F.S.;  
28          establishing a maximum rate of the surtax;  
29          requiring the grantor to pay the surtax;  
30          exempting certain documents from the surtax;  
31          providing that the surtax must be approved by

1 referendum or adopted by extraordinary vote of  
2 the governing authority; requiring the  
3 governing authority to notify the Department of  
4 Revenue of an imposition, termination, or rate  
5 change of the surtax; restricting the effective  
6 dates for imposing a surtax or changing the tax  
7 rate; requiring a ballot statement and  
8 providing a format; providing for the use of  
9 surtax proceeds; requiring the Department of  
10 Revenue to administer the surtax and providing  
11 for administrative costs of the department;  
12 exempting the surtax from s. 201.15, F.S.;  
13 restricting uses of the surtax proceeds;  
14 requiring a report to the Department of  
15 Financial Services; restricting the imposition  
16 or increase of an impact fee if the governing  
17 authority imposes the surtax; providing an  
18 effective date.

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20 Be It Enacted by the Legislature of the State of Florida:  
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22 Section 1. Short title.--Sections 1 through 8 of this  
23 act may be cited as the "Florida Impact Fee Act."

24 Section 2. Policy.--The Legislature finds that an  
25 equitable program for planning and financing public facilities  
26 needed to serve new growth and development is necessary in  
27 order to promote and accommodate orderly growth and  
28 development and to protect the public health, safety, and  
29 welfare of the residents of this state. Therefore, it is the  
30 intent of the Legislature that this act:

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1       (1) Ensure that adequate public facilities are  
2 available to serve new growth and development.

3       (2) Promote orderly growth and development by  
4 codifying the minimum standards required for the adoption of  
5 an impact fee ordinance by a local government as provided for  
6 in case law.

7       (3) Ensure that new growth and development is required  
8 to pay no more than its proportionate share of the cost of any  
9 public facilities necessary to accommodate a development  
10 project.

11       (4) Ensure that funds collected under an impact fee  
12 ordinance are expended to provide a benefit for those who have  
13 paid the fee.

14       Section 3. Definitions.--As used in this act, the  
15 term:

16       (1) "Developer" means a person or legal entity that  
17 undertakes development.

18       (2) "Development" means a construction of a building  
19 or structure, a change in the use of a building or structure,  
20 or a change in the use of land, any of which creates  
21 additional demand and need for public facilities by having an  
22 impact on the capacity of a public facility and thereby  
23 creating a need for improvements to the public facility.

24       (3) "Development order" means the approval of a  
25 development by a municipality or county that authorizes the  
26 commencement of development.

27       (4) "Impact fee" means any payment of money imposed  
28 upon development as a condition to granting a development  
29 order and to pay for a proportionate share of the cost of  
30 system improvements needed to serve new growth and  
31 development. The term "impact fee" does not include a fee

1 levied under any statutory authority other than sections 1-8  
2 of this act.

3 (5) "Local government" means a municipality or county,  
4 or a special district that has authorization under its  
5 enabling legislation to impose an impact fee.

6 (6) "Proportionate share" means that portion of the  
7 cost of system improvements which results from the service  
8 demands created by a development project and the expenditure  
9 of which provides a benefit to those who paid the impact fee.

10 (7) "Public facility" or "public facilities" has the  
11 same meaning as in section 163.3164, Florida Statutes.

12 (8) "System improvement" means a capital improvement  
13 that is a public facility and is designed to provide service  
14 to the community.

15 (9) "System improvement costs" means costs incurred to  
16 provide additional public facilities capacity needed to serve  
17 new growth and development, including the cost of  
18 construction, reconstruction, or expansion of such facilities;  
19 design, surveying, and engineering fees and related land  
20 acquisition costs, including land purchases, court awards and  
21 costs, attorney's fees, and expert witness fees; expenses  
22 incurred for qualified staff or a qualified engineer, planner,  
23 architect, landscape architect, or financial consultant for  
24 preparing or updating the capital improvement element; and  
25 ongoing administrative costs. Financing costs for the  
26 retirement of bonds, notes, or other financial obligations  
27 issued by or on behalf of a local government to finance system  
28 improvements may be included as system improvement costs only  
29 to the extent that these costs are directly related to the  
30 provision of additional public facilities capacity.

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1           Section 4. Authorization; notice and hearing  
2 requirements; minimum standards and requirements for impact  
3 fee ordinances.--

4           (1) A local government may, by ordinance, impose an  
5 impact fee as a condition of a development order in accordance  
6 with this act. The ordinance must be adopted under the notice  
7 and hearing provisions of section 125.66(2)(a), Florida  
8 Statutes, for a county or section 166.041(3)(a), Florida  
9 Statutes, for a municipality.

10           (2) An impact fee ordinance may exempt all or part of  
11 a development from impact fees. If the ordinance provides for  
12 an exemption from impact fees, the ordinance must also specify  
13 criteria for the exemption.

14           (3) An impact fee ordinance may not provide for the  
15 imposition of an impact fee to remedy existing deficiencies.

16           (4) A local government may impose an impact fee only  
17 if it can show a rational nexus between the need for  
18 additional public facilities and the development.

19           (5) An impact fee ordinance must require that impact  
20 fees be spent only for the category of system improvements for  
21 which the fees were collected and that the improvements must  
22 provide a benefit to those who have paid the fees.

23           (6) An impact fee may not exceed a proportionate share  
24 of the cost of system improvements.

25           (7) An impact fee ordinance must include a schedule of  
26 impact fees which specifies the fee for each public facility.

27           (8) An impact fee ordinance must provide for a process  
28 that allows a developer to receive a certification of the  
29 application of the impact fee schedule or individual  
30 assessment to a development project. The certification must  
31 establish that the impact fee may not be increased for 1 year

1 for that development project or for a longer period if the  
2 local government determines that a longer construction period  
3 warrants an extension.

4 (9) An impact fee ordinance must include a provision  
5 for credits against the payment of impact fees. In calculating  
6 an impact fee for a development project, credit must be given  
7 for the present value of any construction of system  
8 improvements or contribution or dedication of land or money  
9 required or accepted by a local government from a developer or  
10 the developer's predecessor in title or interest for system  
11 improvements for which the impact fee is being collected. In  
12 addition, credit must be given for any state or federal funds  
13 received by the local government for system improvements.

14 (10) A local government that adopts an impact fee  
15 ordinance shall provide a process for refunding impact fees  
16 that have been collected but not encumbered within a  
17 reasonable period of time, not to exceed 8 years. Any refund  
18 must be paid to the current owner and must include the unused  
19 or excess development impact fee collected from the developer  
20 plus the interest earned on those moneys.

21 Section 5. Allocation and expenditure of collected  
22 impact fees.--

23 (1) An ordinance that imposes impact fees must require  
24 any impact fees that are collected to be maintained in one or  
25 more interest-bearing accounts. Accounting records must be  
26 maintained for each category of system improvements. Interest  
27 earned on impact fees must be considered funds of the account  
28 on which it is earned and is subject to all restrictions  
29 placed on the use of impact fees under this act.

30 (2) A local government that imposes an impact fee  
31 shall keep records that identify the amount of any development

1 impact fees collected and how those fees were encumbered or  
2 expended during the preceding year for each category of system  
3 improvements.

4 Section 6. Appeals.--

5 (1) A local government that adopts an impact fee  
6 ordinance may provide for an administrative appeal to its  
7 governing body, or to such other body as is designated in the  
8 ordinance, of a determination of the amount of the impact fee  
9 for a development project or an appeal of an interpretation of  
10 the fee. An administrative appeal under this section does not  
11 affect the availability of other legal remedies.

12 (2) A developer may pay an impact fee to obtain a  
13 development order during the pendency of an appeal under  
14 subsection (1). However, if the developer has filed an appeal,  
15 the developer may not be estopped from pursuing the appeal  
16 under subsection (1) as a result of paying the impact fee. In  
17 addition, the developer is entitled to a refund if it is  
18 determined through the appeals process provided in subsection  
19 (1) that the impact fee at issue violates this act.

20 (3) An impact fee ordinance may provide for the  
21 resolution of disputes over an impact fee through voluntary  
22 binding arbitration with a mutually agreed-upon arbitrator.

23 Section 7. Other powers and rights.--This act does not  
24 prevent or prohibit agreements between property owners or  
25 developers and local governments or other governmental  
26 entities regarding the construction or installation of system  
27 improvements and providing for credits or reimbursements for  
28 system improvement costs incurred by a developer, including  
29 interproject transfers of credits, or providing for  
30 reimbursement for project improvement costs that are used or  
31 shared by more than one development project.

1           Section 8. Transition.--This act does not repeal any  
2 existing laws or ordinances authorizing a local government to  
3 impose impact fees or to require contributions or property  
4 dedications for capital improvements. However, an existing  
5 ordinance that is not in compliance with this act must be  
6 brought into compliance with this act by October 1, 2005.

7           Section 9. Section 201.032, Florida Statutes, is  
8 created to read:

9           201.032 Local option real estate transfer surtax on  
10 deeds; conditions of levy; use of proceeds.--

11           (1) Subject to subsections (9) and (10), the governing  
12 authority of a county may levy a surtax on documents that are  
13 taxed under s. 201.02, at a rate not exceeding 5 cents on each  
14 \$100 or fractional part thereof of the consideration for the  
15 real estate or interest therein. The grantor of the real  
16 estate or interest therein shall pay the surtax. However, the  
17 surtax may not be levied on the document that conveys a  
18 specific interest in real property in this state for the first  
19 time following July 1, 2004. Subsequent documents conveying  
20 the same interest are subject to the surtax.

21           (2) The levy of the surtax shall be pursuant to an  
22 ordinance conditioned to take effect only upon approval by a  
23 majority vote of the electors of the county voting in a  
24 referendum or pursuant to an ordinance enacted by an  
25 extraordinary vote of the governing authority of the county.  
26 The governing authority of the county must hold a public  
27 hearing at least 2 weeks before the formal adoption of the  
28 ordinance.

29           (3) The governing authority of the county shall notify  
30 the Department of Revenue within 10 days after final adoption  
31 by ordinance or referendum of an imposition, termination, or



1 rate change of the surtax. The notice must specify the period  
2 during which the surtax will be in effect and the rate of the  
3 surtax and must include a copy of the ordinance and such other  
4 information as the department requires by rule. Failure to  
5 timely provide such notification to the department shall  
6 result in the delay of the effective date of the surtax for a  
7 period of 1 year. A surtax or an increase or decrease in the  
8 rate of the surtax must take effect on January 1 and must  
9 terminate on December 31.

10 (4) If the surtax is conditioned to take effect only  
11 upon approval by a majority vote of the electors of the county  
12 voting in a referendum, the county governing authority shall  
13 place on the ballot a statement that includes a brief general  
14 description of the projects to be funded by the surtax and  
15 that conforms to the requirements of s. 101.161 and reads as  
16 follows:

17 FOR the surtax

18 AGAINST the surtax

19 (5) Proceeds of the surtax may be used only to provide  
20 infrastructure necessary to implement adopted local government  
21 comprehensive plans. As used in this subsection, the term  
22 "infrastructure" means any fixed capital expenditure or fixed  
23 capital outlay associated with the construction,  
24 reconstruction, or improvement of public facilities that have  
25 a life expectancy of 5 or more years and any land acquisition,  
26 land improvement, design, and engineering costs related  
27 thereto.

28 (6) Proceeds of the surtax may be pledged by the  
29 governing authority of the county to pay principal and  
30 interest on bonds issued for the provision of infrastructure  
31 pursuant to subsection (5). If the proceeds are pledged to

1 secure principal and interest due on such bonds, the pledge  
2 constitutes a valid and legally binding contract between the  
3 governing authority of the county and the bondholders, and the  
4 governing authority of the county must continue to levy the  
5 surtax as long as any bonds are outstanding.

6 (7) The Department of Revenue shall administer the  
7 surtax pursuant to s. 201.11. Section 201.15 does not apply to  
8 this surtax. A portion of the tax proceeds, not to exceed 1  
9 percent, may be used to pay the department's cost of  
10 collection and enforcement of the surtax.

11 (8) The governing authority of a county that receives  
12 the proceeds of the surtax authorized by this section may not  
13 apply the proceeds of the surtax, or any other funds  
14 designated as capital outlay funds, to operating costs. Each  
15 governing authority of the county that levies a surtax shall,  
16 within 90 days after the close of its fiscal year, submit to  
17 the Department of Financial Services a financial report that  
18 contains information showing the use of the surtax proceeds.

19 (9) If the governing authority of a county does not  
20 impose an impact fee pursuant to section 4 of this act and  
21 chooses to levy the surtax pursuant to this section, the  
22 governing authority of the county may not levy any impact fee  
23 until the ordinance imposing this surtax has been rescinded  
24 and all obligations against which the surtax revenues have  
25 been pledged are satisfied.

26 (10) If the governing authority of a county imposes a  
27 surtax pursuant to this section, the governing authority may  
28 not increase the rate of any impact fee imposed pursuant to  
29 section 4 of this act beyond the rate imposed on January 1,  
30 2003, and may not impose an additional impact fee until the  
31 ordinance imposing this surtax has been rescinded and all

1 obligations against which the surtax revenues have been  
2 pledged are satisfied.

3 Section 10. This act shall take effect July 1, 2004.

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SENATE SUMMARY

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Provides for local governments to finance public facilities that are needed to serve new growth and development by levying impact fees or a surtax on certain documents. (See bill for details.)

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