

By the Committee on Comprehensive Planning; and Senator  
Bennett

316-2620-04

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; requiring the  
18 Department of Revenue to adopt forms; requiring  
19 the use of such forms when the surtax is paid;  
20 requiring an affidavit under certain  
21 circumstances; authorizing the clerk of the  
22 court to collect a fee; authorizing the  
23 Department of Revenue to adopt emergency rules;  
24 providing an exception when there is a  
25 dissolution of marriage; providing an effective  
26 date.

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28 Be It Enacted by the Legislature of the State of Florida:

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30 Section 1. Short title.--Sections 1 through 8 of this  
31 act may be cited as the "Florida Impact Fee Act."

1           Section 2. Policy.--The Legislature finds that an  
2 equitable program for planning and financing public facilities  
3 needed to serve new growth and development is necessary in  
4 order to promote and accommodate orderly growth and  
5 development and to protect the public health, safety, and  
6 welfare of the residents of this state. Therefore, it is the  
7 intent of the Legislature that this act:

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

10          (2) Promote orderly growth and development by  
11 codifying the minimum standards required for the adoption of  
12 an impact fee ordinance by a local government as provided for  
13 in case law.

14          (3) Ensure that new growth and development is required  
15 to pay no more than its proportionate share of the cost of any  
16 public facilities necessary to accommodate a development  
17 project.

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

21           Section 3. Definitions.--As used in this act, the  
22 term:

23          (1) "Developer" means a person or legal entity that  
24 undertakes development.

25          (2) "Development" means a construction of a building  
26 or structure, a change in the use of a building or structure,  
27 or a change in the use of land, any of which creates  
28 additional demand and need for public facilities by having an  
29 impact on the capacity of a public facility and thereby  
30 creating a need for improvements to the public facility.

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

4           (4) "Impact fee" means any payment of money imposed  
5 upon development as a condition to granting a development  
6 order and to pay for a proportionate share of the cost of  
7 system improvements needed to serve new growth and  
8 development. The term "impact fee" does not include a fee  
9 levied under any statutory authority other than sections 1-8  
10 of this act or a charge or fee to connect to any  
11 municipal-owned utility, including, but not limited to,  
12 communications, electric, natural gas, water, and wastewater  
13 facilities.

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

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

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

23           (8) "System improvement" means a capital improvement  
24 that is a public facility and is designed to provide service  
25 to the community.

26           (9) "System improvement costs" means costs incurred to  
27 provide additional public facilities capacity needed to serve  
28 new growth and development, including the cost of  
29 construction, reconstruction, or expansion of such facilities;  
30 design, surveying, and engineering fees and related land  
31 acquisition costs, including land purchases, court awards and

1 costs, attorney's fees, and expert witness fees; expenses  
2 incurred for qualified staff or a qualified engineer, planner,  
3 architect, landscape architect, or financial consultant for  
4 preparing or updating the capital improvement element; and  
5 ongoing administrative costs. Financing costs for the  
6 retirement of bonds, notes, or other financial obligations  
7 issued by or on behalf of a local government to finance system  
8 improvements may be included as system improvement costs.

9 Section 4. Authorization; notice and hearing  
10 requirements; minimum standards and requirements for impact  
11 fee ordinances.--

12 (1) A local government may, by ordinance, impose an  
13 impact fee as a condition of a development order in accordance  
14 with this act. The ordinance must be adopted under the notice  
15 and hearing provisions of section 125.66(2)(a), Florida  
16 Statutes, for a county or section 166.041(3)(a), Florida  
17 Statutes, for a municipality.

18 (2) An impact fee ordinance may exempt all or part of  
19 a development from impact fees. If the ordinance provides for  
20 an exemption from impact fees, the ordinance must also specify  
21 criteria for the exemption.

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

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

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

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

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

5           (8) An impact fee ordinance must provide for a process  
6 that allows a developer to receive a certification of the  
7 application of the impact fee schedule or individual  
8 assessment to a development project. The certification must  
9 establish that the impact fee may not be increased for 1 year  
10 for that development project or for a longer period if the  
11 local government determines that a longer construction period  
12 warrants an extension.

13           (9) An impact fee ordinance must include a provision  
14 for credits against the payment of impact fees. In calculating  
15 an impact fee for a development project, credit must be given  
16 for the present value of any construction of system  
17 improvements or contribution or dedication of land or money  
18 required or accepted by a local government from a developer or  
19 the developer's predecessor in title or interest for system  
20 improvements for which the impact fee is being collected.

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

28           Section 5. Allocation and expenditure of collected  
29 impact fees.--

30           (1) An ordinance that imposes impact fees must require  
31 any impact fees that are collected to be maintained in one or

1 more interest-bearing accounts. Accounting records must be  
2 maintained for each category of system improvements. Interest  
3 earned on impact fees must be considered funds of the account  
4 on which it is earned and is subject to all restrictions  
5 placed on the use of impact fees under this act.

6 (2) A local government that imposes an impact fee  
7 shall keep records that identify the amount of any development  
8 impact fees collected and how those fees were encumbered or  
9 expended during the preceding year for each category of system  
10 improvements.

11 Section 6. Appeals.--

12 (1) A local government that adopts an impact fee  
13 ordinance may provide for an administrative appeal to its  
14 governing body, or to such other body as is designated in the  
15 ordinance, of a determination of the amount of the impact fee  
16 for a development project or an appeal of an interpretation of  
17 the fee. An administrative appeal under this section does not  
18 affect the availability of other legal remedies.

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

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

30 Section 7. Other powers and rights.--This act does not  
31 prevent or prohibit agreements between property owners or

1 developers and local governments or other governmental  
2 entities regarding the construction or installation of system  
3 improvements and providing for credits or reimbursements for  
4 system improvement costs incurred by a developer, including  
5 interproject transfers of credits, or providing for  
6 reimbursement for project improvement costs that are used or  
7 shared by more than one development project.

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

14 Section 9. Section 201.032, Florida Statutes, is  
15 created to read:

16 201.032 Local option real estate transfer surtax on  
17 deeds; conditions of levy; use of proceeds.--

18 (1) Subject to subsections (9) and (10), the governing  
19 authority of a county may levy a surtax on documents that are  
20 taxed under s. 201.02, at a rate not exceeding 5 cents on each  
21 \$100 or fractional part thereof of the consideration for the  
22 real estate or interest therein. The grantor of the real  
23 estate or interest therein shall pay the surtax. However, the  
24 surtax may not be levied on the document that conveys a  
25 specific interest in real property in this state for the first  
26 time following July 1, 2004. Subsequent documents conveying  
27 the same interest are subject to the surtax.

28 (2) The levy of the surtax shall be pursuant to an  
29 ordinance conditioned to take effect only upon approval by a  
30 majority vote of the electors of the county voting in a  
31 referendum or pursuant to an ordinance enacted by an



1 extraordinary vote of the governing authority of the county.

2 The governing authority of the county must hold a public  
3 hearing at least 2 weeks before the formal adoption of the  
4 ordinance.

5 (3) The governing authority of the county shall notify  
6 the Department of Revenue within 10 days after final adoption  
7 by ordinance or referendum of an imposition, termination, or  
8 rate change of the surtax. The notice must specify the period  
9 during which the surtax will be in effect and the rate of the  
10 surtax and must include a copy of the ordinance and such other  
11 information as the department requires by rule. Failure to  
12 timely provide such notification to the department shall  
13 result in the delay of the effective date of the surtax for a  
14 period of 1 year. A surtax or an increase or decrease in the  
15 rate of the surtax must take effect on January 1 and must  
16 terminate on December 31.

17 (4) If the surtax is conditioned to take effect only  
18 upon approval by a majority vote of the electors of the county  
19 voting in a referendum, the county governing authority shall  
20 place on the ballot a statement that includes a brief general  
21 description of the projects to be funded by the surtax and  
22 that conforms to the requirements of s. 101.161 and reads as  
23 follows:

24 FOR the surtax

25 AGAINST the surtax

26 (5) Proceeds of the surtax may be used only to provide  
27 infrastructure necessary to implement adopted local government  
28 comprehensive plans. As used in this subsection, the term  
29 "infrastructure" means any fixed capital expenditure or fixed  
30 capital outlay associated with the construction,  
31 reconstruction, or improvement of public facilities that have

1 a life expectancy of 5 or more years and any land acquisition,  
2 land improvement, design, and engineering costs related  
3 thereto.

4 (6) Proceeds of the surtax may be pledged by the  
5 governing authority of the county to pay principal and  
6 interest on bonds issued for the provision of infrastructure  
7 pursuant to subsection (5). If the proceeds are pledged to  
8 secure principal and interest due on such bonds, the pledge  
9 constitutes a valid and legally binding contract between the  
10 governing authority of the county and the bondholders, and the  
11 governing authority of the county must continue to levy the  
12 surtax as long as any bonds are outstanding.

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

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

26 (9) If the governing authority of a county does not  
27 impose an impact fee pursuant to section 4 of this act and  
28 chooses to levy the surtax pursuant to this section, the  
29 governing authority of the county may not levy any impact fee  
30 until the ordinance imposing this surtax has been rescinded  
31

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

3 (10) If the governing authority of a county imposes a  
4 surtax pursuant to this section, the governing authority may  
5 not increase the rate of any impact fee imposed pursuant to  
6 section 4 of this act beyond the rate imposed on January 1,  
7 2003, and may not impose an additional impact fee until the  
8 ordinance imposing this surtax has been rescinded and all  
9 obligations against which the surtax revenues have been  
10 pledged are satisfied.

11 (11) The Department of Revenue is directed to adopt  
12 rules pursuant to ss. 120.536(1) and 120.54 and to design,  
13 prepare, print, and adopt forms to implement and enforce the  
14 provisions of this section. Such forms must be used and  
15 recorded on any document that conveys a specific interest in  
16 real property, pursuant to the requirements of this section,  
17 in the county imposing the surtax. If no tax is due pursuant  
18 to this section, the grantor of the real estate or interest  
19 therein must record an affidavit verifying that no tax is due.  
20 At the time of recording, the surtax must be paid to the clerk  
21 of the court. The clerk shall collect and remit the surtax to  
22 the Department of Revenue for distribution to the county  
23 levying the surtax. The clerk may retain 1 percent of the  
24 surtax paid as a service charge of the clerk's office.

25 (12) The Department of Revenue is authorized to adopt  
26 emergency rules under ss. 120.536(1) and 120.54(4) to  
27 implement and enforce the provisions of s. 201.032. The  
28 emergency rules shall remain in effect until the adoption of  
29 permanent rules as provided in s. 201.032.

30 (13) Taxes imposed by this section do not apply to a  
31 deed, transfer, or conveyance between spouses or former

1 spouses pursuant to an action for dissolution of marriage  
2 wherein the real property is or was their marital home or an  
3 interest therein. Taxes paid pursuant to this section shall be  
4 refunded in those cases in which a deed, transfer, or  
5 conveyance occurred 1 year before a dissolution of marriage.  
6 This subsection applies in spite of any consideration as  
7 defined in subsection (1).

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

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10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
11 COMMITTEE SUBSTITUTE FOR  
12 Senate Bill 2874

13 The committee substitute (CS) revises the definition of  
14 "impact fee" to exclude any charge or fee to connect to any  
15 municipal-owned utility. The CS deletes language prohibiting  
16 the imposition of an impact fee for public facilities built in  
17 advance to serve new development. It deletes language  
18 requiring an impact fee credit for state or federal funds  
19 received by the local government for system improvements.

20 In addition, this CS requires the Department of Revenue to  
21 adopt forms to be used when the surtax is paid; requires an  
22 affidavit to be submitted by the seller of the property  
23 verifying that the tax is not due; authorizes the clerk of the  
24 court to collect a fee; authorizes the Department of Revenue  
25 to adopt emergency rules to implement this section; and  
26 provides an exception to the surtax when there is a  
27 dissolution of marriage.  
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