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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2009	.	
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The Committee on Community Affairs (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Effective October 1, 2010, section 163.31801,
Florida Statutes, is amended to read:

163.31801 Impact fees; short title; intent; definitions;
ordinances levying impact fees.—

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

(2) The Legislature finds that impact fees are an important



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12 source of revenue for a local government to use in funding the
13 infrastructure necessitated by new growth. The Legislature
14 further finds that impact fees are an outgrowth of the home rule
15 power of a local government to provide certain services within
16 its jurisdiction. Due to the growth of impact fee collections
17 and local governments' reliance on impact fees, it is the intent
18 of the Legislature to ensure that, when a county or municipality
19 adopts an impact fee by ordinance or a special district adopts
20 an impact fee by resolution, the governing authority complies
21 with this section.

22 (3) An impact fee adopted by ordinance of a county or
23 municipality or by resolution of a special district must, at
24 minimum:

25 (a) Require that the calculation of the impact fee be based
26 on the most recent and localized data.

27 (b) Provide for accounting and reporting of impact fee
28 collections and expenditures. If a local governmental entity
29 imposes an impact fee to address its infrastructure needs, the
30 entity shall account for the revenues and expenditures of such
31 impact fee in a separate accounting fund.

32 (c) Limit administrative charges for the collection of
33 impact fees to actual costs.

34 (d) Require that notice be provided no less than 90 days
35 before the effective date of an ordinance or resolution imposing
36 a new or amended impact fee.

37 (4) Audits of financial statements of local governmental
38 entities and district school boards which are performed by a
39 certified public accountant pursuant to s. 218.39 and submitted
40 to the Auditor General must include an affidavit signed by the



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41 chief financial officer of the local governmental entity or
42 district school board stating that the local governmental entity
43 or district school board has complied with this section.

44 (5) A county or municipality may not levy impact fees in
45 excess of \$2 per square foot for residential property and \$8 per
46 square foot for nonresidential property. Impact fees may be
47 increased annually by an amount that does not exceed the
48 percentage change in the Consumer Price Index after 2010.

49 Section 2. Section 201.032, Florida Statutes, is created to
50 read:

51 201.032 Local option real estate transfer surtax on deeds;
52 conditions on levy; use of proceeds.-

53 (1) The governing body of a county may levy a surtax on
54 documents that are taxed under s. 201.02 in the same manner as
55 provided in s. 201.02, at a rate not to exceed \$1 on each \$100
56 or fractional part thereof of the consideration for the real
57 estate or interest therein. The grantor of the real estate or
58 interest therein shall pay the surtax. However, the surtax may
59 not be levied on a document that conveys a specific interest in
60 real property in this state for the first transaction following
61 the adoption of the ordinance. Subsequent documents conveying an
62 interest in the same real estate are subject to the surtax. For
63 purposes of this section, consideration includes, but is not
64 limited to, the money paid or agreed to be paid; the discharge
65 of an obligation; and the amount of any mortgage, purchase money
66 mortgage lien, or other encumbrance, whether the underlying
67 indebtedness is assumed. If the consideration paid or given in
68 exchange for real property or any interest therein includes
69 property other than money, it is presumed that the consideration



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70 is equal to the fair market value of the real property or
71 interest therein.

72 (2) The levy of the surtax shall be pursuant to an
73 ordinance conditioned to take effect only upon approval by a
74 majority vote of the electors of the county voting in a
75 referendum or pursuant to an ordinance enacted by an
76 extraordinary vote of the governing body of the county. The
77 governing body of the county must hold a public hearing at least
78 2 weeks before a vote to approve an ordinance to levy the surtax
79 or a vote to refer an ordinance to levy the surtax to the
80 electors.

81 (3) The governing body of the county shall notify the
82 Department of Revenue within 10 days after final adoption by
83 ordinance or referendum of an imposition, termination, or rate
84 change of the surtax. The notice must specify the period during
85 which the surtax will be in effect and the rate of the surtax
86 and must include a copy of the ordinance and such other
87 information as the department requires by rule. Failure to
88 timely provide such notice to the department shall result in the
89 delay of the effective date of the surtax for a period of 1
90 year. A surtax or an increase or decrease in the rate of the
91 surtax must take effect on January 1 and must terminate on
92 December 31.

93 (4) If the surtax is conditioned to take effect only upon
94 approval by a majority vote of the electors of the county voting
95 in a referendum, the county governing body shall place on the
96 ballot a title and ballot statement that complies with s.
97 101.161 and includes a brief general description of the projects
98 to be funded by the surtax. The ballot statement shall be



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99 followed by the phrase "FOR the surtax" and "AGAINST the
100 surtax."

101 (5) Proceeds of the surtax may be used only to provide
102 infrastructure necessary to implement adopted local government
103 comprehensive plans. As used in this subsection, the term
104 "infrastructure" means any fixed capital expenditure or fixed
105 capital outlay associated with the construction, reconstruction,
106 or improvement of public facilities that have a life expectancy
107 of 5 or more years and any land acquisition, land improvement,
108 design, and engineering costs related thereto, including
109 projects that qualify for the district facilities work program,
110 as defined in s. 1013.35(1) (b).

111 (6) The proceeds of the surtax following distributions to
112 the Department of Revenue under subsection (8) and the clerks of
113 court under subsection (10), shall be distributed according to
114 the following formula:

115 (a) Twenty-five percent shall be distributed to the county
116 or the municipality in which the property that was the subject
117 of the surtax is located; and

118 (b) Seventy-five percent shall be distributed as follows:

119 1. One-third shall be distributed to municipalities within
120 the county that imposes the surtax based on population. The
121 proportion each municipality receives shall be computed by
122 dividing the population of that municipality by the sum of the
123 population in all the municipalities within the county; and

124 2. Two-thirds shall be distributed to the county, which
125 must distribute at least 25 percent of those funds to the school
126 districts within the county.

127 (7) Proceeds of the surtax may be pledged by the governing



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128 body of the county to pay principal and interest on bonds issued
129 for the provision of infrastructure pursuant to subsection (5).
130 If the proceeds are pledged to secure principal and interest due
131 on such bonds, the pledge constitutes a valid and legally
132 binding contract between the governing body of the county and
133 the bondholders, and the governing body of the county shall
134 continue to levy the surtax as long as any bonds are
135 outstanding.

136 (8) The Department of Revenue shall administer the surtax
137 pursuant to s. 201.11. Section 201.15 does not apply to this
138 surtax. A portion of the surtax proceeds, not to exceed 1
139 percent, may be used to pay the department's cost to collect and
140 enforce the surtax.

141 (9) The governing body of a county that receives the
142 proceeds of the surtax may not apply the proceeds of the surtax,
143 or any other funds designated as capital outlay funds, to
144 operating costs. Each governing body of the county that levies a
145 surtax shall, within 90 days after the close of its fiscal year,
146 submit to the Department of Financial Services a financial
147 report that contains information showing the use of the surtax
148 proceeds.

149 (10) The Department of Revenue adopt rules to design,
150 prepare, print, and adopt forms to implement and enforce the
151 provisions of this section. Such forms must be used and recorded
152 on any document that conveys a specific interest in real
153 property, pursuant to the requirements of this section, in the
154 county imposing the surtax. If a surtax is not due, the grantor
155 of the real estate or interest therein must record an affidavit
156 verifying that the surtax is not due. At the time of recording,



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157 the surtax must be paid to the clerk of the court. The clerk
158 shall collect and remit the surtax to the Department of Revenue
159 for distribution to the county levying the surtax. The clerk may
160 retain 1 percent of the surtax paid as a service charge of the
161 clerk's office.

162 (11) The Department of Revenue shall pay to the governing
163 body of the county that levies the surtax all taxes, penalties,
164 and interest collected under this section less any costs of
165 administration.

166 Section 3. Except as otherwise expressly provided in this
167 act, this act shall take effect July 1, 2009.

168
169 ===== T I T L E A M E N D M E N T =====

170 And the title is amended as follows:

171 Delete everything before the enacting clause
172 and insert:

173 A bill to be entitled
174 An act relating to local taxes; amending s. 163.31801,
175 F.S.; limiting the rate of impact fees on residential
176 and nonresidential property; creating s. 201.032,
177 F.S.; authorizing counties to levy a surtax on certain
178 documents that transfer real property or an interest
179 in real property; limiting the rate of the surtax;
180 requiring the grantor to pay the surtax; providing
181 that the surtax must be approved by a extraordinary
182 vote of the governing body of the county or by a
183 majority vote of the electors of the county; requiring
184 the governing body to notify the Department of Revenue
185 of the adoption of the surtax and changes to the



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186 surtax within a certain period; delaying the effective
187 date for 1 year if the notice is not timely provided;
188 providing requirements for the ballot containing a
189 referendum for the surtax; prescribing the uses of
190 surtax revenues; providing for the distribution of
191 surtax revenues among the county levying the surtax
192 and municipalities within the county; authorizing
193 surtax revenues to be pledged to repay bonds;
194 directing the Department of Revenue to administer,
195 collect, and enforce the surtax; authorizing the
196 Department of Revenue to use a portion of the proceeds
197 of the surtax to pay its costs to administer the
198 surtax; requiring the governing body of counties
199 levying the surtax to submit reports to the Department
200 of Financial Services showing the use of surtax
201 revenues; authorizing the Department of Revenue to
202 adopt rules to implement and enforce the surtax;
203 authorizing clerks of court to retain a portion of the
204 surtax as a service charge; providing effective dates.