

By the Committee on Community Affairs; and Senator Bennett

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1 A bill to be entitled
2 An act relating to local taxes; amending s. 163.31801,
3 F.S.; limiting the rate of impact fees on residential
4 and nonresidential property; creating s. 201.032,
5 F.S.; authorizing counties to levy a surtax on certain
6 documents that transfer real property or an interest
7 in real property; limiting the rate of the surtax;
8 requiring the grantor to pay the surtax; providing
9 that the surtax must be approved by a extraordinary
10 vote of the governing body of the county or by a
11 majority vote of the electors of the county; requiring
12 the governing body to notify the Department of Revenue
13 of the adoption of the surtax and changes to the
14 surtax within a certain period; delaying the effective
15 date for 1 year if the notice is not timely provided;
16 providing requirements for the ballot containing a
17 referendum for the surtax; prescribing the uses of
18 surtax revenues; providing for the distribution of
19 surtax revenues among the county levying the surtax
20 and municipalities within the county; authorizing
21 surtax revenues to be pledged to repay bonds;
22 directing the Department of Revenue to administer,
23 collect, and enforce the surtax; authorizing the
24 Department of Revenue to use a portion of the proceeds
25 of the surtax to pay its costs to administer the
26 surtax; requiring the governing body of counties
27 levying the surtax to submit reports to the Department
28 of Financial Services showing the use of surtax
29 revenues; authorizing the Department of Revenue to

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30 adopt rules to implement and enforce the surtax;
31 authorizing clerks of court to retain a portion of the
32 surtax as a service charge; providing effective dates.
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34 Be It Enacted by the Legislature of the State of Florida:
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36 Section 1. Effective October 1, 2010, section 163.31801,
37 Florida Statutes, is amended to read:

38 163.31801 Impact fees; short title; intent; definitions;
39 ordinances levying impact fees.—

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

42 (2) The Legislature finds that impact fees are an important
43 source of revenue for a local government to use in funding the
44 infrastructure necessitated by new growth. The Legislature
45 further finds that impact fees are an outgrowth of the home rule
46 power of a local government to provide certain services within
47 its jurisdiction. Due to the growth of impact fee collections
48 and local governments' reliance on impact fees, it is the intent
49 of the Legislature to ensure that, when a county or municipality
50 adopts an impact fee by ordinance or a special district adopts
51 an impact fee by resolution, the governing authority complies
52 with this section.

53 (3) An impact fee adopted by ordinance of a county or
54 municipality or by resolution of a special district must, at
55 minimum:

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

58 (b) Provide for accounting and reporting of impact fee

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59 collections and expenditures. If a local governmental entity
60 imposes an impact fee to address its infrastructure needs, the
61 entity shall account for the revenues and expenditures of such
62 impact fee in a separate accounting fund.

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

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

68 (4) Audits of financial statements of local governmental
69 entities and district school boards which are performed by a
70 certified public accountant pursuant to s. 218.39 and submitted
71 to the Auditor General must include an affidavit signed by the
72 chief financial officer of the local governmental entity or
73 district school board stating that the local governmental entity
74 or district school board has complied with this section.

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

80 Section 2. Section 201.032, Florida Statutes, is created to
81 read:

82 201.032 Local option real estate transfer surtax on deeds;
83 conditions on levy; use of proceeds.-

84 (1) The governing body of a county may levy a surtax on
85 documents that are taxed under s. 201.02 in the same manner as
86 provided in s. 201.02, at a rate not to exceed \$1 on each \$100
87 or fractional part thereof of the consideration for the real

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88 estate or interest therein. The grantor of the real estate or
89 interest therein shall pay the surtax. However, the surtax may
90 not be levied on a document that conveys a specific interest in
91 real property in this state for the first transaction following
92 the adoption of the ordinance. Subsequent documents conveying an
93 interest in the same real estate are subject to the surtax. For
94 purposes of this section, consideration includes, but is not
95 limited to, the money paid or agreed to be paid; the discharge
96 of an obligation; and the amount of any mortgage, purchase money
97 mortgage lien, or other encumbrance, whether the underlying
98 indebtedness is assumed. If the consideration paid or given in
99 exchange for real property or any interest therein includes
100 property other than money, it is presumed that the consideration
101 is equal to the fair market value of the real property or
102 interest therein.

103 (2) The levy of the surtax shall be pursuant to an
104 ordinance conditioned to take effect only upon approval by a
105 majority vote of the electors of the county voting in a
106 referendum or pursuant to an ordinance enacted by an
107 extraordinary vote of the governing body of the county. The
108 governing body of the county must hold a public hearing at least
109 2 weeks before a vote to approve an ordinance to levy the surtax
110 or a vote to refer an ordinance to levy the surtax to the
111 electors.

112 (3) The governing body of the county shall notify the
113 Department of Revenue within 10 days after final adoption by
114 ordinance or referendum of an imposition, termination, or rate
115 change of the surtax. The notice must specify the period during
116 which the surtax will be in effect and the rate of the surtax

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117 and must include a copy of the ordinance and such other
118 information as the department requires by rule. Failure to
119 timely provide such notice to the department shall result in the
120 delay of the effective date of the surtax for a period of 1
121 year. A surtax or an increase or decrease in the rate of the
122 surtax must take effect on January 1 and must terminate on
123 December 31.

124 (4) If the surtax is conditioned to take effect only upon
125 approval by a majority vote of the electors of the county voting
126 in a referendum, the county governing body shall place on the
127 ballot a title and ballot statement that complies with s.
128 101.161 and includes a brief general description of the projects
129 to be funded by the surtax. The ballot statement shall be
130 followed by the phrase "FOR the surtax" and "AGAINST the
131 surtax."

132 (5) Proceeds of the surtax may be used only to provide
133 infrastructure necessary to implement adopted local government
134 comprehensive plans. As used in this subsection, the term
135 "infrastructure" means any fixed capital expenditure or fixed
136 capital outlay associated with the construction, reconstruction,
137 or improvement of public facilities that have a life expectancy
138 of 5 or more years and any land acquisition, land improvement,
139 design, and engineering costs related thereto, including
140 projects that qualify for the district facilities work program,
141 as defined in s. 1013.35(1)(b).

142 (6) The proceeds of the surtax following distributions to
143 the Department of Revenue under subsection (8) and the clerks of
144 court under subsection (10), shall be distributed according to
145 the following formula:

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

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

150 1. One-third shall be distributed to municipalities within
151 the county that imposes the surtax based on population. The
152 proportion each municipality receives shall be computed by
153 dividing the population of that municipality by the sum of the
154 population in all the municipalities within the county; and

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

158 (7) Proceeds of the surtax may be pledged by the governing
159 body of the county to pay principal and interest on bonds issued
160 for the provision of infrastructure pursuant to subsection (5).
161 If the proceeds are pledged to secure principal and interest due
162 on such bonds, the pledge constitutes a valid and legally
163 binding contract between the governing body of the county and
164 the bondholders, and the governing body of the county shall
165 continue to levy the surtax as long as any bonds are
166 outstanding.

167 (8) The Department of Revenue shall administer the surtax
168 pursuant to s. 201.11. Section 201.15 does not apply to this
169 surtax. A portion of the surtax proceeds, not to exceed 1
170 percent, may be used to pay the department's cost to collect and
171 enforce the surtax.

172 (9) The governing body of a county that receives the
173 proceeds of the surtax may not apply the proceeds of the surtax,
174 or any other funds designated as capital outlay funds, to

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175 operating costs. Each governing body of the county that levies a
176 surtax shall, within 90 days after the close of its fiscal year,
177 submit to the Department of Financial Services a financial
178 report that contains information showing the use of the surtax
179 proceeds.

180 (10) The Department of Revenue adopt rules to design,
181 prepare, print, and adopt forms to implement and enforce the
182 provisions of this section. Such forms must be used and recorded
183 on any document that conveys a specific interest in real
184 property, pursuant to the requirements of this section, in the
185 county imposing the surtax. If a surtax is not due, the grantor
186 of the real estate or interest therein must record an affidavit
187 verifying that the surtax is not due. At the time of recording,
188 the surtax must be paid to the clerk of the court. The clerk
189 shall collect and remit the surtax to the Department of Revenue
190 for distribution to the county levying the surtax. The clerk may
191 retain 1 percent of the surtax paid as a service charge of the
192 clerk's office.

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

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