

By the Committees on Appropriations; Finance and Tax; and  
Community Affairs; and Senator Gruters

576-04531-20

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1                                   A bill to be entitled  
2       An act relating to impact fees; amending s. 163.31801,  
3       F.S.; prohibiting new or increased impact fees from  
4       applying to certain applications; providing an  
5       exception; providing applicability; providing a  
6       calculation on which contributions to mitigate impacts  
7       not otherwise funded by impact fees must be based;  
8       prohibiting such contributions from being collected  
9       before the issuance of building permits; providing  
10      that impact fee credits are assignable and  
11      transferable under certain conditions; providing an  
12      effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

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16       Section 1. Section 163.31801, Florida Statutes, is amended  
17 to read:

18       163.31801 Impact fees; short title; intent; minimum  
19 requirements; audits; challenges.—

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

22       (2) The Legislature finds that impact fees are an important  
23 source of revenue for a local government to use in funding the  
24 infrastructure necessitated by new growth. The Legislature  
25 further finds that impact fees are an outgrowth of the home rule  
26 power of a local government to provide certain services within  
27 its jurisdiction. Due to the growth of impact fee collections  
28 and local governments' reliance on impact fees, it is the intent  
29 of the Legislature to ensure that, when a county or municipality

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30 adopts an impact fee by ordinance or a special district adopts  
31 an impact fee by resolution, the governing authority complies  
32 with this section.

33 (3) At a minimum, an impact fee adopted by ordinance of a  
34 county or municipality or by resolution of a special district  
35 must satisfy all of the following conditions:

36 (a) The calculation of the impact fee must be based on the  
37 most recent and localized data.

38 (b) The local government must provide for accounting and  
39 reporting of impact fee collections and expenditures. If a local  
40 governmental entity imposes an impact fee to address its  
41 infrastructure needs, the entity must account for the revenues  
42 and expenditures of such impact fee in a separate accounting  
43 fund.

44 (c) Administrative charges for the collection of impact  
45 fees must be limited to actual costs.

46 (d) The local government must provide notice not less than  
47 90 days before the effective date of an ordinance or resolution  
48 imposing a new or increased impact fee. A county or municipality  
49 is not required to wait 90 days to decrease, suspend, or  
50 eliminate an impact fee. Unless the result is to reduce the  
51 total mitigation costs or impact fees imposed on an applicant,  
52 new or increased impact fees may not apply to current or pending  
53 permit applications submitted before the effective date of an  
54 ordinance or resolution imposing a new or increased impact fee.

55 (e) Collection of the impact fee may not be required to  
56 occur earlier than the date of issuance of the building permit  
57 for the property that is subject to the fee.

58 (f) The impact fee must be proportional and reasonably

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59 connected to, or have a rational nexus with, the need for  
60 additional capital facilities and the increased impact generated  
61 by the new residential or commercial construction.

62 (g) The impact fee must be proportional and reasonably  
63 connected to, or have a rational nexus with, the expenditures of  
64 the funds collected and the benefits accruing to the new  
65 residential or nonresidential construction.

66 (h) The local government must specifically earmark funds  
67 collected under the impact fee for use in acquiring,  
68 constructing, or improving capital facilities to benefit new  
69 users.

70 (i) Revenues generated by the impact fee may not be used,  
71 in whole or in part, to pay existing debt or for previously  
72 approved projects unless the expenditure is reasonably connected  
73 to, or has a rational nexus with, the increased impact generated  
74 by the new residential or nonresidential construction.

75 (4) Notwithstanding any charter provision, comprehensive  
76 plan policy, ordinance, or resolution, the local government must  
77 credit against the collection of the impact fee any  
78 contribution, whether identified in a proportionate share  
79 agreement or other form of exaction, related to public education  
80 facilities, including land dedication, site planning and design,  
81 or construction. Any contribution must be applied to reduce any  
82 education-based impact fees on a dollar-for-dollar basis at fair  
83 market value. This subsection does not apply to a local  
84 government governed by a charter that was adopted and  
85 implemented before December 31, 2006, which charter language  
86 contains provisions for providing school capacity, so long as  
87 the funds collected pursuant to the charter provision are used

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88 to mitigate impacts not otherwise funded by impact fees or other  
89 local exactions relating to public education facilities, and the  
90 funds are applied in a manner that is proportional and  
91 reasonably connected to, or has a rational nexus with, the need  
92 for additional capital facilities, the need for which is  
93 generated by the new residential development. Contributions to  
94 mitigate impacts not otherwise funded by impact fees must be  
95 based on the difference between the cost per student station as  
96 determined by the educational facilities impact fee study on  
97 which the then-current education-based impact fee is based,  
98 subject to s. 1013.64(2)(a)6. and (6)(b), and the cost per  
99 student station funded by the education-based impact fee. Such  
100 contributions may not be collected before the issuance of a  
101 building permit.

102 (5) If a local government increases its impact fee rates,  
103 the holder of any impact fee credits, whether such credits are  
104 granted under s. 163.3180, s. 380.06, or otherwise, which were  
105 in existence before the increase, is entitled to the full  
106 benefit of the intensity or density prepaid by the credit  
107 balance as of the date it was first established. This subsection  
108 shall operate prospectively and not retrospectively.

109 (6) Audits of financial statements of local governmental  
110 entities and district school boards which are performed by a  
111 certified public accountant pursuant to s. 218.39 and submitted  
112 to the Auditor General must include an affidavit signed by the  
113 chief financial officer of the local governmental entity or  
114 district school board stating that the local governmental entity  
115 or district school board has complied with this section.

116 (7) In any action challenging an impact fee or the

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117 government's failure to provide required dollar-for-dollar  
118 credits for the payment of impact fees as provided in s.  
119 163.3180(6)(h)2.b., the government has the burden of proving by  
120 a preponderance of the evidence that the imposition or amount of  
121 the fee or credit meets the requirements of state legal  
122 precedent and this section. The court may not use a deferential  
123 standard for the benefit of the government.

124 (8) Impact fee credits are assignable and transferable at  
125 any time after establishment from one development or parcel to  
126 any other that is within the same impact fee zone or impact fee  
127 district or that is within an adjoining impact fee zone or  
128 impact fee district within the same local government  
129 jurisdiction and receives benefits from the improvement or  
130 contribution that generated the credits.

131 (9)~~(8)~~ A county, municipality, or special district may  
132 provide an exception or waiver for an impact fee for the  
133 development or construction of housing that is affordable, as  
134 defined in s. 420.9071. If a county, municipality, or special  
135 district provides such an exception or waiver, it is not  
136 required to use any revenues to offset the impact.

137 (10)~~(9)~~ This section does not apply to water and sewer  
138 connection fees.

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