

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

576-04219-21

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1 A bill to be entitled
2 An act relating to impact fees; amending s. 163.31801,
3 F.S.; defining the terms "infrastructure" and "public
4 facilities"; requiring local governments and special
5 districts to credit against the collection of impact
6 fees any contribution related to public facilities or
7 infrastructure; providing conditions under which
8 credits may not be applied; providing limitations on
9 impact fee increases; providing for retroactive
10 operation; requiring specified entities to submit an
11 affidavit attesting that impact fees were
12 appropriately collected and expended; providing for
13 retroactive applicability; requiring school districts
14 to report specified information regarding impact fees;
15 providing a directive to the Division of Law Revision;
16 providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 163.31801, Florida Statutes, is amended
21 to read:

22 163.31801 Impact fees; short title; intent; minimum
23 requirements; audits; challenges.—

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

26 (2) The Legislature finds that impact fees are an important
27 source of revenue for a local government to use in funding the
28 infrastructure necessitated by new growth. The Legislature
29 further finds that impact fees are an outgrowth of the home rule

576-04219-21

2021750c3

30 power of a local government to provide certain services within
31 its jurisdiction. Due to the growth of impact fee collections
32 and local governments' reliance on impact fees, it is the intent
33 of the Legislature to ensure that, when a county or municipality
34 adopts an impact fee by ordinance or a special district adopts
35 an impact fee by resolution, the governing authority complies
36 with this section.

37 (3) For purposes of this section, the term:

38 (a) "Infrastructure" means a fixed capital expenditure or
39 fixed capital outlay, excluding the cost of repairs or
40 maintenance, associated with the construction, reconstruction,
41 or improvement of public facilities that have a life expectancy
42 of at least 5 years; related land acquisition, land improvement,
43 design, engineering, and permitting costs; and other related
44 construction costs required to bring the public facility into
45 service. The term also includes a fire department vehicle, an
46 emergency medical service vehicle, a sheriff's office vehicle, a
47 police department vehicle, a school bus as defined in s.
48 1006.25, and the equipment necessary to outfit the vehicle or
49 bus for its official use. For independent special fire control
50 districts, the term "infrastructure" includes new facilities as
51 defined in s. 191.009(4).

52 (b) "Public facilities" has the same meaning as in s.
53 163.3164 and includes emergency medical, fire, and law
54 enforcement facilities.

55 (4) ~~(3)~~ At a minimum, each local government that adopts and
56 collects an impact fee by ordinance and each special district
57 that adopts, collects, and administers an impact fee by
58 resolution must ~~an impact fee adopted by ordinance of a county~~

576-04219-21

2021750c3

59 ~~or municipality or by resolution of a special district must~~
60 ~~satisfy all of the following conditions:~~

61 (a) Ensure that the calculation of the impact fee is ~~must~~
62 ~~be~~ based on the most recent and localized data.

63 (b) ~~The local government must~~ Provide for accounting and
64 reporting of impact fee collections and expenditures and. ~~If a~~
65 ~~local governmental entity imposes an impact fee to address its~~
66 ~~infrastructure needs, the entity must~~ account for the revenues
67 and expenditures of such impact fee in a separate accounting
68 fund.

69 (c) Limit administrative charges for the collection of
70 impact fees ~~must be limited~~ to actual costs.

71 (d) ~~The local government must~~ Provide notice at least ~~not~~
72 ~~less than~~ 90 days before the effective date of an ordinance or
73 resolution imposing a new or increased impact fee. A local
74 government ~~county or municipality~~ is not required to wait 90
75 days to decrease, suspend, or eliminate an impact fee. Unless
76 the result is to reduce the total mitigation costs or impact
77 fees imposed on an applicant, new or increased impact fees may
78 not apply to current or pending permit applications submitted
79 before the effective date of ~~an ordinance or resolution imposing~~
80 a new or increased impact fee.

81 (e) Ensure that collection of the impact fee may not be
82 required to occur earlier than the date of issuance of the
83 building permit for the property that is subject to the fee.

84 (f) Ensure that the impact fee is ~~must be~~ proportional and
85 reasonably connected to, or has ~~have~~ a rational nexus with, the
86 need for additional capital facilities and the increased impact
87 generated by the new residential or commercial construction.

576-04219-21

2021750c3

88 (g) Ensure that the impact fee ~~is must be~~ proportional and
89 reasonably connected to, or has ~~have~~ a rational nexus with, the
90 expenditures of the funds collected and the benefits accruing to
91 the new residential or nonresidential construction.

92 (h) ~~The local government must~~ Specifically earmark funds
93 collected under the impact fee for use in acquiring,
94 constructing, or improving capital facilities to benefit new
95 users.

96 (i) Ensure that revenues generated by the impact fee are
97 ~~may not be~~ used, in whole or in part, to pay existing debt or
98 for previously approved projects unless the expenditure is
99 reasonably connected to, or has a rational nexus with, the
100 increased impact generated by the new residential or
101 nonresidential construction.

102 (5) (a) ~~(4)~~ Notwithstanding any charter provision,
103 comprehensive plan policy, ordinance, development order,
104 development permit, or resolution, the local government or
105 special district must credit against the collection of the
106 impact fee any contribution, whether identified in a
107 proportionate share agreement or other form of exaction, related
108 to public ~~education~~ facilities or infrastructure, including land
109 dedication, site planning and design, or construction. Any
110 contribution must be applied on a dollar-for-dollar basis at
111 fair market value to reduce any ~~education-based~~ impact fee
112 collected for the general category or class of public facilities
113 or infrastructure for which the contribution was made ~~fees on a~~
114 ~~dollar-for-dollar basis at fair market value.~~

115 (b) If a local government or special district does not
116 charge and collect an impact fee for the general category or

576-04219-21

2021750c3

117 class of public facilities or infrastructure contributed, a
118 credit may not be applied under paragraph (a).

119 (6)~~(5)~~ A local government, school district, or special
120 district may increase an impact fee only as provided in this
121 subsection.

122 (a) An impact fee may be increased only pursuant to a plan
123 for the imposition, collection, and use of the increased impact
124 fees which complies with this section.

125 (b) An increase to a current impact fee rate of not more
126 than 25 percent of the current rate must be implemented in two
127 equal annual increments beginning with the date on which the
128 increased fee is adopted.

129 (c) An increase to a current impact fee rate which exceeds
130 25 percent but is not more than 50 percent of the current rate
131 must be implemented in four equal installments beginning with
132 the date the increased fee is adopted.

133 (d) An impact fee increase may not exceed 50 percent of the
134 current impact fee rate.

135 (e) An impact fee may not be increased more than once every
136 4 years.

137 (f) An impact fee may not be increased retroactively for a
138 previous or current fiscal or calendar year.

139 (g) A local government, school district, or special
140 district may increase an impact fee rate beyond the phase-in
141 limitations established under paragraph (b), paragraph (c),
142 paragraph (d), or paragraph (e) by establishing the need for
143 such increase in full compliance with the requirements of
144 subsection (4), provided the following criteria are met:

145 1. A demonstrated-need study justifying any increase in

576-04219-21

2021750c3

146 excess of paragraph (b), paragraph (c), paragraph (d), or
147 paragraph (e) has been completed within the 12 months prior to
148 the adoption of the impact fee increase and expressly
149 demonstrates the extraordinary circumstances necessitating the
150 need to exceed the phase-in limitations;

151 2. The local government jurisdiction has held no less than
152 two publicly noticed workshops dedicated to the extraordinary
153 circumstances necessitating the need to exceed the phase-in
154 limitations of paragraph (b), paragraph (c), paragraph (d), or
155 paragraph (e); and

156 3. The impact fee increase ordinance is approved by no less
157 than a two-thirds vote of the governing body.

158 (h) Any local government or school district that enacts new
159 impact fees as the result of a current impact fee study may
160 implement the total amount of those fees in up to four equal
161 segments in up to 4 succeeding years.

162 (i) This subsection shall operate retroactively to January
163 1, 2021.

164 (7) If an impact fee is increased a local government
165 increases its impact fee rates, the holder of any impact fee
166 credits, whether such credits are granted under s. 163.3180, s.
167 380.06, or otherwise, which were in existence before the
168 increase, is entitled to the full benefit of the intensity or
169 density prepaid by the credit balance as of the date it was
170 first established. This subsection shall operate prospectively
171 and not retrospectively.

172 (8)(6) A local government, school district, or special
173 district must submit with its annual financial report required
174 under s. 218.32 or its financial audit report required under s.

576-04219-21

2021750c3

175 218.39 a separate affidavit signed by its chief financial
176 officer or, if there is no chief financial officer, its
177 executive officer attesting, to the best of his or her
178 knowledge, that all impact fees were collected and expended by
179 the local government, school district, or special district, or
180 were collected and expended on its behalf, in full compliance
181 with the spending period provision in the local ordinance or
182 resolution, and that funds expended from each impact fee account
183 were used only to acquire, construct, or improve specific
184 infrastructure needs as defined in this section ~~Audits of~~
185 ~~financial statements of local governmental entities and district~~
186 ~~school boards which are performed by a certified public~~
187 ~~accountant pursuant to s. 218.39 and submitted to the Auditor~~
188 ~~General must include an affidavit signed by the chief financial~~
189 ~~officer of the local governmental entity or district school~~
190 ~~board stating that the local governmental entity or district~~
191 ~~school board has complied with this section.~~

192 (9) ~~(7)~~ In any action challenging an impact fee or the
193 government's failure to provide required dollar-for-dollar
194 credits for the payment of impact fees as provided in s.
195 163.3180(6)(h)2.b., the government has the burden of proving by
196 a preponderance of the evidence that the imposition or amount of
197 the fee or credit meets the requirements of state legal
198 precedent and this section. The court may not use a deferential
199 standard for the benefit of the government.

200 (10) ~~(8)~~ Impact fee credits are assignable and transferable
201 at any time after establishment from one development or parcel
202 to any other that is within the same impact fee zone or impact
203 fee district or that is within an adjoining impact fee zone or

576-04219-21

2021750c3

204 impact fee district within the same local government
205 jurisdiction and which receives benefits from the improvement or
206 contribution that generated the credits. This subsection applies
207 to all impact fee credits regardless of whether the credits were
208 established before or after the effective date of this act.

209 ~~(11)(9)~~ A county, municipality, or special district may
210 provide an exception or waiver for an impact fee for the
211 development or construction of housing that is affordable, as
212 defined in s. 420.9071. If a county, municipality, or special
213 district provides such an exception or waiver, it is not
214 required to use any revenues to offset the impact.

215 ~~(12)(10)~~ This section does not apply to water and sewer
216 connection fees.

217 ~~(13)(11)~~ In addition to the items that must be reported in
218 the annual financial reports under s. 218.32, a local
219 government, school district ~~county, municipality,~~ or special
220 district must report all of the following information ~~data~~ on
221 all impact fees charged:

222 (a) The specific purpose of the impact fee, including the
223 specific infrastructure needs to be met, including, but not
224 limited to, transportation, parks, water, sewer, and schools.

225 (b) The impact fee schedule policy describing the method of
226 calculating impact fees, such as flat fees, tiered scales based
227 on number of bedrooms, or tiered scales based on square footage.

228 (c) The amount assessed for each purpose and for each type
229 of dwelling.

230 (d) The total amount of impact fees charged by type of
231 dwelling.

232 (e) Each exception and waiver provided for construction or

576-04219-21

2021750c3

233 development of housing that is affordable.

234 Section 2. The Division of Law Revision is directed to
235 replace the phrase "the effective date of this act" wherever it
236 occurs in this act with the date the act becomes a law.

237 Section 3. This act shall take effect upon becoming a law.