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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

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



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

(3) For purposes of this section:

(a) The term "infrastructure" means any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of a public facility, excluding the cost of repairs or maintenance, that have a life expectancy of 5 or more years; any related land acquisition, land improvement, design, engineering, and permitting costs; and all other related construction costs required to bring the public facility into service.

(b) The term "public facility" means any facility as defined in s. 163.3164(39), and includes any fire and law enforcement facility.

(4) At a minimum, each county and municipality that adopts, collects, or administers an impact fee by ordinance and each special district that adopts, collects, or administers an impact fee by resolution ~~an impact fee adopted by ordinance of a county or municipality or by resolution of a special district~~ must



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~~satisfy all of the following conditions:~~

(a) Require that the calculation of the impact fee ~~must~~ be based on the most recent and localized data collected within the last 36 months and excludes any cost that does not meet the definition of infrastructure.

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

(c) Limit administrative charges for the collection of impact fees ~~must be limited~~ to actual costs. The cost per student station established in school impact fee calculations may not exceed that statutory total maximum cost per student station calculated under s. 1013.64(6).

(d) ~~The local government must~~ Provide notice not less than 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee. New or increased impact fees may not apply to current or pending permit applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee. A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.

(e) ~~Collection of the impact fee may not be required to occur earlier than the date of issuance of the building permit~~



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69 ~~for the property that is subject to the fee.~~

70 ~~(f)~~ Ensure that the impact fee ~~is must be~~ proportional and
71 reasonably connected to, or has ~~have~~ a rational nexus with, the
72 need for additional infrastructure ~~capital facilities~~ and the
73 increased impact generated by the new residential or commercial
74 construction.

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

79 ~~(g)(h)~~ The local government must Specifically earmark funds
80 collected under the impact fee for use in acquiring,
81 constructing, or improving infrastructure ~~capital facilities~~ to
82 benefit new users.

83 (5) Collection of the impact fee may not be required to
84 occur earlier than the date of issuance of the building permit
85 for the property that is subject to the fee.

86 ~~(6)(i)~~ (6) Revenues generated by the impact fee may not be
87 used, in whole or in part, to pay existing debt or for
88 previously approved projects unless the expenditure is
89 reasonably connected to, or has a rational nexus with, the
90 increased impact generated by the new residential or
91 nonresidential construction.

92 ~~(7)(4)~~ (7) The local government must credit against the
93 collection of the impact fee any contribution, whether
94 identified in a proportionate share agreement or other form of
95 exaction, related to public education facilities, including land
96 dedication, site planning and design, or construction. Any
97 contribution must be applied to reduce any education-based



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impact fees on a dollar-for-dollar basis at fair market value.

~~(8)(5)~~ If a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, s. 380.06, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established. This subsection shall operate prospectively and not retrospectively.

~~(9)(6)~~ Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must include an affidavit signed by the chief financial officer of the local governmental entity or district school board stating that the local governmental entity or district school board has complied with this section and the spending period provision in the local ordinance or resolution.

~~(10)(7)~~ In any action challenging an impact fee or the government's failure to provide required dollar-for-dollar credits for the payment of impact fees or for contributions made as provided in this chapter ~~s. 163.3180(6)(h)2.b.~~, the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee or credit meets the requirements of state legal precedent and this section. The court may not use a deferential standard for the benefit of the government.

~~(11)~~ Impact fee credits are assignable and transferable at any time after establishment from one development or parcel to any other development or parcel within the same impact fee jurisdiction for the same type of public facility for which the



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impact fee applies.

(12)(8) A county, municipality, or special district may provide an exception or waiver for an impact fee for the development or construction of housing that is affordable, as defined in s. 420.9071. If a county, municipality, or special district provides such an exception or waiver, it is not required to use any revenues to offset the impact. To ensure impact fees or equivalent contributions are only collected once, a local government shall provide impact fee credits or other forms of compensation if a contribution is greater in value than the applicable impact fee. Contributions related to the transportation system are creditable against the combined total of all impact fees and exactions charged for mobility. This subsection applies at the time any contribution is accepted, regardless of when the contributions were agreed upon or committed to.

(13) (a) Each county and municipality that assesses impact fees must establish an impact fee review committee.

(b) 1. The committee shall be composed of the following members appointed by the county commission or the governing body of the municipality, as applicable:

a. Two members who are employed by the county or municipality.

b. Two members who represent the business community.

c. Two members who are local licensed general or residential contractors.

d. One at-large member.

2. The county commission or the governing body of the municipality, as applicable, shall appoint three alternate



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members, consisting of one representative from each of the
categories described in sub-subparagraphs 1.a., b., and c., who
shall serve in the absence of their respective member.

3. Members and alternate members must be qualified electors
of the county or municipality, as applicable, for at least 2
years before their appointment.

4. Committee members shall serve at the pleasure of the
local government and shall serve until they are replaced.

(c)1. Each committee meeting must be duly noticed and open
to the public as required by s. 286.011.

2. A meeting may not be held unless a quorum is present. A
quorum consists of a majority of members of the committee, but
an alternate member shall count toward the quorum when a regular
member is absent.

3. A member who fails to attend three consecutive meetings
or fails to attend two-thirds of the meetings within a calendar
year automatically forfeits the appointment, and the county
commissioners or members of the governing body of the
municipality, as applicable, shall promptly fill the vacancy.

4. Members of the committee shall serve without
compensation.

(d) The committee shall meet as needed to:

1. Establish a policy and methodology for determining
impact fees on new developments.

2. Review the proposed impact fee on each new development
before the fee becomes final.

3. Submit recommendations made by the impact fee committee
to the county commission or governing body of the municipality,
as applicable. The recommendations must be presented at the



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meeting when the impact fee on the new development will be
discussed and voted upon.

4. After each impact fee is adopted by the local
government, review all proposed expenditures of that impact fee
to ensure the fee is used for capital projects within the
jurisdiction.

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

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to impact fees; amending s. 163.31801,
F.S.; providing definitions; revising requirements for
counties and municipalities that adopt, collect, or
administer an impact fee by ordinance and for special
districts that adopt, collect, or administer an impact
fee by resolution; providing timeframes for the
collection of impact fees by local governments;
providing that impact fee credits are assignable and
transferable under certain conditions; requiring local
governments to provide impact fee credits or other
forms of compensation under certain conditions;
providing applicability; requiring certain counties
and municipalities to establish impact fee review
committees; providing for membership; providing



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214 procedures for holding meetings and establishing
215 quorums; providing committee duties; providing an
216 effective date.