

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

593-03916-20

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1 A bill to be entitled
2 An act relating to impact fees; amending s. 163.31801,
3 F.S.; revising legislative findings; defining terms;
4 revising requirements for counties and municipalities
5 that adopt, collect, or administer an impact fee by
6 ordinance and for special districts that adopt,
7 collect, and administer an impact fee by resolution;
8 providing minimum requirements for such counties,
9 municipalities, and special districts; prohibiting new
10 or increased impact fees from applying to certain
11 applications; providing an exception; providing
12 timeframes for the collection of impact fees by local
13 governments; providing that impact fee credits are
14 assignable and transferable under certain conditions;
15 providing that transportation credits, used in lieu of
16 impact fees, are assignable and transferable under
17 certain conditions; requiring local governments to
18 provide impact fee credits or other forms of
19 compensation under certain conditions; providing
20 applicability; requiring certain counties and
21 municipalities to establish impact fee review and
22 advisory committees; providing for membership;
23 providing procedures for holding meetings and
24 establishing quorums; providing committee duties;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 163.31801, Florida Statutes, is amended

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30 to read:

31 163.31801 Impact fees; short title; intent; minimum
32 requirements; audits; challenges.—

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

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

47 (3) For purposes of this section:

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

56 (b) The term "public facility" means any facility as
57 defined in s. 163.3164(39) and includes any fire and law
58 enforcement facility. For independent special fire control and

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59 rescue districts, the term "infrastructure" also includes new
60 facilities as defined in s. 191.009(4).

61 (4) At a minimum, each county and municipality that adopts,
62 collects, or administers an impact fee by ordinance and each
63 special district that adopts, collects, and administers an
64 impact fee by resolution ~~an impact fee adopted by ordinance of a~~
65 ~~county or municipality or by resolution of a special district~~
66 ~~must satisfy all of the following conditions:~~

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

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

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

85 (d) ~~The local government must~~ Provide notice not less than
86 90 days before the effective date of an ordinance or resolution
87 imposing a new or increased impact fee. Unless the result is to

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88 reduce the total mitigation costs or impact fees imposed on an
89 applicant, new or increased impact fees may not apply to current
90 or pending permit applications submitted before the effective
91 date of an ordinance or resolution imposing a new or increased
92 impact fee. A county or municipality is not required to wait 90
93 days to decrease, suspend, or eliminate an impact fee.

94 ~~(e) Collection of the impact fee may not be required to~~
95 ~~occur earlier than the date of issuance of the building permit~~
96 ~~for the property that is subject to the fee.~~

97 ~~(f)~~ Ensure that the impact fee is ~~must be~~ proportional and
98 reasonably connected to, or has ~~have~~ a rational nexus with, the
99 need for additional infrastructure ~~capital facilities~~ and the
100 increased impact generated by the new residential or commercial
101 construction.

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

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

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

113 ~~(6)(i)~~ Revenues generated by the impact fee may not be
114 used, in whole or in part, to pay existing debt or for
115 previously approved projects unless the expenditure is
116 reasonably connected to, or has a rational nexus with, the

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117 increased impact generated by the new residential or
118 nonresidential construction.

119 (7)~~(4)~~ The local government must credit against the
120 collection of the impact fee any contribution, whether
121 identified in a proportionate share agreement or other form of
122 exaction, related to public education facilities, including land
123 dedication, site planning and design, or construction. Any
124 contribution must be applied to reduce any education-based
125 impact fees on a dollar-for-dollar basis at fair market value.

126 (8)~~(5)~~ If a local government increases its impact fee
127 rates, the holder of any impact fee credits, whether such
128 credits are granted under s. 163.3180, s. 380.06, or otherwise,
129 which were in existence before the increase, is entitled to the
130 full benefit of the intensity or density prepaid by the credit
131 balance as of the date it was first established. This subsection
132 shall operate prospectively and not retrospectively.

133 (9)~~(6)~~ Audits of financial statements of local governmental
134 entities and district school boards which are performed by a
135 certified public accountant pursuant to s. 218.39 and submitted
136 to the Auditor General must include an affidavit signed by the
137 chief financial officer of the local governmental entity or
138 district school board stating that the local governmental entity
139 or district school board has complied with this section and the
140 spending period provision in the local ordinance or resolution.

141 (10)~~(7)~~ In any action challenging an impact fee or the
142 government's failure to provide required dollar-for-dollar
143 credits for the payment of impact fees or for contributions made
144 as provided in this chapter ~~s. 163.3180(6)(h)2.b.~~, the
145 government has the burden of proving by a preponderance of the

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146 evidence that the imposition or amount of the fee or credit
147 meets the requirements of state legal precedent and this
148 section. The court may not use a deferential standard for the
149 benefit of the government.

150 (11) Impact fee credits are assignable and transferable at
151 any time after establishment for the same type of public
152 facility for which the impact fee applies to any development or
153 parcel located within the geographic boundary of the local
154 government jurisdiction where the impact fee is imposed and
155 situated geographically within an impact fee zone or district
156 that receives a benefit from the improvement, dedication, or
157 payment which generated the credit to be transferred. If a local
158 government elects to use an alternative mobility funding system
159 as provided for in s. 163.3180(5)(i) in lieu of impact fees,
160 transportation credits are assignable and transferable at any
161 time after establishment to any development or parcel within the
162 geographic boundary of the local government jurisdiction where
163 the credit was established so long as the credit is applied to a
164 zone or district which is receiving a benefit from the
165 contribution to the alternative mobility funding system which
166 generated the credit. Under either system described in this
167 subsection, a benefit shall be recognized within any zone or
168 district located within 5 miles of the zone or district where
169 the credits were generated.

170 (12)~~(8)~~ A county, municipality, or special district may
171 provide an exception or waiver for an impact fee for the
172 development or construction of housing that is affordable, as
173 defined in s. 420.9071. If a county, municipality, or special
174 district provides such an exception or waiver, it is not

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175 required to use any revenues to offset the impact.

176 (13) To ensure impact fees or equivalent contributions are
177 not imposed more than once for the same impacts, a local
178 government shall provide impact fee credits or other forms of
179 compensation if a contribution is greater in value than the
180 applicable impact fee. Contributions related to the
181 transportation system are creditable against the combined total
182 of all impact fees, mobility fees, or other forms of exactions
183 charged to mitigate transportation impacts. This subsection
184 applies at the time any contribution is accepted, regardless of
185 when the contributions were agreed upon or committed to.

186 (14) (a) Before enacting an impact fee, each county and
187 municipality must establish an impact fee review and advisory
188 committee.

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

192 a. Two members who are employed by the county or
193 municipality. If a school impact fee is assessed or under
194 consideration, one of the two members shall be employed by the
195 school district.

196 b. Two members who represent the business community who are
197 not elected officials or employees of the local government
198 jurisdiction.

199 c. Two members who are local licensed general or
200 residential contractors, who are not elected officials or
201 employees of the local government jurisdiction.

202 d. One at-large member who is not an elected official or
203 employee of the local government jurisdiction.

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204 2. The county commission or the governing body of the
205 municipality, as applicable, may appoint three alternate
206 members, consisting of one representative from each of the
207 categories described in sub-subparagraphs 1.a., b., and c., who
208 shall serve in the absence of their respective member.

209 3. Members and alternate members must be qualified electors
210 of the county or municipality, as applicable.

211 4. Members and alternate members shall serve at the
212 pleasure of the local government and shall serve until they are
213 replaced.

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

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

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

225 4. Members of the committee shall serve without
226 compensation.

227 5. A small county as defined in s. 110.1228(1)(c) or a
228 small municipality as defined in s. 110.1228(1)(b) which
229 assesses an impact fee may utilize an existing committee that
230 contains representation from the building or development
231 community and reviews building or development in lieu of the
232 impact fee review committee provided herein.

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233 (d) The committee shall meet as needed to examine impact
234 fee policies and provide recommendations on impact fee
235 decisions, including, but not limited to, reviewing all of the
236 following:

237 1. The selection of an impact fee consultant.

238 2. Impact fee studies and study recommendations.

239 3. Policies and methodologies for determining impact fees
240 on new developments and new construction.

241 4. Changes to impact fee calculations.

242 5. After each impact fee is adopted by the local government
243 and at least before a county or municipality adopts its budget,
244 the proposed budget for expending impact fees to ensure the fee
245 is used in accordance with this section and other pertinent
246 sections of state law.

247 (15)-(9) This section does not apply to water and sewer
248 connection fees.

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