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CS/CS/CS/HB 337

2021 Legislature

1  
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 that  
13 impact fee credits are assignable and transferable  
14 regardless of when they the credits were established;  
15 requiring school districts to report specified  
16 information regarding impact fees; providing a  
17 directive to the Division of Law Revision; providing  
18 an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22 Section 1. Section 163.31801, Florida Statutes, is amended  
23 to read:

24 163.31801 Impact fees; short title; intent; minimum  
25 requirements; audits; challenges.—

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

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

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

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

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51 bus for its official use. For independent special fire control  
 52 districts, the term includes new facilities as defined in s.  
 53 191.009(4).

54 (b) "Public facilities" has the same meaning as in s.  
 55 163.3164 and includes emergency medical, fire, and law  
 56 enforcement facilities.

57 (4)(3) At a minimum, each local government that adopts and  
 58 collects an impact fee by ordinance and each special district  
 59 that adopts, collects, and administers an impact fee by  
 60 resolution must ~~an impact fee adopted by ordinance of a county~~  
 61 ~~or municipality or by resolution of a special district must~~  
 62 ~~satisfy all of the following conditions:~~

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

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

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

73 (d) The local government must Provide notice at least ~~not~~  
 74 ~~less than~~ 90 days before the effective date of an ordinance or  
 75 resolution imposing a new or increased impact fee. A local

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76 | government ~~county or municipality~~ is not required to wait 90  
 77 | days to decrease, suspend, or eliminate an impact fee. Unless  
 78 | the result is to reduce the total mitigation costs or impact  
 79 | fees imposed on an applicant, new or increased impact fees may  
 80 | not apply to current or pending permit applications submitted  
 81 | before the effective date of ~~an ordinance or resolution imposing~~  
 82 | a new or increased impact fee.

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

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

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

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

98 |       (i) Ensure that revenues generated by the impact fee are  
 99 | ~~may not be~~ used, in whole or in part, to pay existing debt or  
 100 | for previously approved projects unless the expenditure is

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101 reasonably connected to, or has a rational nexus with, the  
 102 increased impact generated by the new residential or  
 103 nonresidential construction.

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

117 (b) If a local government or special district does not  
 118 charge and collect an impact fee for the general category or  
 119 class of public facilities or infrastructure contributed, a  
 120 credit may not be applied under paragraph (a).

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

124 (a) An impact fee may be increased only pursuant to a plan  
 125 for the imposition, collection, and use of the increased impact

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126 | fees which complies with this section.

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

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

135 | (d) An impact fee increase may not exceed 50 percent of  
136 | the current impact fee rate.

137 | (e) An impact fee may not be increased more than once  
138 | every 4 years.

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

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

147 | 1. A demonstrated need study justifying any increase in  
148 | excess of those authorized in paragraph (b), paragraph (c),  
149 | paragraph (d), or paragraph (e) has been completed within the 12  
150 | months before the adoption of the impact fee increase and

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151 expressly demonstrates the extraordinary circumstances  
152 necessitating the need to exceed the phase-in limitations.

153 2. The local government jurisdiction has held not less  
154 than two publicly noticed workshops dedicated to the  
155 extraordinary circumstances necessitating the need to exceed the  
156 phase-in limitations set forth in paragraph (b), paragraph (c),  
157 paragraph (d), or paragraph (e).

158 3. The impact fee increase ordinance is approved by at  
159 least a two-thirds vote of the governing body.

160 (h) This subsection operates retroactively to January 1,  
161 2021.

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

170 (8)(6) A local government, school district, or special  
171 district must submit with its annual financial report required  
172 under s. 218.32 or its financial audit report required under s.  
173 218.39 a separate affidavit signed by its chief financial  
174 officer or, if there is no chief financial officer, its  
175 executive officer attesting, to the best of his or her

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176 | knowledge, that all impact fees were collected and expended by  
177 | the local government, school district, or special district, or  
178 | were collected and expended on its behalf, in full compliance  
179 | with the spending period provision in the local ordinance or  
180 | resolution, and that funds expended from each impact fee account  
181 | were used only to acquire, construct, or improve specific  
182 | infrastructure needs ~~Audits of financial statements of local~~  
183 | ~~governmental entities and district school boards which are~~  
184 | ~~performed by a certified public accountant pursuant to s. 218.39~~  
185 | ~~and submitted to the Auditor General must include an affidavit~~  
186 | ~~signed by the chief financial officer of the local governmental~~  
187 | ~~entity or district school board stating that the local~~  
188 | ~~governmental entity or district school board has complied with~~  
189 | ~~this section.~~

190 | (9)~~(7)~~ In any action challenging an impact fee or the  
191 | government's failure to provide required dollar-for-dollar  
192 | credits for the payment of impact fees as provided in s.  
193 | 163.3180(6)(h)2.b., the government has the burden of proving by  
194 | a preponderance of the evidence that the imposition or amount of  
195 | the fee or credit meets the requirements of state legal  
196 | precedent and this section. The court may not use a deferential  
197 | standard for the benefit of the government.

198 | (10)~~(8)~~ Impact fee credits are assignable and transferable  
199 | at any time after establishment from one development or parcel  
200 | to any other that is within the same impact fee zone or impact



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

207 (11)-(9) A county, municipality, or special district may  
 208 provide an exception or waiver for an impact fee for the  
 209 development or construction of housing that is affordable, as  
 210 defined in s. 420.9071. If a county, municipality, or special  
 211 district provides such an exception or waiver, it is not  
 212 required to use any revenues to offset the impact.

213 (12)-(10) This section does not apply to water and sewer  
 214 connection fees.

215 (13)-(11) In addition to the items that must be reported in  
 216 the annual financial reports under s. 218.32, a local  
 217 government, school district ~~county, municipality,~~ or special  
 218 district must report all of the following information ~~data~~ on  
 219 all impact fees charged:

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

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

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226 footage.

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

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

231 (e) Each exception and waiver provided for construction or  
232 development of housing that is affordable.

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

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