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LEGISLATIVE ACTION

Senate

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House

The Committee on Appropriations (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete lines 19 - 177

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

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

23 (a) "Infrastructure" means a fixed capital expenditure or
24 fixed capital outlay, excluding the cost of repairs or
25 maintenance, associated with the construction, reconstruction,
26 or improvement of public facilities that have a life expectancy
27 of at least 5 years; related land acquisition, land improvement,
28 design, engineering, and permitting costs; and other related
29 construction costs required to bring the public facility into
30 service. The term also includes a fire department vehicle, an
31 emergency medical service vehicle, a sheriff's office vehicle, a
32 police department vehicle, a school bus as defined in s.
33 1006.25, and the equipment necessary to outfit the vehicle or
34 bus for its official use. For independent special fire control
35 districts, the term "infrastructure" includes new facilities as
36 defined in s. 191.009(4).

37 (b) "Public facilities" has the same meaning as in s.
38 163.3164 and includes emergency medical, fire, and law
39 enforcement facilities.



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40 ~~(4)-(3)~~ At a minimum, each local government that adopts and
41 collects an impact fee by ordinance and each special district
42 that adopts, collects, and administers an impact fee by
43 resolution must ~~an impact fee adopted by ordinance of a county~~
44 ~~or municipality or by resolution of a special district must~~
45 ~~satisfy all of the following conditions:~~

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

48 (b) ~~The local government must~~ Provide for accounting and
49 reporting of impact fee collections and expenditures and. ~~If a~~
50 ~~local governmental entity imposes an impact fee to address its~~
51 ~~infrastructure needs, the entity must~~ account for the revenues
52 and expenditures of such impact fee in a separate accounting
53 fund.

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

56 (d) ~~The local government must~~ Provide notice at least not
57 ~~less than~~ 90 days before the effective date of an ordinance or
58 resolution imposing a new or increased impact fee. A local
59 government ~~county or municipality~~ is not required to wait 90
60 days to decrease, suspend, or eliminate an impact fee. Unless
61 the result is to reduce the total mitigation costs or impact
62 fees imposed on an applicant, new or increased impact fees may
63 not apply to current or pending permit applications submitted
64 before the effective date of ~~an ordinance or resolution imposing~~
65 a new or increased impact fee.

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



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

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

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

81 (i) Ensure that revenues generated by the impact fee are
82 ~~may not be~~ used, in whole or in part, to pay existing debt or
83 for previously approved projects unless the expenditure is
84 reasonably connected to, or has a rational nexus with, the
85 increased impact generated by the new residential or
86 nonresidential construction.

87 (5) (a) ~~(4)~~ Notwithstanding any charter provision,
88 comprehensive plan policy, ordinance, development order,
89 development permit, or resolution, the local government or
90 special district must credit against the collection of the
91 impact fee any contribution, whether identified in a
92 proportionate share agreement or other form of exaction, related
93 to public ~~education~~ facilities or infrastructure, including land
94 dedication, site planning and design, or construction. Any
95 contribution must be applied on a dollar-for-dollar basis at
96 fair market value to reduce any ~~education-based~~ impact fee
97 collected for the general category or class of public facilities



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98 or infrastructure for which the contribution was made fees on a
99 dollar-for-dollar basis at fair market value.

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

104 (6)-(5) A local government, school district, or special
105 district may increase an impact fee only as provided in this
106 subsection.

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

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

114 (c) An increase to a current impact fee rate which exceeds
115 25 percent but is not more than 50 percent of the current rate
116 must be implemented in four equal installments beginning with
117 the date the increased fee is adopted.

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

120 (e) An impact fee may not be increased more than once every
121 4 years.

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

124 (g) A local government, school district, or special
125 district may increase an impact fee rate beyond the phase-in
126 limitations established under paragraph (b), paragraph (c),



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127 paragraph (d), or paragraph (e) by establishing the need for
128 such increase in full compliance with the requirements of
129 subsection (4), provided the following criteria are met:

130 1. A demonstrated-need study justifying any increase in
131 excess of paragraph (b), paragraph (c), paragraph (d), or
132 paragraph (e) has been completed within the 12 months prior to
133 the adoption of the impact fee increase and expressly
134 demonstrates the extraordinary circumstances necessitating the
135 need to exceed the phase-in limitations;

136 2. The local government jurisdiction has held no less than
137 two publicly-noticed workshops dedicated to the extraordinary
138 circumstances necessitating the need to exceed the phase-in
139 limitations of paragraph (b), paragraph (c), paragraph (d), or
140 paragraph (e); and

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

143 (h) This subsection shall operate retroactively to January
144 1, 2021.

145 (7) If an impact fee is increased a local government
146 increases its impact fee rates, the holder of any impact fee
147 credits, whether such credits are granted under s. 163.3180, s.
148 380.06, or otherwise, which were in existence before the
149 increase, is entitled to the full benefit of the intensity or
150 density prepaid by the credit balance as of the date it was
151 first established. This subsection shall operate prospectively
152 and not retrospectively.

153 (8) (6) A local government, school district, or special
154 district must submit with its annual financial report required
155 under s. 218.32 or its financial audit report required under s.



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156 218.39 a separate affidavit signed by its chief financial
157 officer or, if there is no chief financial officer, its
158 executive officer attesting, to the best of his or her
159 knowledge, that all impact fees were collected and expended by
160 the local government, school district, or special district, or
161 were collected and expended on its behalf, in full compliance
162 with the spending period provision in the local ordinance or
163 resolution, and that funds expended from each impact fee account
164 were used only to acquire, construct, or improve specific
165 infrastructure needs as defined in this section ~~Audits of~~
166 ~~financial statements of local governmental entities and district~~
167 ~~school boards which are performed by a certified public~~
168 ~~accountant pursuant to s. 218.39 and submitted to the Auditor~~
169 ~~General must include an affidavit signed by the chief financial~~
170 ~~officer of the local governmental entity or district school~~
171 ~~board stating that the local governmental entity or district~~
172 ~~school board has complied with this section.~~

173 (9) ~~(7)~~ In any action challenging an impact fee or the
174 government's failure to provide required dollar-for-dollar
175 credits for the payment of impact fees as provided in s.
176 163.3180(6)(h)2.b., the government has the burden of proving by
177 a preponderance of the evidence that the imposition or amount of
178 the fee or credit meets the requirements of state legal
179 precedent and this section. The court may not use a deferential
180 standard for the benefit of the government.

181 (10) ~~(8)~~ Impact fee credits are assignable and transferable
182 at any time after establishment from one development or parcel
183 to any other that is within the same impact fee zone or impact
184 fee district or that is within an adjoining impact fee zone or



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185 impact fee district within the same local government
186 jurisdiction and which receives benefits from the improvement or
187 contribution that generated the credits. This subsection applies
188 to all impact fee credits regardless of whether the credits were
189 established before or after the effective date of this act.

190 ~~(11)(9)~~ A county, municipality, or special district may
191 provide an exception or waiver for an impact fee for the
192 development or construction of housing that is affordable, as
193 defined in s. 420.9071. If a county, municipality, or special
194 district provides such an exception or waiver, it is not
195 required to use any revenues to offset the impact.

196 ~~(12)(10)~~ This section does not apply to water and sewer
197 connection fees.

198 ~~(13)(11)~~ In addition to the items that must be reported in
199 the annual financial reports under s. 218.32, a local
200 government, school district ~~county, municipality,~~ or special
201 district must report all of the following information ~~data~~ on
202 all impact fees charged:

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

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

209 (c) The amount assessed for each purpose and for each type
210 of dwelling.

211 (d) The total amount of impact fees charged by type of
212 dwelling.

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



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214 development of housing that is affordable.

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

218

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

220 And the title is amended as follows:

221 Delete lines 6 - 14

222 and insert:

223 fees any contribution related to public facilities or
224 infrastructure; providing conditions under which
225 credits may not be applied; providing limitations on
226 impact fee increases; providing for retroactive
227 operation; requiring specified entities to submit an
228 affidavit attesting that impact fees were
229 appropriately collected and expended; providing for
230 retroactive applicability; requiring school districts
231 to report specified information regarding impact fees;
232 providing a directive to the Division of Law Revision;
233 providing