

MAKING AN IMPACT ON IMPACT FEES



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Virtually anyone who has developed property in Florida in recent years knows what impact fees are and how much they can add to the cost of construction. As their label suggests, these are fees imposed by local governments to offset the cost of infrastructure improvements (roads, schools, parks, etc.) necessitated by new development. Because these fees are imposed at the local level, calculations vary from jurisdiction to jurisdiction.

To provide some framework for imposition of fees across the state, the Florida Legislature enacted the “Florida Impact Fee Act” in 2006. See F.S. §163.31801. The Impact Fee Act provides that the adoption of an impact fee must, *at a minimum*, require that the calculation of the impact fee be based on recent data; provide for the accounting and reporting of impact fee collections and expenditures; limit administrative charges for the collection of impact fees to actual costs; and require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing an impact fee.

When enacted, however, the Impact Fee Act did not address challenges to impact fees. While the legal standards for challenging impact fees as either improper or excessive were already established by Florida’s appellate courts, there was a growing lack of uniformity among trial courts in the application of those legal standards. In an

effort to address this, the Legislature amended the Impact Fee Act (effective July 1, 2009) to codify the proper burden of proof. The amendment clarifies that in an impact fee challenge, the burden is *on the government*, not the citizen challenger, to prove that proposed impact fees meet the requirements of Florida precedent and prohibits courts from adopting a deferential view of impact fee ordinances.

Applicable legal precedent requires an agency to prove that any challenged fee meets a “dual rational nexus” test by demonstrating that reasonable connections exist between the need for additional capital facilities and the population growth generated by new development and between the expenditure of funds collected and benefits accruing to the new development. See, *St Johns County v. N.E. Fla. Builders Ass’n*, 583 So.2d 635, 637 (Fla. 1991).

While not a real change in the law, the amendment aims to promote uniform administration of justice around the state and to raise awareness of the proper parameters for impact fees among citizens faced with their imposition, courts tasked with deciding legal challenges, and agencies which impose them in the first place. Reminding agencies that they have the burden of proof in any subsequent legal challenge will hopefully lead to imposition of properly tailored fees in the first place, and actually reduce litigation. ¹