

## **NAHB | Florida HB 1139 | Impact Fees | Bill Analysis**

House Bill 1139 (2026) will amend the Florida Statutes in sections 163.3164, 163.3177, 163.3180, 163.31801 and 212.055. The aim of these five amendments are to clearly define a “plan-based methodology” for calculating certain impact fees, require coordination between jurisdictions involved in the same development project, prevent duplicate charges in conflicting jurisdictions, mandate that impact fee increases have objective proof and allow a legal route for challenging illegal impact fees.

If passed, overall, it would provide more specific requirements for a city or locality to be able to levy impact fees upon new developments, as well as address issues that occur when multiple city or county jurisdictions are involved in a new development’s impact fee calculations. The final section provides a date of implementation of July 1, 2026, for this version of the bill.

### **BACKGROUND**

Impact fees are charges levied by local governments on new developments to generate revenue to fund public infrastructure improvements necessitated by the development. Impact fees are typically used to fund necessities like roads, schools, water and sewer systems, and other infrastructure dedicated to a specific public use.

There is a precedent of the use of impact fees in Florida dating to the 1970s, especially in areas facing high growth and restrictive tax systems.<sup>1</sup> The Supreme Court of Florida first addressed the use of impact fees in 1976 in *Contractors & Builders Association of Pinellas County v. City of Dunedin*. In this case, the builders’ association challenged a new water system impact fee from the city of Dunedin; however, the Florida Supreme Court upheld the fee as a valid charge.<sup>2</sup>

Although the use of impact fees is still prevalent for new development in the state, there have been some instances recently where local governments’ ability to levy impact fees was significantly limited. In 2021, Florida passed House Bill 337 (HB 337), which aimed to help

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<sup>1</sup> <https://www.nahb.org/-/media/NAHB/advocacy/docs/industry-issues/land-use-101/infrastructure/impact-fee-handbook.pdf?rev=ecddf5247fd14dbca7a85327a3987b31>

<sup>2</sup> <https://www.nassaucountyfl.com/DocumentCenter/View/2883/Court-Case-312-So2d-763-City-of-Dunedin?bidId=>

reduce the effects of impact fees on developers. It mandated that a private developer's contributions to public goods must be credited against their impact fee charge of related public facilities; outlined areas impact fees could not be applied; mandates that funds are correctly allocated to impact fee expenditures; and requires that school districts also report specific information regarding the use of impact fees.<sup>3</sup>

Overall, HB 1139 would have built on the preexisting HB 337 by requiring a plan-based methodology for certain impact fee determinations, reducing the likelihood for conflicting jurisdictions to charge duplicative fees by requiring greater cooperation and by mandating that most impact fees be specifically justified through the study process, with legal routes for developers to fight excessive impact fees.

## **THIS BILL**

House Bill 1139, if passed in the State of Florida, will amend five sections of the Florida Statutes. First, the addition in section 163.3164 clearly defines a "plan-based methodology" for impact fee studies. Amendments in sections 163.3177 and 163.3180 require coordination between conflicting jurisdictions for new developments and ensure conflicting jurisdictions cannot levy duplicate charges. Amendments in section 163.31801 create more intensive measures for implementing impact fees, as well as making the fees easier to challenge by developers. Finally, the amendment in section 212.055 just fixes a referencing issue stemming from the added amendments.

### **Section 1**

Creates subsection (39) of Section 163.3164, Florida Statutes. The new subsection (39) will do the following:

- Defines "plan-based methodology" as a study methodology that uses the most recent and localized data to project growth within a jurisdiction over a 10-year period.

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<sup>3</sup> <https://www.flsenate.gov/Session/Bill/2021/337>

- Requires the methodology to anticipate capacity impacts on relevant systems which will be created by the projected growth.
- Requires the methodology to establish a list of capital projects to be constructed or purchased in a defined time period to mitigate the anticipated capacity impacts as part of a new or updated impact fee study.
- Requires the capital projects identified in a county or municipal impact fee study and any necessary interlocal agreement to comport with the requirements of Section 163.3177(6)(h), Florida Statutes.

## **Section 2**

Amends paragraph (h) of subsection (6) of Section 163.3177, Florida Statutes. The amended paragraph (h) does the following:

- Requires interlocal or other formal agreements to ensure that the local government addresses, through coordination mechanisms, the impacts of development proposed in the local comprehensive plan upon development in adjacent municipalities, the county, adjacent counties, the region, and the state.
- Provides that the area of concern for municipalities shall include adjacent municipalities, the county, and counties adjacent to the municipality.
- Provides that the area of concern for counties shall include all municipalities within the county, adjacent counties, and adjacent municipalities.
- Requires coordination mechanisms to include plans to provide mitigation funding to address any extra jurisdictional impacts of development, consistent with the requirements of Section 163.3180(5)(j), Florida Statutes.
- Requires coordination in establishing level-of-service standards for public facilities with any state, regional, or local entity having operational and maintenance responsibility for such facilities.

### **Section 3**

Amends paragraph (j) of subsection (5) of Section 163.3180, Florida Statutes. The amended paragraph (j) does the following:

- Requires that if a county and municipality charge the developer of a new development or redevelopment a fee for transportation capacity impacts, the county and municipality must create and execute an interlocal agreement to coordinate the mitigation of their respective transportation capacity impacts.
- Requires the interlocal agreement to ensure that any new development or redevelopment is not charged twice for the same transportation capacity impacts.
- Requires the interlocal agreement to establish a plan-based methodology, consistent with the requirements of Section 163.3177(6)(h), Florida Statutes, for determining the legally permissible fee to be charged to a new development or redevelopment.
- Requires the county or municipality issuing the building permit to collect the fee, unless agreed to otherwise.
- Requires the interlocal agreement to provide a method for the proportionate distribution of the revenue collected by the county or municipality to address the transportation capacity impacts of a new development or redevelopment, or provide a method of assigning responsibility for the mitigation of the transportation capacity impacts belonging to the county and the municipality.
- Provides that an interlocal agreement entered into before October 1, 2024, may not extend beyond October 1, 2031, unless the county and municipality mutually agree to extend the existing interlocal agreement before the expiration of the agreement.

### **Section 4**

Adds a new paragraph (a) to subsection (3) and amends paragraph (g) of subsection (6) and subsection (9) of Section 163.31801, Florida Statutes. The amended section will do the following:

- Defines "extraordinary circumstances" as measurable effects of development which will require mitigation by the affected local government, school district, or special district and

which exceed the total of the current adopted impact fee amount and any increase authorized under paragraphs (6)(c), (d), and (e) in less than four years.

- Requires a demonstrated-need study using a plan-based methodology to justify any impact fee increase beyond the phase-in limitations established in law.
- Requires the demonstrated-need study to be completed within the 12 months before adoption of the impact fee increase.
- Requires the demonstrated-need study to expressly demonstrate the extraordinary circumstances necessitating the need to exceed the phase-in limitations.
- Requires the capacity standards used to support the existence of extraordinary circumstances to be specified in the impact fee study adopted under paragraph (4)(a).
- Requires the demonstrated-need study to be accompanied by a declaration stating how and the timeframe during which the proposed impact fee increase will be used to construct or purchase the improvements necessary to increase capacity.
- Requires the local government, school district, or special district to use localized data reflecting differences in costs and modality of projects between urban, emerging urban, and rural areas, as applicable within the study area, to project the anticipated growth or capacity impacts which underlie the extraordinary circumstances necessitating the impact fee increase.
- Requires the local government jurisdiction to hold at least two publicly noticed workshops dedicated to the extraordinary circumstances necessitating the need to exceed the phase-in limitations.
- Requires the impact fee increase ordinance to be approved by a unanimous vote of the governing body.
- Requires an impact fee increase approved under this paragraph to be implemented in at least two, but not more than four, equal annual increments beginning with the date on which the impact fee increase ordinance is adopted.

- Prohibits a local government, school district, or special district from increasing an impact fee rate beyond the phase-in limitations if the jurisdiction has not increased the impact fee within the past five years.
- Provides that any year in which the jurisdiction is prohibited from increasing an impact fee because it is located within a hurricane disaster area is not included in the five-year period.
- Prohibits the use of data older than four years to demonstrate extraordinary circumstances.
- Prohibits the inclusion in an impact fee increase of any deduction authorized by a previous or existing impact fee.
- Prohibits an impact fee rate from increasing beyond the phase-in limitations by more than 100 percent divided equally over a four-year period.
- Provides that, in any action challenging an impact fee or the government's failure to provide required dollar-for-dollar credits, 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 Section 163.31801, Florida Statutes.
- Provides that the court may not use a deferential standard for the benefit of the government.
- Provides that if the court determines that the petitioner made an overpayment due to an improperly assessed impact fee, the petitioner is entitled to a refund in the amount of the overpayment with interest.
- Requires the local government, school district, or special district that assessed the impact fee to issue the refund within 90 days after the judgment becomes final.
- Provides that a prevailing petitioner who is a resident of or an owner of a business located within the jurisdiction of the local government, school district, or special district that imposed the impact fee is entitled to reasonable attorney fees and costs.

- Provides that a prevailing petitioner is entitled to reasonable attorney fees and costs in any subsequent action necessary to collect a refund ordered by the court for any impact fee overpayment.

## **Section 5**

Amends paragraph (d) of subsection (2) of Section 212.055, Florida Statutes.

The amended paragraph will do the following:

- Revises the statutory cross-reference for the definition of "public facilities" from Section 163.3164(41), Florida Statutes, to Section 163.3164(42), Florida Statutes.
- Makes a conforming amendment to reflect the renumbering of Section 163.3164 resulting from the creation of subsection (39).

## **Section 6**

- Provides that the act shall take effect July 1, 2026.

## **ARGUMENTS in SUPPORT**

Sections 1 and 4 of HB 1139 would impose additional requirements on the studies used to support certain impact fee approvals and increases. Under the new legislation, localities would be required to follow the new plan-based methodology and demonstrated-need study in order to levy any impact fee. Further, the bill also lays out a proper legal pathway for developers to challenge impact fees they feel are improperly assessed, excessive or illegal. These changes would increase transparency in the use of impact fee process and reduce their use.

Supporters argue that a reduction in the overall use of impact fees and their costs could encourage new residential development by lowering the cost burden on builders. This is significant as regulations imposed at the federal, state and local levels account for more than \$130,000 of the cost to build a new single-family home, which is passed onto the buyer.<sup>4</sup> Not only will this make the industry more competitive, but it could have different effect depends on

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<sup>4</sup> [Regulatory Costs Jump 40% in Five Years, Add \\$131,734 to New Home Prices | NAHB](#)

the project. In one scenario, lower impact fees could reduce the cost of the final product, leading to more affordable housing for consumers struggling with homeownership or rental costs. Alternatively, if the drop in cost to the developer is not reflected in the final home price, builders may be able to invest more into the homes themselves, leading to larger homes or improved features under the same initial price tag.

Sections 2 and 3 focus on other existing challenges with development. For one, they would require coordination between jurisdictions in scenarios where new development spans multiple localities, whether it be cities or counties. They also aim to eliminate the problem of multiple localities charging conflicting or duplicate transportation impact fees to a developer. These provisions could help reduce development costs and create a more predictable development process.

Overall, supporters of this bill seek increased competition in the market by reducing cost barriers for developers and, ultimately, overall home affordability for consumers. It increases governmental transparency and limitations to restrict the future use of excessive impact fees. Greater transparency can lead to greater certainty for developers to understand how impact fees are calculated and applied.

## **ARGUMENTS in OPPOSITION**

The primary argument from opposers of the legislation is that this bill improperly limits the ability of localities to enact impact fees. For example, opponents argue that impact fees are still vital to new development and that this bill's effects could cause an inability for the state to pay for public infrastructure for the accommodation of new development. This could lead to completed developments but unpaved roads, unfinished electrical access, limited plumbing or other issues stemming from a lack of public infrastructure.

Opponent also argue that the additional time and costs needed to carry out the new plan-based methodology studies could lead to similar effects due to inadequate local funding. For example, the impact fees could appropriately cover the costs of state infrastructure; however, local governments may require extra funding to process all the paperwork required for various studies, justifications for fees, legal defense of fees or cross-jurisdiction cooperation. Although

mandating cooperation between conflicting jurisdictions and the mitigation of duplicate fees on developers may not be majorly opposed, they could add to administrative cost burdens.

Although cost is a large barrier, time is also a concern when it comes to new development. As the administrative processes of this bill could lengthen approval times, that would have negative effects on home pricing and affordability.<sup>5</sup>

Overall, this bill faces several significant arguments from the opposition. First, the bill severely restricts the discretion localities currently have to levy impact fees, instead requiring additional studies for implementation. As a result, the local government's ability to provide public infrastructure could be harmed. Alternatively, the costs of integrating the new development, if not generated through impact fees, could be shifted to the taxpayer at large, meaning that the greater community or locality could have more of its tax dollars allocated to new development than anticipated. At the same time, the new regulations on the state from conducting studies, justifying fees, fighting to uphold fees in court and cooperating with conflicting jurisdictions could cause much longer wait times for new development, which directly translates to higher cost for the consumer. Opponents argue that additional regulations on the local government's ability to impose impact fees do not outweigh the potential benefit of new development.

## **SIMILAR LEGISLATION/LAWS**

[Florida House Bill 337, 2021](#)

[California Mitigation Fee Act](#)

[Texas Local Government Code Chapter 395](#)

[Utah Impact Fees Act](#)

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<sup>5</sup> <https://www.nahb.org/news-and-economics/press-releases/2025/02/home-builders-tell-congress-how-permitting-roadblocks-raise-housing-costs>

## **COURT CASES**

[Contractors and Builders Association of Pinellas County v. City of Dunedin](#)

[St. Johns County v. Northeast Florida Builders Association](#)

[Sheetz v. County of El Dorado](#)

[Hollywood, Inc. v. Broward County, 1983](#)

## **POTENTIAL SUPPORT**

Florida Home Builders Association, Associated Builders and Contractors of Florida, Florida Realtors, Florida Chamber of Commerce, Associated Industries of Florida, YIMBY's, Florida Associated Builders and Contractors, Florida Apartment Association

## **POTENTIAL OPPOSITION**

Florida League of Cities, Florida Association of Counties, Florida School Boards Association, Florida Association of Special Districts, Florida Planning and Zoning Association, 1000 Friends of Florida