



# HERNANDO SCHOOL DISTRICT

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## **Low Impact Fees and the Consequences to Concurrency**

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*“The Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth.” – F.S. § 163.31801(2)*



# **COMMUNITY PLANNING**

# COMMUNITY PLANNING ACT & PUBLIC SCHOOLS

F.S. §163.3161, §163.3177, and §1013.33

1. The definition of “public facilities” includes education
2. Each local government’s comprehensive plan must:
  - Include standards to ensure the availability of public facilities and the adequacy of those facilities to meet established levels of service
  - Include educational facilities in its capital improvement element of its adopted comprehensive plan
  - Ensure public facilities are planned *“in time and place with the plans for residential development, concurrently with other necessary services.”*
3. These statutes are mandatory and cannot be ignored



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# **SCHOOL IMPACT FEES**

# EDUCATIONAL FACILITIES IMPACT FEE SUMMARY

(Single Family Detached)

2019: Rate statutorily supported by study	\$ 6,352
2020: <u>Current rate</u> adopted by local ordinance	\$ 3,176
2022: Rate statutorily supported by study	\$ 8,764
2023: Increase proposed by BOCC: <u>\$ 122</u>	
Resulting amount if adopted	\$ 3,298
2023: Increase allowed by statute: <u>\$ 1,588</u> *	
Resulting amount if adopted	\$ 4,764

\* Extraordinary circumstances notwithstanding, an increase of up to 50% of the current rate is allowed by – F.S. §163.31801(6)(d) The statute does not stipulate that “current rate” means the cumulative total of all categories of impact fees.



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# IMPACT FEES – POINTS TO PONDER

F.S. §163.31801

- A. The *Educational Facilities Impact Fee* is established pursuant to its own ordinance – Hernando County Code, Section 23-64
- B. The *Florida Impact Fee Act* allows the increase of each impact fee pursuant to its terms – § 163.31801, Hernando County Code §23.64, et. seq, the Educational Facilities Impact Fee
  - 1. The *Educational Facilities Impact Fee* is not limited to the aggregate impact fee amount – Id.
  - 2. Each impact fee may be adjusted up to 50% over 4 years

*“The use of impact fees has become an accepted method of paying for public improvements that must be constructed to serve new growth.” – Florida Supreme Court [583 So.2d 635]*



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# IMPACT FEES – POINTS TO PONDER

F.S. §163.31801(4)

At a minimum, each local government that adopts and collects an impact fee must:

- (a) Ensure the calculation of the fee is based on the most recent and localized data



*Latest study was completed by Benesch in August 2022*

- (f) Ensure that the fee is proportional to the need for additional capital facilities and impact generated by new residential construction



*Adopted fee is NOT proportional to the calculated impact to public schools – it is artificially low*



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**CONCURRENCY**



# SCHOOL CONCURRENCY SUMMARY

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F.S. §163.3180

- A. Public facilities will achieve or maintain the adopted level-of-service standard concurrently with residential development
  - 1. Adopted Level-of-Service (LOS) for schools: 100% of student capacity
- B. Developments that will exceed 100% LOS may proceed if:
  - 1. Adequate capacity will be in place or under construction within 3 years, OR
  - 2. Developer tenders a written, legally binding commitment to provide mitigation proportionate to the demand for public school facilities
- C. Options for Proportionate Share Mitigation must be in the Comprehensive Plan and Interlocal Agreement



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# **PROPORTIONATE SHARE MITIGATION – OPTIONS**

F.S. §163.3180(6)(h)(2)(a)

**Appropriate mitigation options include:**

- 1. The contribution of land or payment for land acquisition**
- 2. The construction or expansion of a public school facility, or payment thereof**
- 3. The construction of a charter school compliant with Florida Statutes, §1002.33(18)**
- 4. The creation of mitigation banking based on the developer's construction or financing of a public school facility in exchange for the right to sell capacity credits**



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# PROPORTIONATE SHARE MITIGATION – CREDITS

F.S. §163.3180(6)(h)(2)(b)

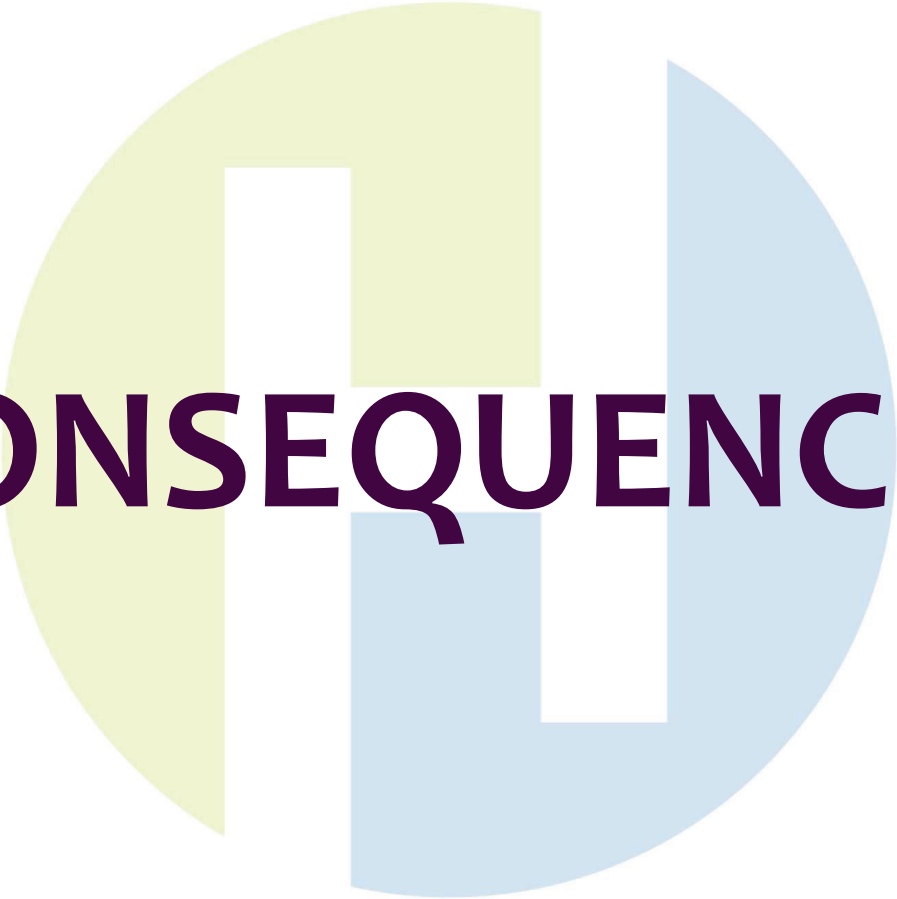
The local government shall **credit** such a proportionate-share mitigation payment **toward any impact fee** for public educational facilities **on a dollar-for-dollar basis** at fair market value.

The credit must be **based on the total impact fee** assessed.



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A stylized logo consisting of two large, rounded shapes. The left shape is light green and the right shape is light blue. They are positioned as if they are two halves of a larger circle, with a white gap between them. The word "CONSEQUENCES" is written in a bold, dark purple, sans-serif font across the center of the logo.

**CONSEQUENCES**

# PROP SHARE EXAMPLE 'A.1'

(Low Impact Fee)

<b>PROPOSED DEVELOPMENT</b>		<b>100 single family homes</b>
Max. Impact Fee (100 SFH x \$ 3,176)		\$ 317,600
<b>STUDENTS</b>		
(100 SFH x .303 students)	30	
Capacity Available (assumed)	10	
Capacity Needed	20	
<b>COST TO BUILD CAPACITY (20 X \$32,000)</b>		<b>\$ 640,000</b>
<u>Prop Share (20 x \$ 32,000)</u>		<u>- \$ 640,000</u>
Difference		\$ 0
<b>IMPACT FEE CREDITS – for sale or transfer to future developments</b>		
In dollars (\$ 640,000 – \$ 317,600)		\$ 322,400
In homes (\$ 322,400 ÷ \$ 3,176)		<b>102 future homes</b>
In capacity (102 SFH x .303 students)		<b>31 future students</b>

# PROP SHARE EXAMPLE 'A.2'

(Low Impact Fee)

PROPOSED DEVELOPMENT		100 single family homes
Max. Impact Fee (100 SFH x \$ 3,176)		\$ 317,600
STUDENTS		
(100 SFH x .303 students)	30	
Capacity Available (assumed)	10	
Capacity Needed	20	
COST TO BUILD CAPACITY (20 X \$32,000)		\$ 640,000
<u>Prop Share (Max. Impact Fee)</u>		<u>- \$ 317,600</u>
Difference		<b>\$ 322,400 shortfall</b>
IMPACT FEE CREDITS – for sale or transfer to future developments		
In dollars (\$ 317,600 – \$ 317,600)		\$ 0
In homes (\$ 0 ÷ \$ 3,176)		0 future homes
In capacity (0 SFH x .303 students)		0 future students

# PROP SHARE EXAMPLE 'B.1'

(Increased Impact Fee)

<b>PROPOSED DEVELOPMENT</b>		<b>100 single family homes</b>
Max. Impact Fee (100 SFH x \$ 4,764)		\$ 476,400
<b>STUDENTS</b>		
(100 SFH x .303 students)	30	
Capacity Available (assumed)	10	
Capacity Needed	20	
<b>COST TO BUILD CAPACITY (20 X \$32,000)</b>		<b>\$ 640,000</b>
<u>Prop Share (20 x \$ 32,000)</u>		<u>- \$ 640,000</u>
Difference		\$ 0
<b>IMPACT FEE CREDITS – for sale or transfer to future developments</b>		
In dollars (\$ 640,400 – \$ 476,400)		\$ 163,600
In homes (\$ 163,600 ÷ \$ 4,764)		<b>34 future homes</b>
In capacity (34 SFH x .303 students)		<b>10 future students</b>

# PROP SHARE EXAMPLE 'B.2'

(Increased Impact Fee)

PROPOSED DEVELOPMENT		100 single family homes
Max. Impact Fee (100 SFH x \$ 4,764)		\$ 476,400
STUDENTS		
(100 SFH x .303 students)	30	
Capacity Available (assumed)	10	
Capacity Needed	20	
COST TO BUILD CAPACITY (20 X \$32,000)		\$ 640,000
<u>Prop Share (Max. Impact Fee)</u>		<u>- \$ 476,400</u>
Difference		<b>\$ 163,600 shortfall</b>
IMPACT FEE CREDITS – for sale or transfer to future developments		
In dollars (\$ 476,400 – \$ 476,400)		\$ 0
In homes (\$ 0 ÷ \$ 4,764)		0 future homes
In capacity (0 SFH x .303 students)		0 future students



# PROP SHARE EXAMPLE 'C.1'

(Full Impact Fee)

PROPOSED DEVELOPMENT		100 single family homes
Max. Impact Fee (100 SFH x \$ 8,764)		\$ 876,400
STUDENTS		
(100 SFH x .303 students)	30	
Capacity Available (assumed)	10	
Capacity Needed	20	
COST TO BUILD CAPACITY (20 X \$32,000)		\$ 640,000
<u>Prop Share (20 x \$ 32,000)</u>		<u>- \$ 640,000</u>
Difference		\$ 0
IMPACT FEE CREDITS – for sale or transfer to future developments		
In dollars (\$ 640,000 – \$ 876,400)		(\$ 236,400) owed
In homes (\$ 0 ÷ \$ 8,764)		0 future homes
In capacity (0 SFH x .303 students)		0 future students

# PROP SHARE EXAMPLE 'C.2'

(Full Impact Fee)

PROPOSED DEVELOPMENT		100 single family homes
Max. Impact Fee (100 SFH x \$ 8,764)		\$ 876,400
STUDENTS		
(100 SFH x .303 students)	30	
Capacity Available (assumed)	10	
Capacity Needed	20	
COST TO BUILD CAPACITY (20 X \$32,000)		\$ 640,000
<u>Prop Share (Max. Impact Fee)</u>		<u>- \$ 876,400</u>
Difference		\$ 236,400 surplus
IMPACT FEE CREDITS – for sale or transfer to future developments		
In dollars (\$ 876,400 – \$ 876,400)		\$ 0
In homes (\$ 0 ÷ \$ 8,764)		0 future homes
In capacity (0 SFH x .303 students)		0 future students



**OPTIONS**

# DISTRICT'S OPTIONS AND CONSEQUENCES – OPTION 'A'

## OPTION

Accept FULL prop share amount based on cost-per-student-station

## CONSEQUENCES

1. The District will never have enough capital funding to keep up with growth
2. The sale and assignment of impact fee credits applied to **FUTURE PROJECTS** will require tracking – how & by whom?
3. The District is confirming it **WILL** have adequate **CAPACITY** even though it **WON'T** receive **ANY FUTURE FUNDING** needed to mitigate the impact of **FUTURE PROJECTS**

# **DISTRICT'S OPTIONS AND CONSEQUENCES – OPTION 'B'**

## **OPTION**

**Accept PARTIAL mitigation amount based on current impact fee**

## **CONSEQUENCES**

- 1. The District will never have enough capital funding to keep up with growth**
- 2. The District is confirming it WILL have adequate CAPACITY even though it WON'T receive the total funding actually needed to mitigate the impact of THIS PROJECT**



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# **DISTRICT'S OPTIONS AND CONSEQUENCES – OPTION 'C'**

## **OPTION**

**Decline all Prop Share offers OR rescind school concurrency, consistent with 2022 Florida Statute §163.3180(1)(a)**

## **CONSEQUENCES**

- 1. No “PAY-AND-GO” option for developers**
- 2. No false confirmation of future adequate capacity**
- 3. If there is no capacity, local government cannot approve the development**
- 4. Inadequate funding from artificially low impact fees means school construction will lag behind development**

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**CONCLUSIONS**

# CONCLUSIONS

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1. If the impact fee were high enough to allow the prop share mitigation payment to be LESS than the total impact fees, school concurrency would be an effective plan, performing as the Legislature intended. An appropriate fee would:
  - a. Allow the District to collect the prop share payment at the time of plat or site plan approval before homes are built
  - b. Provide the developer an impact fee credit that wouldn't harm the District in the future, while still leaving some impact fees due when building permits are issued



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## **CONCLUSIONS**

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- 2. Because the impact fee is artificially low, the amount collected cannot fund the infrastructure necessitated by new growth, as the Legislature intended. This results in:**
  - a. A shortfall in the primary funding mechanism designed to accommodate growth**
  - b. Harm to the District by creating impact fee credits that falsely confirm future capacity where there is none**
  - c. A concurrency process that is difficult for the District to administer under the current statutory scheme**



## CONCLUSIONS

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3. If the County doesn't agree to adjust the Impact Fee, the District will need to seriously consider its next steps
4. The inability to construct needed classrooms will severely curtail development
5. Once the proposed minimal increase to the Impact Fee is adopted it will be impossible to change for another 4 years
6. The long-term consequences will be felt for years to come



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## **NEXT STEPS**

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### **A. IF EDUCATIONAL IMPACT FEE IS NOT INCREASED**

- 1. District may decline to enter into Prop Share Agreements**
- 2. Accrual of capital funds will be limited by a slow Budgetary process, curtailing the rate at which development can be approved**

### **B. IF EDUCATIONAL IMPACT FEE IS INCREASED**

- 1. Draft proposed changes to *Interlocal Agreement***
- 2. Revise District's *Prop Share Mitigation Agreement* template**



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