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LAND USE MANAGEMENT: RETIREMENT COMMUNITIES EVADE PUBLIC SCHOOL IMPACT FEES

Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126 (Fla. 2000)

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Under protest, Appellee paid $86,984.07 in public school impact fees to Appellant County to develop an eighty-four unit mobile home park for persons aged 55 and older.[1] Appellee then filed suit in the Circuit Court for Volusia County claiming that public school impact fees are unconstitutional as applied to a retirement community.[2] Volusia County Ordinance No. 97-7 imposed on new residential development a fee to help defray the cost of public school expansion made necessary by such development.[3] However, Appellee's development included an irrevocable deed restriction prohibiting "any person under the age of eighteen (18) years" from permanently residing in the development.[4] Appellee claimed that no children from the development would swell County rolls and, therefore, no fee should be assessed.[5] The trial court granted summary judgment to Appellee, reasoning that no substantial relationship existed between Appellee's development and the need for new schools and noting that Appellee's development would not benefit from the construction of new schools.[6] Volusia County appealed and simultaneously requested certification of the case to the Florida Supreme Court as a matter of great public importance.[7] The Fifth District Court of Appeals did not hear the case but rather granted Appellant's request as provided in the pass-through

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1. Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 128-30 (Fla. 2000).
2. *Id.* at 128.
3. *Id.* at 129-30; Volusia County, Fla., Ordinance 97-7, § VI (May 15, 1997) (enacting Volusia County, Fla., Code of Ordinances art. V, ch. 70, § 70-174(d)). As the court explained, "[t]he impact fee represents the cost per dwelling unit of providing new facilities.... In calculating the fee, the County utilized the student generation rate, which is the average number of public school students per dwelling unit." *Volusia County*, 760 So. 2d at 130.
4. *Volusia County*, 760 So. 2d at 128 (quoting Supplemental Declaration of Covenants, Conditions and Restrictions For Aberdeen at Ormond Beach Manufactured Housing Community art. II, §§ 2.2, 3.2). The court noted that the minimum age requirements of the deed restriction "comply with the 'housing for older persons' exemption of the Federal Fair Housing Act." *Id.; see* 42 U.S.C. § 3607 (1994 & Supp. I 1996).
5. *See Volusia County*, 760 So. 2d at 130.
6. *Id.*
7. *Id.*

certification provision of Florida's Constitution.[8] The Florida Supreme Court affirmed and HELD, where residential development has no potential to increase school enrollment, public school impact fees are unwarranted.[9]

The Florida Supreme Court first upheld the legality of impact fees in *Contractors & Builders Ass'n of Pinellas County v. City of Dunedin.*[10] In *Dunedin*, the plaintiff challenged the city's impact fee for water and sewer service as an unconstitutional tax beyond the authority of a municipality.[11] Rejecting this argument, the court reasoned that a municipality's authority to establish rates for water and sewer service[12] included the authority to charge new users a reasonable fee for expanding the service to meet their needs.[13] However, the court required (1) that impact fees "not exceed a pro rata share of reasonably anticipated costs of expansion" and (2) that monies thus collected only be spent to meet the costs of such expansion.[14]

These two requirements distinguish an impact fee from a tax and form the basis of the dual rational nexus test explained in *Hollywood, Inc. v. Broward County.*[15] In *Hollywood*, the plaintiff, seeking a permit to subdivide property for residential development, challenged a county ordinance imposing an impact fee for expanding the county's park system to serve the new subdivision.[16] Florida's Fourth District Court of Appeals

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8. *Id.*; FLA. CONST. art. V, § 3(b)(5).

9. *Volusia County*, 760 So. 2d at 137.

10. 329 So. 2d 314 (Fla. 1976). On the history and developing use of impact fees nationwide, *see generally* JAMES C. NICHOLAS ET AL., A PRACTITIONER'S GUIDE TO DEVELOPMENT IMPACT FEES (1991); Julian C. Juergensmeyer & Robert M. Blake, *Impact Fees: An Answer to Local Governments' Capital Funding Dilemma*, 9 FLA. ST. U. L. REV. 415 (1981); Bernard V. Keenan & Peter A. Buchsbaum, *Report of the Subcommittee on Exactions and Impact Fees*, 23 URB. LAW. 627 (1991); Arthur C. Nelson, *Development Impact Fees: The Next Generation*, 26 URB. LAW. 541 (1994); Deborah Rhoads, *Developer Exactions and Public Decision Making in the United States and England*, 11 ARIZ. J. INT'L & COMP. L. 469 (1994); Nancy E. Stroud & Susan L. Trevarthen, *Defensible Exactions after* Nollan v. California Coastal Commission *and* Dolan v. City of Tigard, 25 STETSON L. REV. 719 (1996).

11. *Dunedin*, 329 So. 2d at 317.

12. *Id.* at 319; FLA. STAT. § 180.13(2) (1973).

13. *Dunedin*, 329 So. 2d at 319-20.

14. *Id.* at 320-21. Although the court upheld the authority of the municipality to impose an impact fee, the court concluded that the challenged ordinance (City of Dunedin, Fla., Code § 25-71) was "defective for failure to spell out necessary restrictions on the use of fees it authorizes to be collected" and remanded the case. *Id.* at 321. The City of Dunedin cured the defective ordinance, but on remand the trial court ordered the City to refund the fees collected under the defective ordinance and paid under protest. The Second District Court of Appeals reversed this decision, and no refunds were made. Dunedin v. Contractors & Builders Ass'n, 358 So. 2d 846 (Fla. 2d DCA 1978).

15. 431 So. 2d 606, 611-12 (Fla. 4th DCA 1983).

16. *Id.* at 607. The ordinance (Broward County, Fla., Code § 5-198(h)) gave the developer the option of paying the fee, dedicating land in lieu of the fee, or paying a fee equal in value to such dedicated land. *Id.* at 607-08.

found that regulating development "to ensure the adequate provision of parks" fell "squarely within" the police power delegated by the state to each county.[17] However, the court explained that impact fees may only address needs "sufficiently attributable to" the new development and must be "sufficiently earmarked for the substantial benefit" of the new development.[18] In other words, the local government must demonstrate a reasonable connection, or rational nexus, between the need for additional capital facilities and the growth in population generated by the subdivision. In addition, the government must show a reasonable connection, or rational nexus, between the expenditures of the funds collected and the benefits accruing to the subdivision.[19]

Florida's Supreme Court adopted the dual rational nexus test and first authorized the use of impact fees to support public school expansion in *St. Johns County v. Northeast Florida Builders Ass'n, Inc.*[20] In *St. Johns County*, the plaintiff claimed that an impact fee for public schools failed the first prong of the dual rational nexus test because many new residents did not have children and would therefore have no impact on public schools.[21] The court disagreed, reasoning that public schools "serve each dwelling unit" and that "[d]uring the useful life of the new dwelling units, school-age children will come and go."[22] Thus the court found that the

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17. *Id.* at 614. Regarding the delegation of state power to counties, Florida is a "home rule" state rather than a "Dillon's rule" state; under Article VIII, Section 1 of Florida's Constitution, the state of Florida grants to charter counties and non-charter counties all powers of government not specifically excepted by law, and section 125.01 of the Florida Statutes implements this constitutional provision. *See* City of Boca Raton v. State, 595 So. 2d 25, 26-29 (Fla. 1992); Home Builders & Contractors Ass'n of Palm Beach County v. Board of County Commissioners of Palm Beach County, 446 So. 2d 140, 142-43 (Fla. 4th DCA 1983). Exercise of the government's police power on behalf of the health, safety, and welfare of the citizenry is thereby included in the "broad home rule powers" granted to counties. *Hollywood,* 431 So. 2d at 608; *see also* State v. City of Port Orange, 650 So. 2d 1, 3 (Fla. 1994); Speer v. Olson, 367 So. 2d 207, 210-11 (Fla. 1978).

18. *Hollywood,* 431 So. 2d at 611.

19. *Id.* at 611-12. On the national development and use of the dual rational nexus test, as well as alternative tests, *see generally* NICHOLAS, *supra* note 10, at 13, 31-33, 42-43, 82; Vance G. Camisa, *Impact Fees in Pennsylvania,* 31 DUQ. L. REV. 455 (1993); Douglas Dennington, *California Supreme Court Survey: February 1993—December 1993,* 21 PEPP. L. REV. 1502 (1994); Jesse S. Ishikawa, *Rough Proportionality; Wisconsin's New Impact Fee Act,* 68 WIS. L. REV. 18 (1995); Juergensmeyer & Blake, *supra* note 10, at 427-33; Martin L. Leitner & Susan P. Schoettle, *A Survey of State Impact Fee Enabling Legislation,* 25 URB. LAW. 491 (1993); William W. Merrill III & Robert K. Lincoln, *Linkage Fees and Fair Share Regulations; Law and Method,* 25 URB. LAW. 223 (1993); David Nuffer, *Utah's 1995 Impact Fee Legislation,* 8 UTAH BAR J. 12 (1995); Rhoads, *supra* note 10, at 481-92; Stroud & Trevarthen, *supra* note 10, at 719-28.

20. 583 So. 2d 635, 637-42 (Fla. 1991).

21. *Id.* at 638.

22. *Id.* Prior to enacting the St. Johns County Educational Facilities Impact Fee Ordinance, St. Johns County had conducted a comprehensive study on the question of impact fees. Anticipating the court's emphasis on calculating fees per unit and not per occupant, this study calculated the

county had demonstrated "a reasonable connection between the need for additional schools and the growth in population that will accompany new development" in satisfaction of the first prong of the dual rational nexus test.[23] The ordinance, however, failed the second prong of the dual rational nexus test because the ordinance failed to ensure that the fees collected would be spent to benefit those who paid them.[24] The court ultimately upheld the validity of the ordinance but halted collection of the impact fee until appropriate amendments to the ordinance met the second prong of the dual rational nexus test.[25]

Although the court approved the use of impact fees to fund public school expansion in *St. Johns County*,[26] an alternative provision in the county's ordinance[27] prompted the court to consider a possible contradiction in the specific requirements of an impact fee and the constitutional mandate of "free" public schools.[28] The alternative provision allowed a feepayer to submit "an independent fee calculation study" justifying exemption from the fee.[29] Thus, new households with no children destined for public schools could avoid paying for public school expansion, while new households with public school children would still pay the fee.[30] This provision made the impact fee very much like a user fee,[31] which would easily satisfy both prongs of the dual rational nexus

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average cost of providing school facilities for each new single-family unit at $2,899. Estimating that existing revenues covered $2,451 of this amount, St. Johns County set its public school impact fee at $448 per unit. *Id.* at 637-38.

23. *Id.* at 638-39.

24. *Id.* at 639. The St. Johns County Educational Facilities Impact Fee Ordinance included an "opt in" provision for the cities and towns of the county; the ordinance was not effective within incorporated municipalities within the county unless that municipality entered into an interlocal agreement with the county to collect the fees. As written, nothing in the ordinance prohibited a municipality from "opting out" of the impact fee while still benefiting from the collection of the fee in neighboring areas. Hence, like the defective ordinance in *Dunedin*, the St. Johns ordinance included insufficient "restriction on the use of the funds to ensure that they will be spent to benefit those who have paid the fees." *Id.*; *see also* Contractors & Builders Ass'n of Pinellas County v. City of Dunedin, 329 So. 2d 314, 321 (Fla. 1976).

25. *St. Johns County*, 583 So. 2d at 639-42; *see also* Daniel Gordon, *Failing the State Constitutional Education Grade: Constitutional Revision Weakening Children and Human Rights*, 29 STETSON L. REV. 271, 274-77 (1999); Joseph L. Parisi, St. Johns County v. Northeast Florida Builders Association *and Florida School Impact Fees: An Exercise in Semantics*, 16 NOVA L. REV. 569, 569-96 (1991).

26. *St. Johns County*, 583 So. 2d at 642.

27. *Id.* at 640; St. Johns County, Fla., Ordinance 87-60 § 7(B) (Oct. 20, 1987).

28. FLA. CONST. art. IX, § 1; *St. Johns County*, 431 So. 2d at 640.

29. St. Johns County, Fla., Ordinance 87-60 § 7(B) (Oct. 20, 1987); *St. Johns County*, 431 So. 2d at 640.

30. *St. Johns County*, 431 So. 2d at 640.

31. As the court explained in *City of Port Orange*:

test.[32] A user fee, however, would contravene the constitutional requirement of "free" public schools,[33] because a student's "access to public schools" may not depend "upon the payment of any fees."[34] In response, the court severed the alternative provision before upholding the remainder of the ordinance.[35]

In the instant case, the court clarified these constitutional limits on the use of impact fees to fund public school expansion.[36] The court emphasized that, because of the required nexus between the new development and the need for new schools, public school impact fees may only be assessed against new dwelling units which house children or may in the future house children.[37] Because of the constitutional mandate of free public schools, however, public school impact fees may not be assessed based on whether a new dwelling unit currently houses children.[38] Therefore, exemptions for deed-restricted adult developments, which cannot impact public schools, are proper, whereas exemptions for individual households without children would turn the impact fee into an unconstitutional user fee.[39]

The instant case also reaffirmed and delineated the requirements of the dual rational nexus test.[40] Regarding the first prong of the test, requiring a substantial relationship between the impact of a new development and the need for public school expansion, the court held that the development's impact on public schools must be more than incidental or possible.[41] For example, a development's impact on the countywide ratio of students to

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> User fees are charges based upon the proprietary right of the governing body permitting the use of the instrumentality involved. Such fees share common traits that distinguish them from taxes; they are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society and they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge.

State v. City of Port Orange, 650 So. 2d 1, 3 (Fla. 1994) (citations omitted).

32. *See St. Johns County*, 431 So. 2d at 640.

33. FLA. CONST. art. IX, § 1; *St. Johns County*, 431 So. 2d at 639-40.

34. *St. Johns County*, 431 So. 2d at 639.

35. *Id.* at 639-40. The court reasoned that without the alternative provision the impact fee would be assessed upon each new dwelling unit regardless of whether public school children were current occupants. *Id.* at 640; *see also* David L. Powell, *Back to Basics on School Concurrency*, 26 FLA. ST. U. L. REV. 451, 465 (1999).

36. Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 132-37 (Fla. 2000).

37. *Id.* at 137.

38. *Id.* at 132, 137.

39. *Id.* at 136-37.

40. *Id.* at 134-36.

41. *Id.* at 136.

dwelling units, a ratio used to calculate the impact fee, is not sufficient.[42] Likewise, the remote possibility that an adult disabled person will reside in a community and exercise his right to attend public school does not constitute sufficient impact.[43] Regarding the second prong of the test, requiring that fees be spent to benefit those who paid them, the court held that the benefit must be more than incidental or tangential.[44] For example, the possibility that adults from a development may use a public school for night classes or for emergency shelter does not suffice to meet the benefits prong of the dual rational nexus test.[45]

By continuing to employ a strict reading of the dual rational nexus test in evaluating the legality of impact fees, the court maintained a critical distinction between fees and taxes.[46] Taxes may, in general, be levied and spent without a specific showing of need or benefit.[47] Because of the potential for abuse, constitutions and legislatures have limited the authority to tax; municipalities and counties are empowered to raise only specifically defined taxes and are enjoined from raising any other tax.[48] Impact fees, on the other hand, must meet the restrictions of the dual rational nexus test, which limits the potential for abuse.[49] With these safeguards in place, legislatures and courts have interpreted fee collection to be within the police powers delegated to municipalities and counties, which facilitates the responsiveness and flexibility of local government in land use planning.[50] The court's insistence upon an undiluted application

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42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 135.

47. *See* Collier County v. State, 733 So. 2d 1012, 1017 (Fla. 1999); City of Boca Raton v. State, 595 So. 2d 25, 29 (Fla. 1992); Pamela M. Dubov, *Taxation—Ad Valorem Alternatives:* Collier County v. State, 733 So. 2d 1012 (Fla. 1999), 29 STETSON L. REV. 987, 987-90 (2000).

48. *See* Dubov, *supra* note 47, at 987-88. Article VII of the Florida Constitution provides that "[n]o tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law." FLA. CONST. art. VII, § 1(a). Article VII further provides that "[c]ounties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by the constitution." FLA. CONST. art. VII, § 9(a). The phrase "ad valorem tax" refers to a tax assessed against real property and may be used interchangeably with the phrase "property tax." *Collier County*, 733 So. 2d at 1014 n.2.

49. *See Volusia County*, 760 So. 2d at 130-34; State v. City of Port Orange, 650 So. 2d 1, 3 (Fla. 1994); St. Johns County v. N.E. Florida Builders Ass'n, 583 So. 2d 635, 637 (Fla. 1991); Contractors & Builders Ass'n of Pinellas County v. City of Dunedin, 329 So. 2d 314, 320-21 (Fla. 1976); Hollywood, Inc. v. Broward County, 431 So. 2d 606, 611-13 (Fla. 4th DCA 1983); NICHOLAS, *supra* note 10, 38-42.

50. *See generally* FLA. STAT. §§ 125.01, 192.001 (2000); *Boca Raton*, 595 So. 2d at 26-29;

of the dual rational nexus test preserves this distinction between fees and taxes and thereby preserves a balance of public policies favoring restraint in taxation and flexibility in local planning.[51]

Furthermore, in reconciling *St. Johns County*, wherein the court refused to exempt households without children, with the instant case, wherein the court required an exemption for dwellings which could not house children, the court clarified that impact fees are properly based on the characteristics of the dwelling unit rather than the unit's actual occupants.[52] In *St. Johns County*, the court noted that occupancy changes over the useful life of a dwelling unit, such that impact fees must be calculated based on the average impact that a dwelling unit of that type will have on local services. Consideration of whether a particular set of occupants in a dwelling unit will use more or less of a service is irrelevant, and in the context of public schools, unconstitutional.[53] In the instant case, the court again focused on the characteristics of the dwelling units and found them to be deed-restricted such that no minors could become occupants.[54] The court concluded that a dwelling unit which could not affect the school system should not pay an impact fee for school expansion.[55]

While such careful parsing brings clarity to an emerging area of law, the wisdom of the court's decision depends on the ongoing enforcement of deed restrictions. For the purposes of assessing impact fees, the court accepted a deed restriction as a characteristic of Appellee's dwelling units on par with the units' physical characteristics, such as the number of bedrooms.[56] In reality, however, owners and renters often ignore deed restrictions when convenient, and enforcement of deed restrictions on private property only follows an injunction arising from a civil suit brought by a neighbor (or homeowner's association) who benefits from the restriction.[57] Furthermore, where neighbors have habitually acquiesced to

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Hollywood, 431 So. 2d at 608; Speer v. Olson, 367 So. 2d 207, 210-11 (Fla. 1978); Juergensmeyer & Blake, *supra* note 10, at 426.

51. As the Court explained in *State of Florida v. City of Port Orange*, 650 So. 2d 1, 6 (Fla. 1994), "The power of a municipality to tax should not be broadened by semantics which would be the effect of labeling what the City is here collecting a fee rather than a tax." *City of Port Orange*, 650 So. 2d at 3; *see also* Home Builders and Contractors Ass'n of Palm Beach County v. Bd. of County Comm'rs of Palm Beach County, 446 So. 2d 140, 145 (Fla. 4th DCA 1983); Juergensmeyer & Blake, *supra* note 10, at 426.

52. *Volusia County*, 760 So. 2d at 136-37; *St. Johns County*, 583 So. 2d at 639-40. *See generally* NICHOLAS, *supra* note 10, at 85-86.

53. *St. Johns County*, 583 So. 2d at 639-40.

54. *Volusia County*, 760 So. 2d at 134.

55. *Id.* at 136-37.

56. *Id.*

57. In the context of enforcement, such deed restrictions are treated as "equitable servitudes;" the restrictive clause runs with the land in equity and prohibits any occupant from certain action. ROGER A. CUNNINGHAM ET AL., THE LAW OF PROPERTY § 8.22 (2d ed. 1993).

violations of deed restrictions, courts have held such restrictions to be unenforceable.[58] Local planning agencies are not empowered to enforce deed restrictions, and at least under existing precedent, lack standing to sue an owner of private property for the enforcement of a restriction found in that owner's deed.[59]

Given these problems of enforcement, how may local planning agencies respond when individual residents violate restrictions in their deeds? Regarding the instant case, for example, if one child later moves into plaintiff's development and enrolls in public school, what action may defendant County take?[60] Presumably, exacting a fee from the student's household would violate Florida's constitutional mandate for "free" public schools.[61] Alternatively, exacting a public school impact fee retroactively upon every unit in the development would likely embroil the courts in further litigation.[62] Following the instant case, local planning agencies are not equipped to respond to violations of deed restrictions on private property, even though such violations may affect local planning needs.

The court's decision in the instant case also reopens the possibility that other sorts of deed-restricted developments may seek to avoid impact fees.[63] Could a religious community, for example, claim exemption from public school impact fees by including a deed restriction requiring that all children attend a parochial school?[64] Alternatively, could an individual

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58. *See, e.g.*, Rowen v. Holiday Pines Prop. Owners' Ass'n, Inc., 759 So. 2d 13, 14 (Fla. 4th DCA 2000).

59. *See generally* Palm Point Prop. Owners' Ass'n of Charlotte County, Inc. v. Pisarski, 626 So. 2d 195 (Fla. 1993); Cudjoe Gardens Prop. Owners Ass'n, Inc. v. Payne, C. Nos. 3D00-1052, 3D00-1322, 2000 Fla. App. LEXIS 12329 (Fla. 3d DCA Sept. 27, 2000).

60. In the instant case, the court discussed the enforceability of the deed restriction, but only in the context of whether Plaintiff's "Primary Declaration" (which was not recorded) or "Supplemental Declaration" (which was recorded) controlled the property. *Volusia County*, 760 So. 2d at 132-34. The court in the instant case did not discuss the questions raised here.

61. In *St. Johns County* the court considered the testimony of Dr. James Nicholas regarding the alternative provision of the county's ordinance. St. Johns County v. N.E. Florida Builders Ass'n, 583 So. 2d 635, 640 (Fla. 1991). Nicholas had suggested that an occupant who avoided paying the fee because they would send no children to public school could do so only "upon the understanding that if a school child later occupied the home, the fee would have to be paid." *Id.* However, precisely because such a scheme would violate Florida's constitutional mandate of a "free" public school system, the court in *St. Johns County* severed the alternative provision. *Id.*

62. *See supra* note 61 and accompanying text. This author knows of no jurisprudence regarding "retroactive" impact fees.

63. *See Volusia County*, 760 So. 2d at 136-37. The court in the instant case held that "deed-restricted housing could be exempt" from public school impact fees. *Id.* at 137. Read literally, this holding invites property holders and developers to incorporate a variety of restrictions in their deeds in an attempt to avoid impact fees.

64. *See supra* note 61 and accompanying text. Dr. Nicholas' testimony in *St. Johns County* raised a parallel scenario, but only in the context of the alternative provision in the County's ordinance (now severed as unconstitutional) which allowed an individual family to avoid the fee

placing a mobile home claim exemption from public school impact fees by incorporating a deed restriction requiring that children in the unit be home-schooled?[65] Such possibilities raise further questions regarding the enforcement of deed restrictions and revive the constitutional question of whether an impact fee paid primarily by households with public school students violates Florida's constitutional mandate for a free system of public schools. The court's decision in the instant case highlights the need for guiding legislation regarding impact fee assessment. In states such as Florida, explosive population growth has forced local governments to improvise in generating revenue. A handful of judicial opinions have interrupted this improvisation to enforce constitutional limits, but the burden of meeting new needs by experimenting with new forms of revenue has fallen on local governments. These local governments, especially rural counties and smaller municipalities, are ill-equipped to craft legal innovations in revenue generation while meeting the everyday needs of citizens.[66] Funding the necessary expansion of the public school system is a problem across the state, and state legislation defining the proper use of impact fees could ease the burden on local governments and provide a more predictable environment for developers.[67]

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by warranting that they would send no children to public school. *St. Johns County*, 583 So. 2d at 640. The instant case suggests that if that same family incorporated such a warranty as a deed restriction, they would not be liable for the impact fee.

65. *See supra* notes 61, 64 and accompanying text. *See generally* Michael W. Woodward, *Free Schools and Cheap Mobile Homes; School Impact Fees Come to Rural Florida*, 70 FLA. BAR. J. 70 (1996).

66. *See* NICHOLAS, *supra* note 10, at 169-74; Juergensmeyer, *supra* note 10, at 434-45.

67. Such legislation in Florida would complement legislation passed in 1998 which mandated county-wide school concurrency. FLA. STAT. ch. 98-176 (1998). *See generally* Gordon, *supra* note 25; Keri L. Howe, *School Impact Fees in Colorado: Gone, but Hopefully not Forgotten*, 70 U. COLO. L. REV. 257 (1998); David L. Powell, *Back to Basics on School Concurrency*, 26 FLA. ST. U.L. REV. 451 (1999); Craig A. Robertson, *Concurrency and its Relation to Growth Management*, 20 NOVA L. REV. 891 (1996).