



What Hath the Legislature Wrought: Mobility Fees and Impact Fees

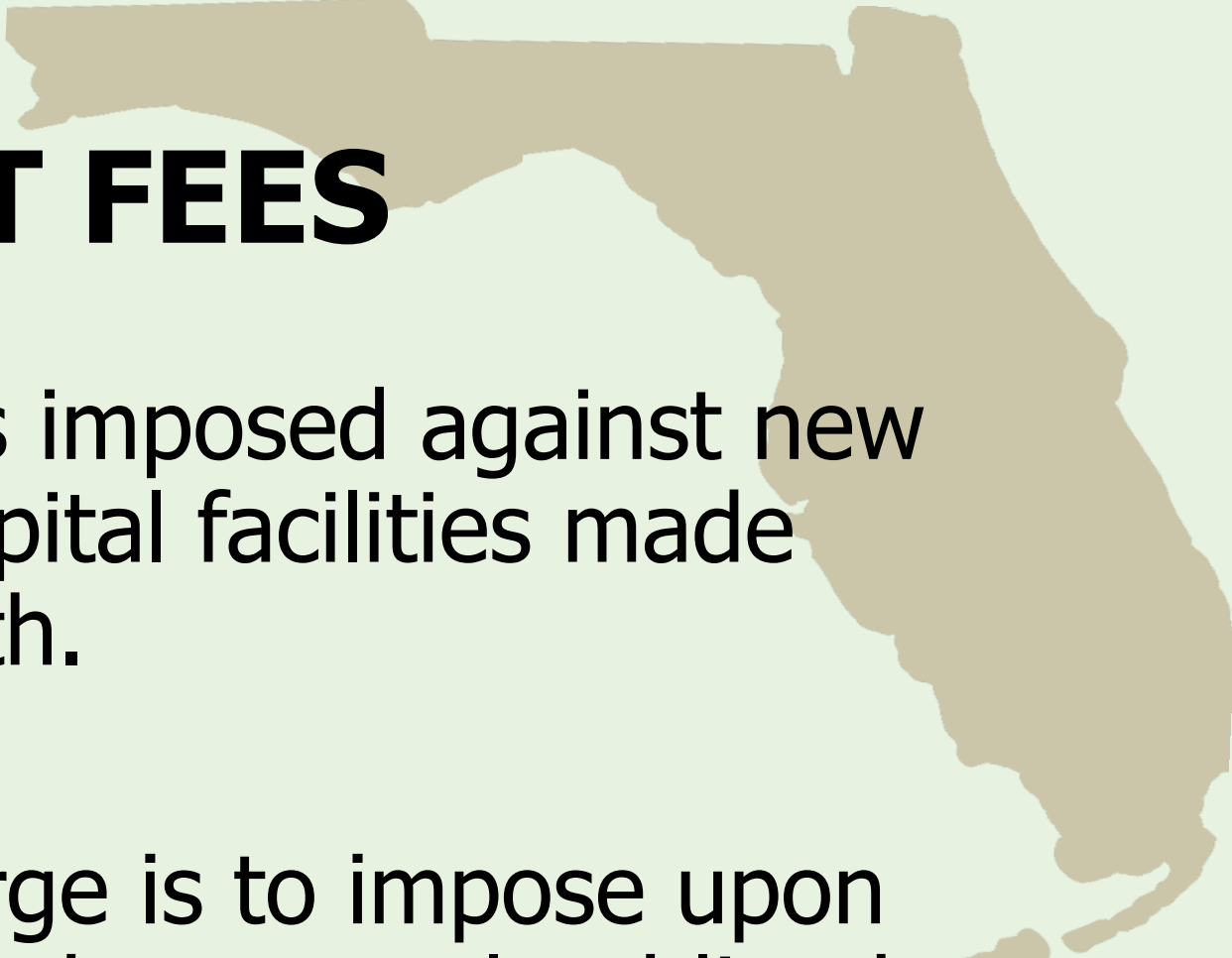
Gregory T. Stewart
Matthew R. Shaud
Nabors, Giblin & Nickerson, PA
gstewart@ngnlaw.com
mshaud@ngnlaw.com

Road Map

- Impact Fees
- Mobility Fees
- Florida Statutes
- Recent Case Law

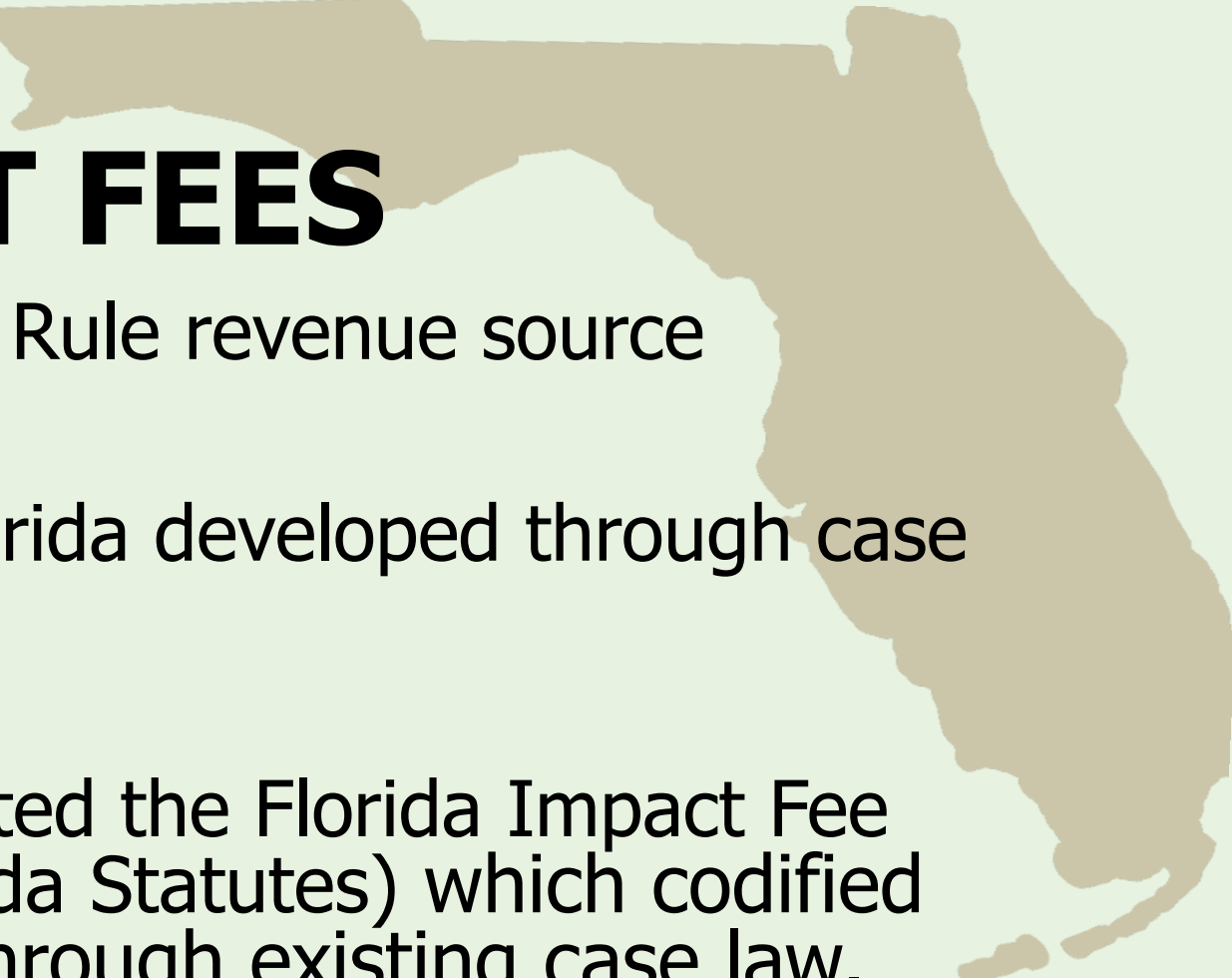


IMPACT FEES



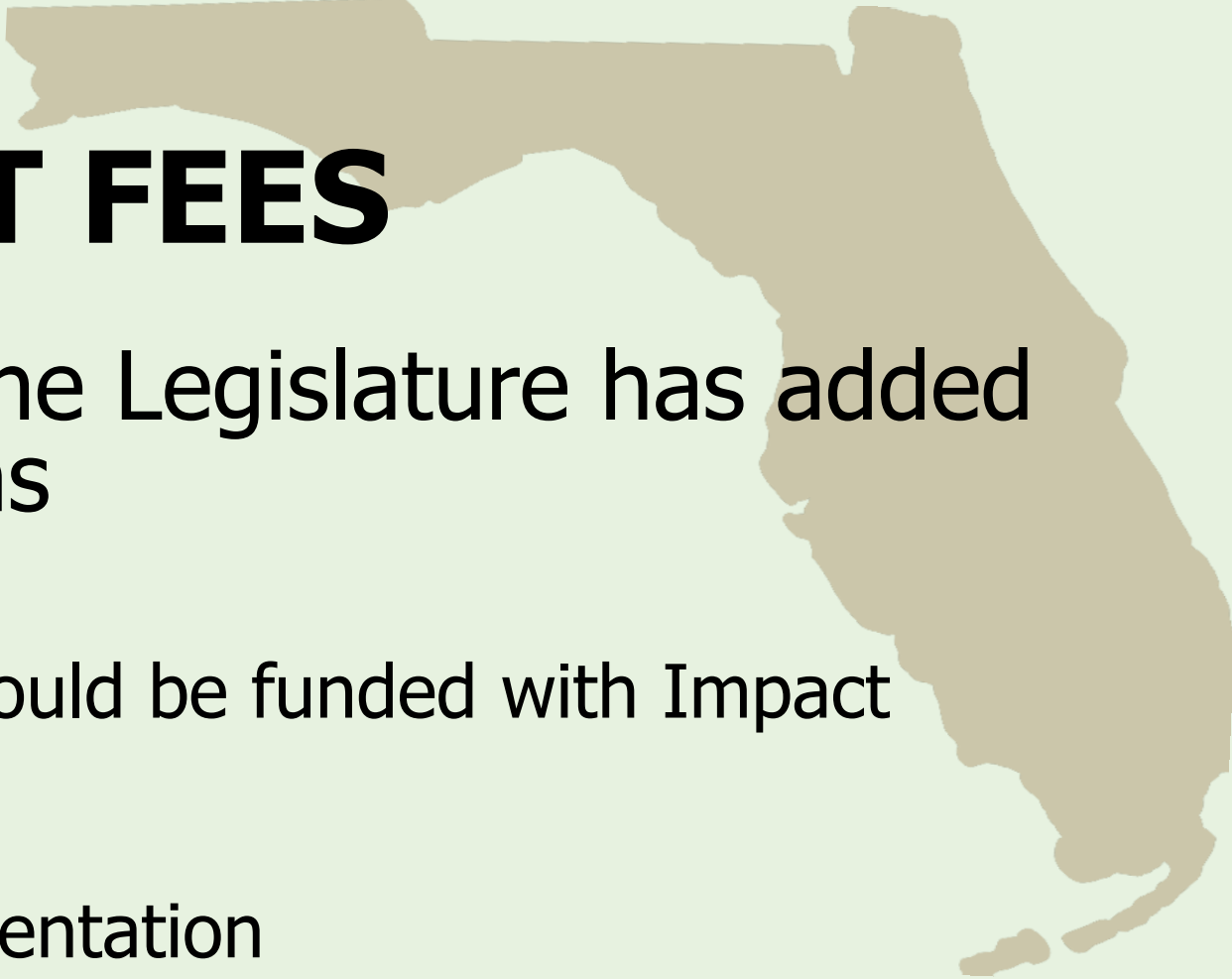
- Impact fees are charges imposed against new development to fund capital facilities made necessary by that growth.
- The purpose of the charge is to impose upon newcomers, rather than the general public, the cost of new facilities made necessary by their arrival.

IMPACT FEES



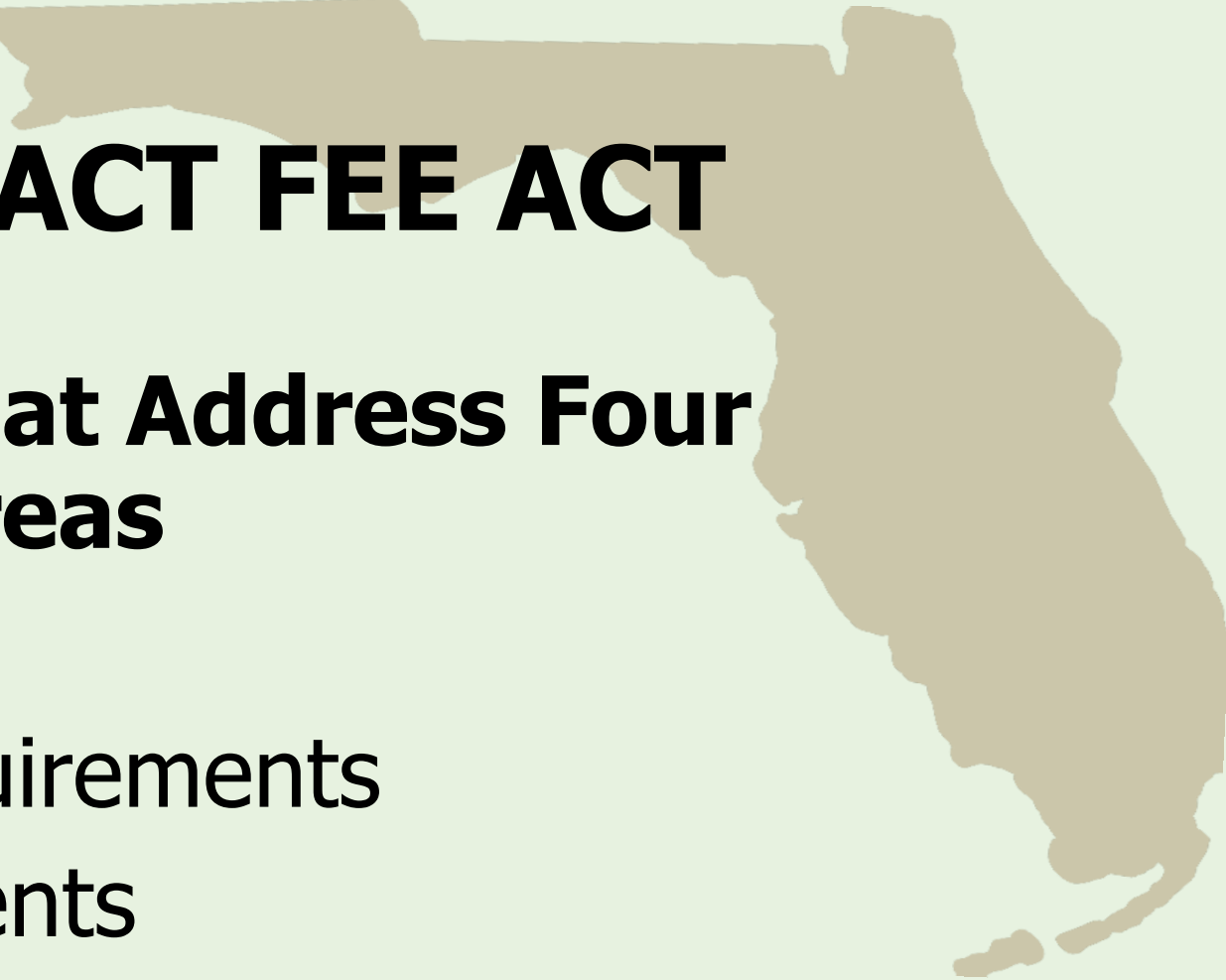
- Initially developed as a Home Rule revenue source
- Until 2006, Impact Fees in Florida developed through case law, not legislation
- In 2006, the Legislature adopted the Florida Impact Fee Act, (section 163.31801, Florida Statutes) which codified what had been established through existing case law.
- That did not last long

IMPACT FEES



- Over the past 20 years, the Legislature has added significant new restrictions
 - Limited public facilities that could be funded with Impact Fees
 - Placed restrictions on implementation
 - Placed restrictions on the how long the study process may go

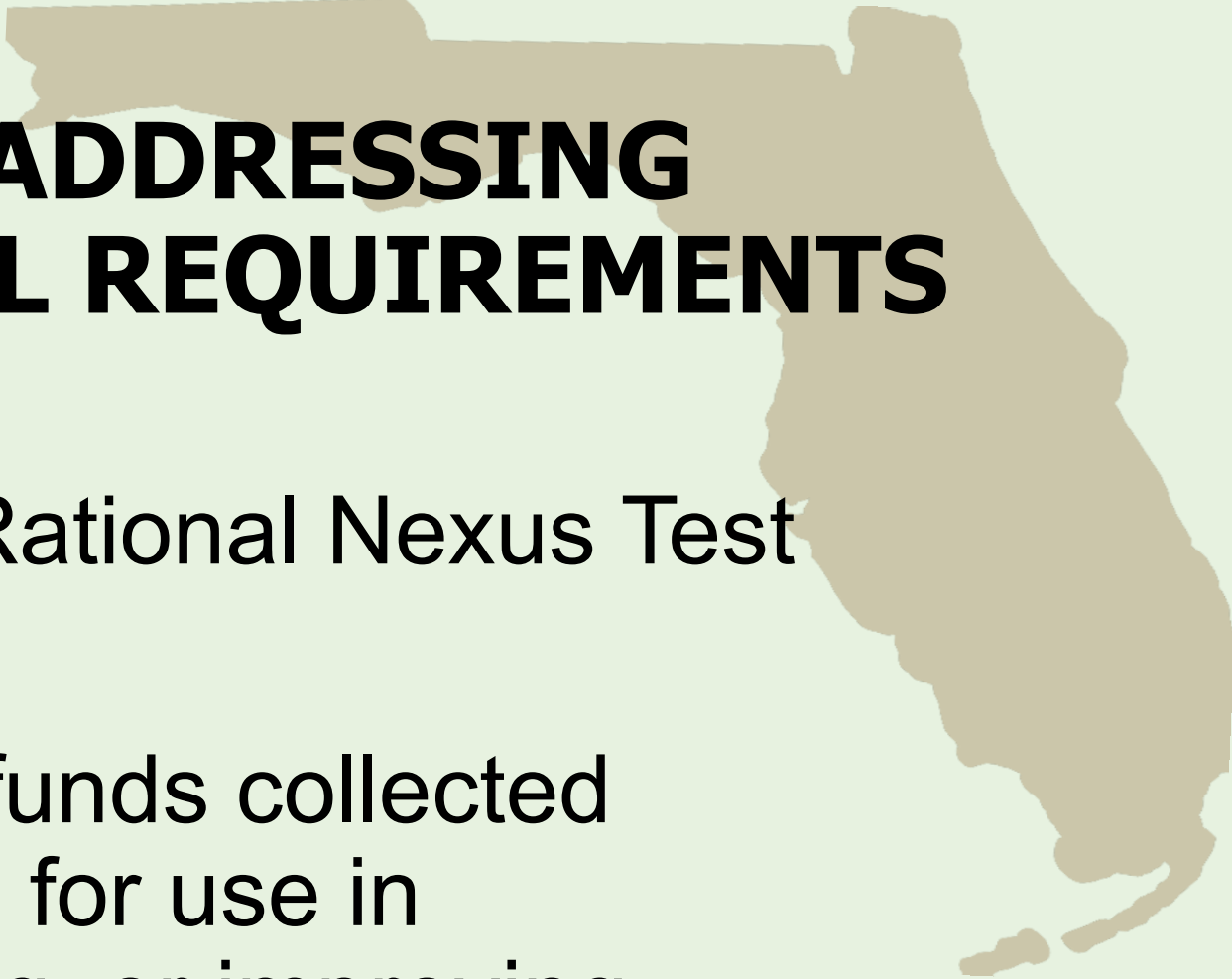
FLORIDA IMPACT FEE ACT



13+ Amendments That Address Four Broad Areas

- (1) Traditional Legal Requirements
- (2) Procedural Requirements
- (3) Use Restrictions
- (4) Defense of Impact Fees

AMENDMENTS ADDRESSING TRADITIONAL LEGAL REQUIREMENTS



- Codification of Dual Rational Nexus Test
- Specifically earmark funds collected under the Impact Fee for use in acquiring, constructing, or improving capital facilities to benefit new users.

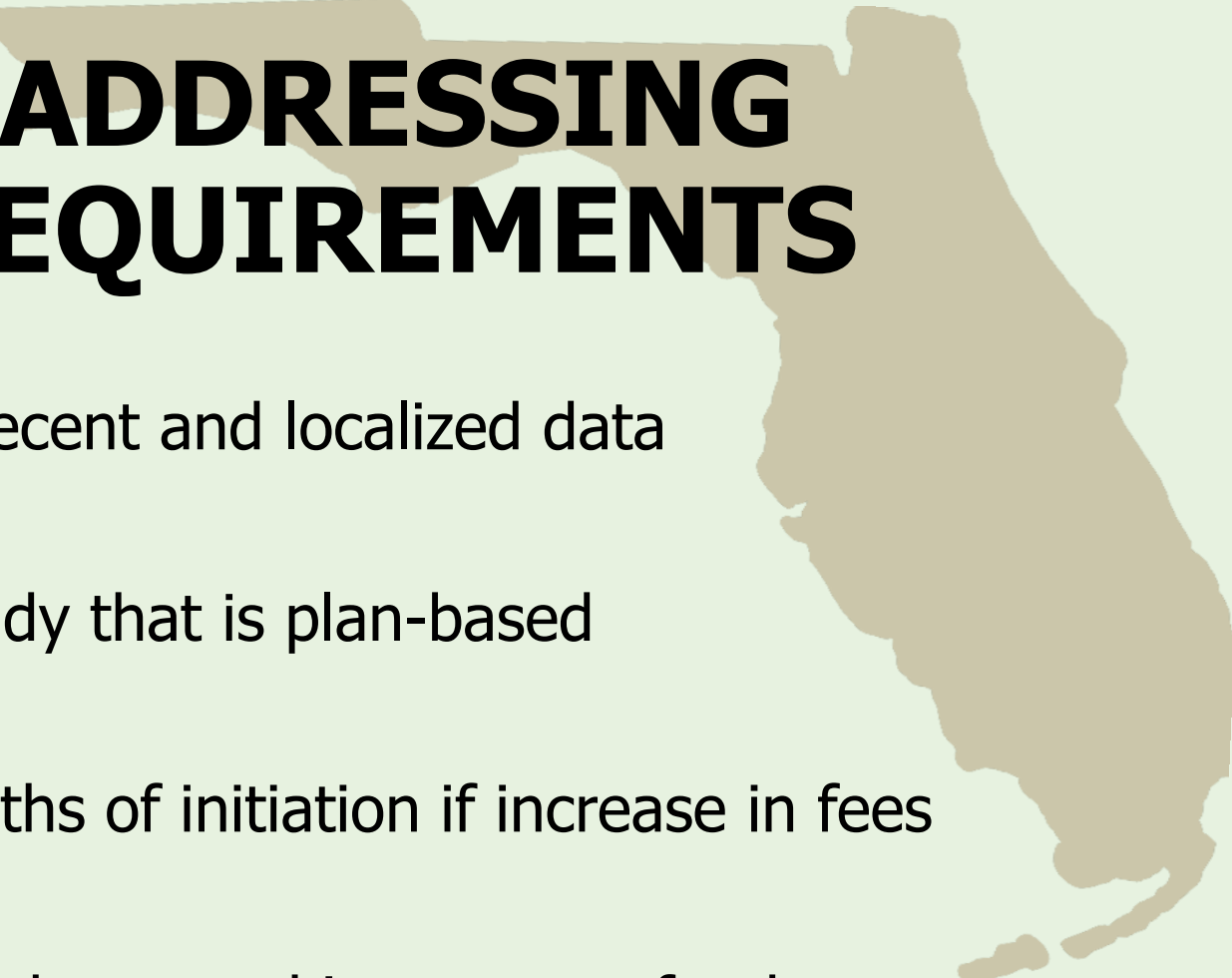
AMENDMENTS ADDRESSING TRADITIONAL LEGAL REQUIREMENTS



- **CREDITS**

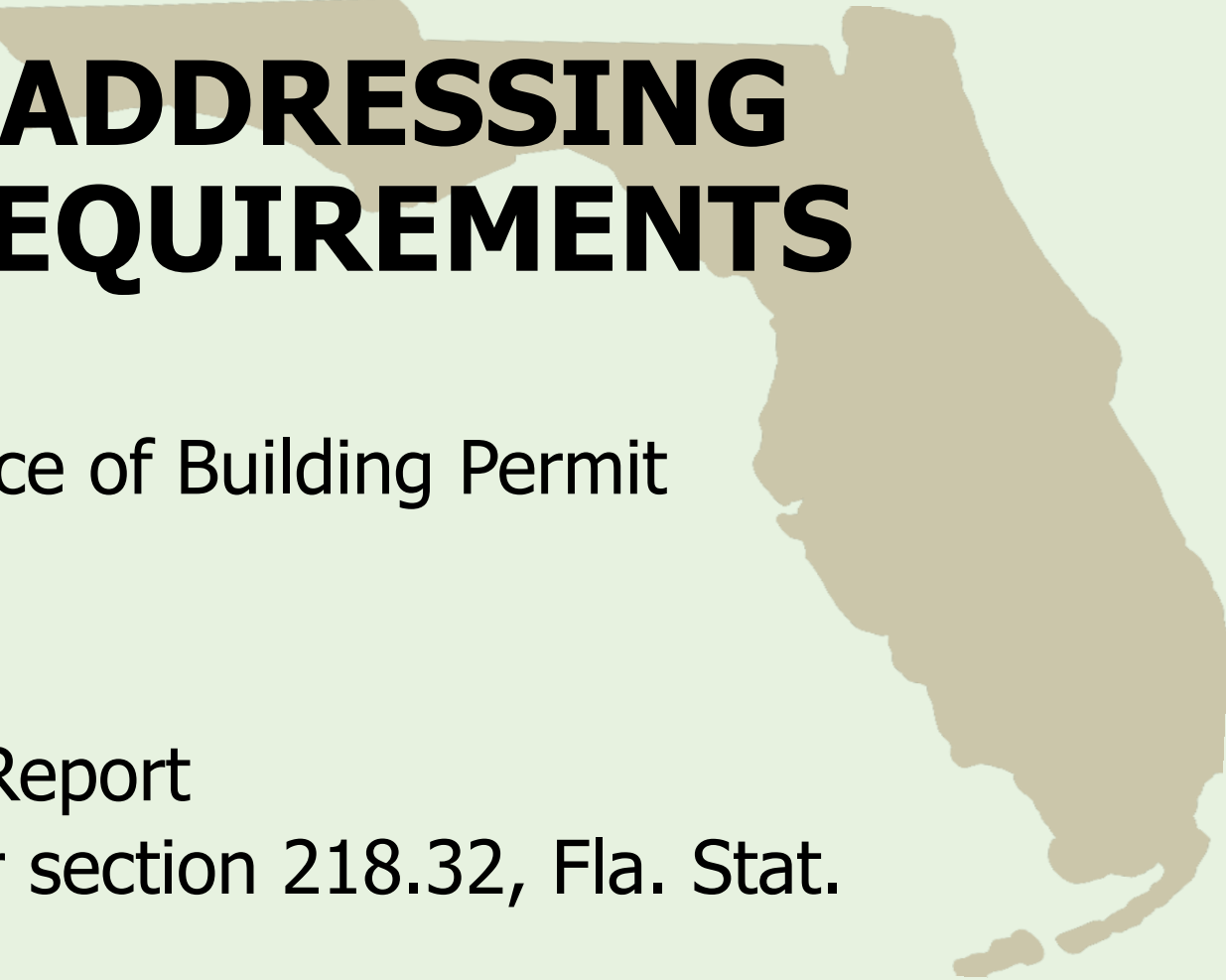
- Any contribution or improvement related to public facility must be given dollar-for-dollar credit
- Indexing of credit for increases in Fee
- Assignable and transferable within same district or adjacent district, where the improvement benefits area

AMENDMENTS ADDRESSING PROCEDURAL REQUIREMENTS



- Study must be based upon the most recent and localized data
- Study must be demonstrated-need study that is plan-based
- Study must be adopted within 12 months of initiation if increase in fees
- Impact Fees must be accounted for and reported in separate fund
- 90 days' notice prior to increasing Fee

AMENDMENTS ADDRESSING PROCEDURAL REQUIREMENTS



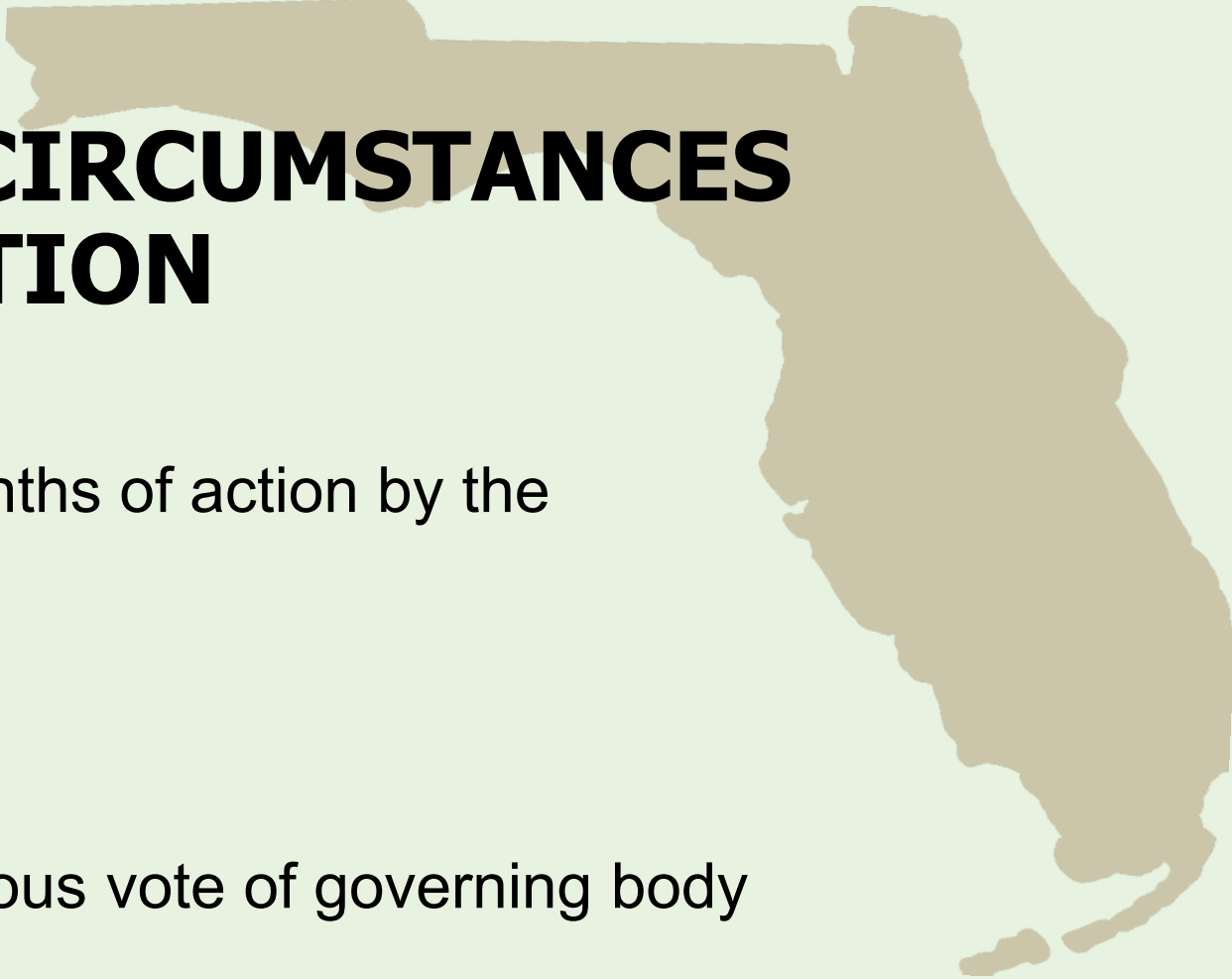
- Payable no earlier than at issuance of Building Permit
- Reporting
 - Affidavit from CFO in Annual Report
 - Annual Financial Report under section 218.32, Fla. Stat.

PROCEDURAL REQUIREMENTS -PHASING

Implementation of Impact Fee Increases

- **Up to 25% = two equal annual installments**
- **Up to 50% = four equal installments**
- Under the normal implementation requirements, may not increase Impact Fees more than 50 percent of the current rate
- Impact Fee may not be increased more than once every 4 years
- No retroactive increases

EXTRAORDINARY CIRCUMSTANCES EXCEPTION



- Needs-based study to justify –
 - Completed within the 12 months of action by the Governing Body
- At least two public workshops
- Ordinance approved by unanimous vote of governing body
- Cannot use extraordinary circumstances exception if Fee has not increased in the past 5 years

AMENDMENTS ADDRESSING USE RESTRICTIONS

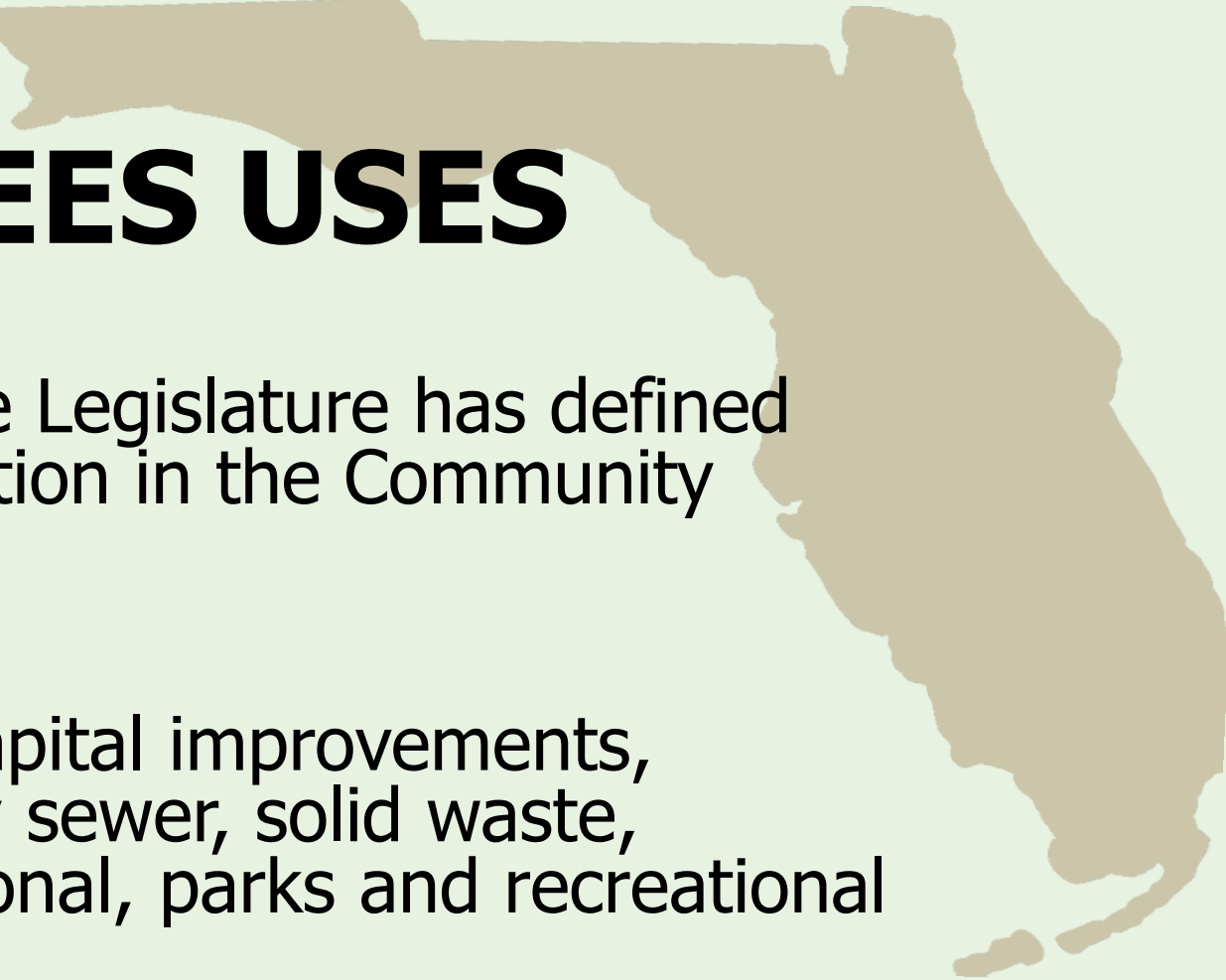
- Public Facilities/Infrastructure
- Administrative Expenses
- Debt

COMMON IMPACT FEES



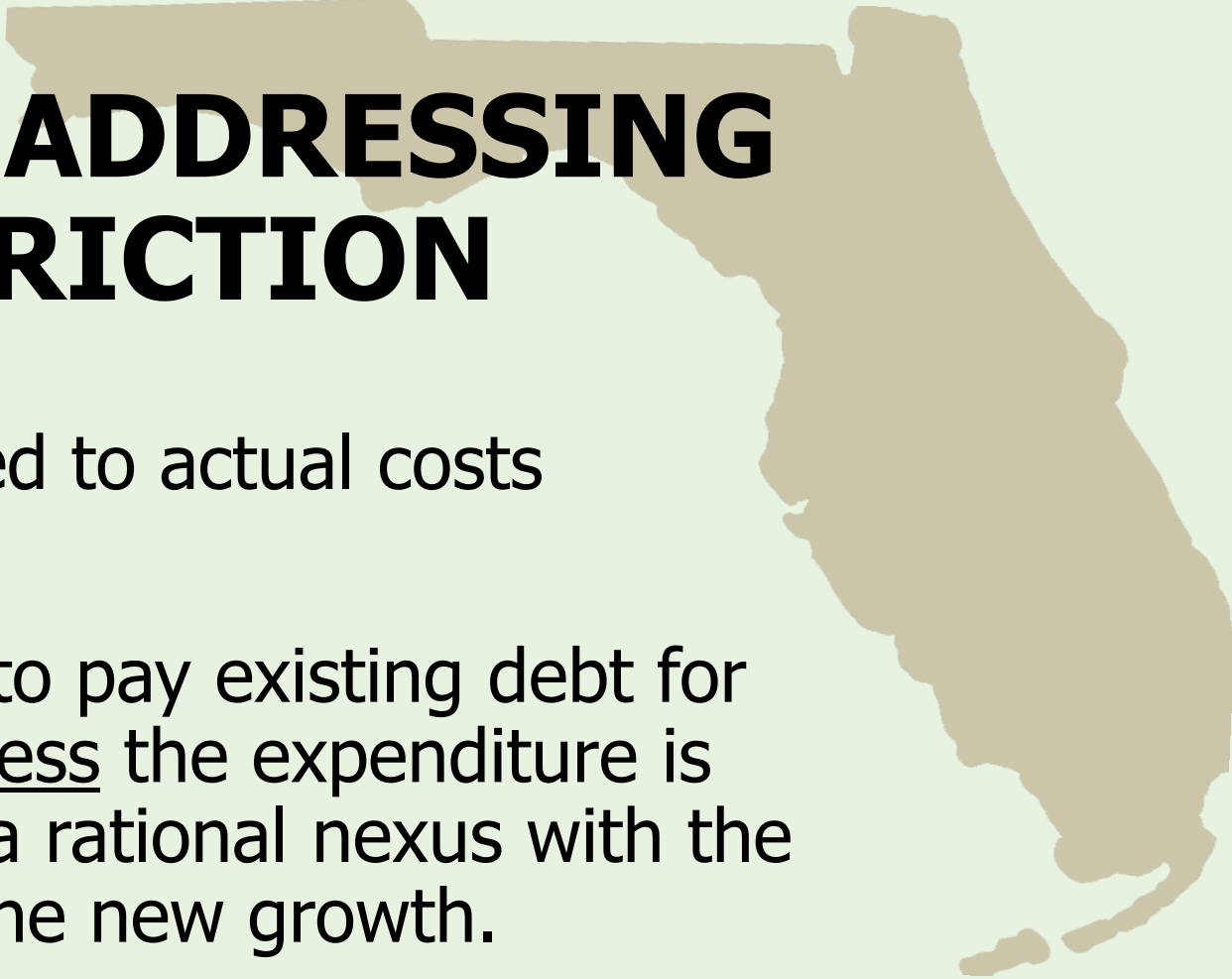
- Roads
- Parks Construction or Expansion
- Fire and EMS Facilities
- Water & Sewer Facility Expansion
- School Facilities
- Jails
- Law Enforcement
- Libraries
- Public Buildings

IMPACT FEES USES



- May be more limited because the Legislature has defined “Public Facilities” to match definition in the Community Planning Act
- “Public facilities” means major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities.
- Plus, EMS, fire, and law enforcement facilities

AMENDMENTS ADDRESSING USE RESTRICTION

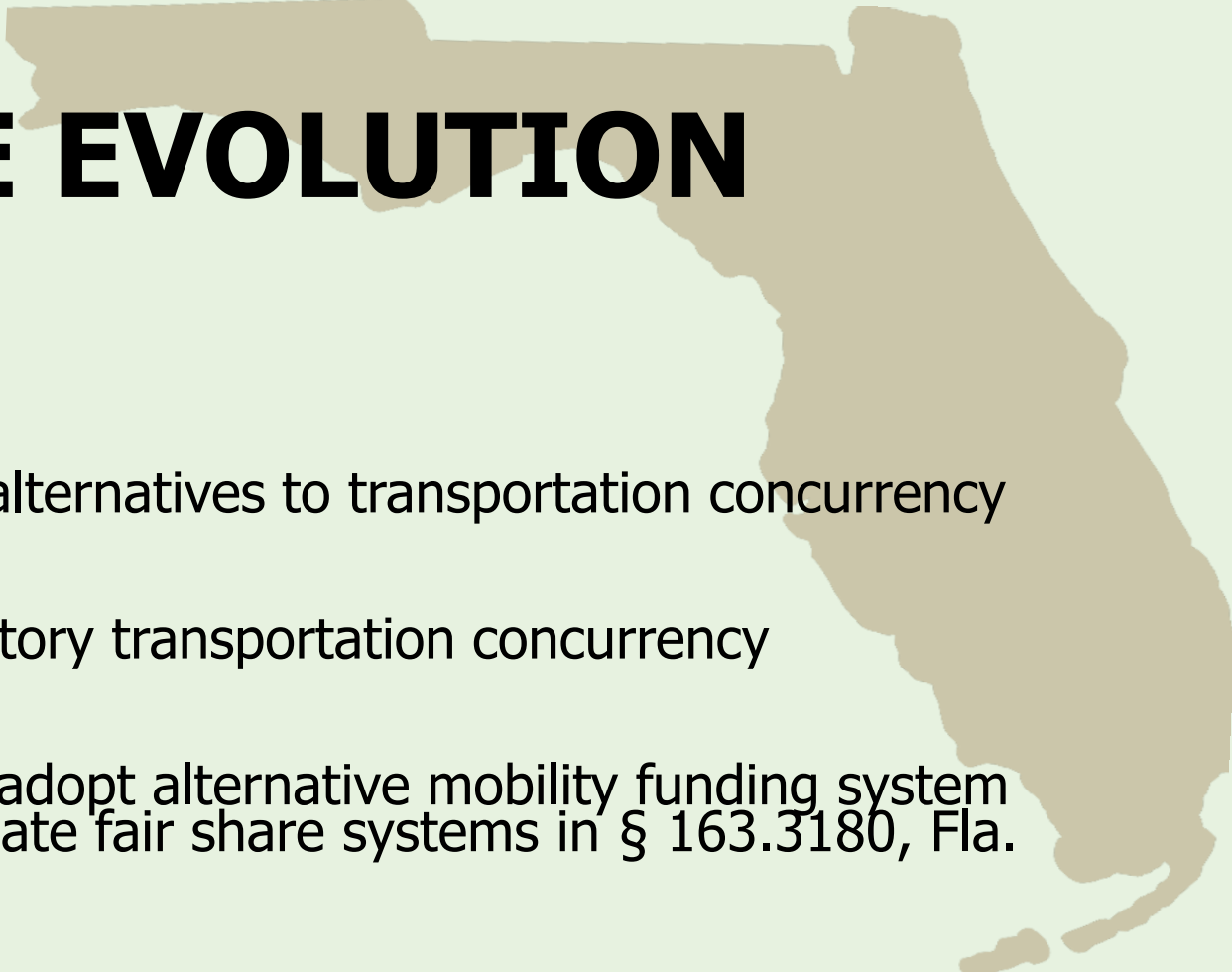


- Administrative Expenses – Limited to actual costs
- Debt – May not use Impact Fee to pay existing debt for previously approved projects unless the expenditure is reasonably connected to or has a rational nexus with the increased impact generated by the new growth.

AMENDMENTS ADDRESSING DEFENSE OF IMPACT FEES

- Burden of Proof
- No Deference

MOBILITY FEE EVOLUTION



1985 – Transportation concurrency begins

2009 – State convenes panel to investigate alternatives to transportation concurrency

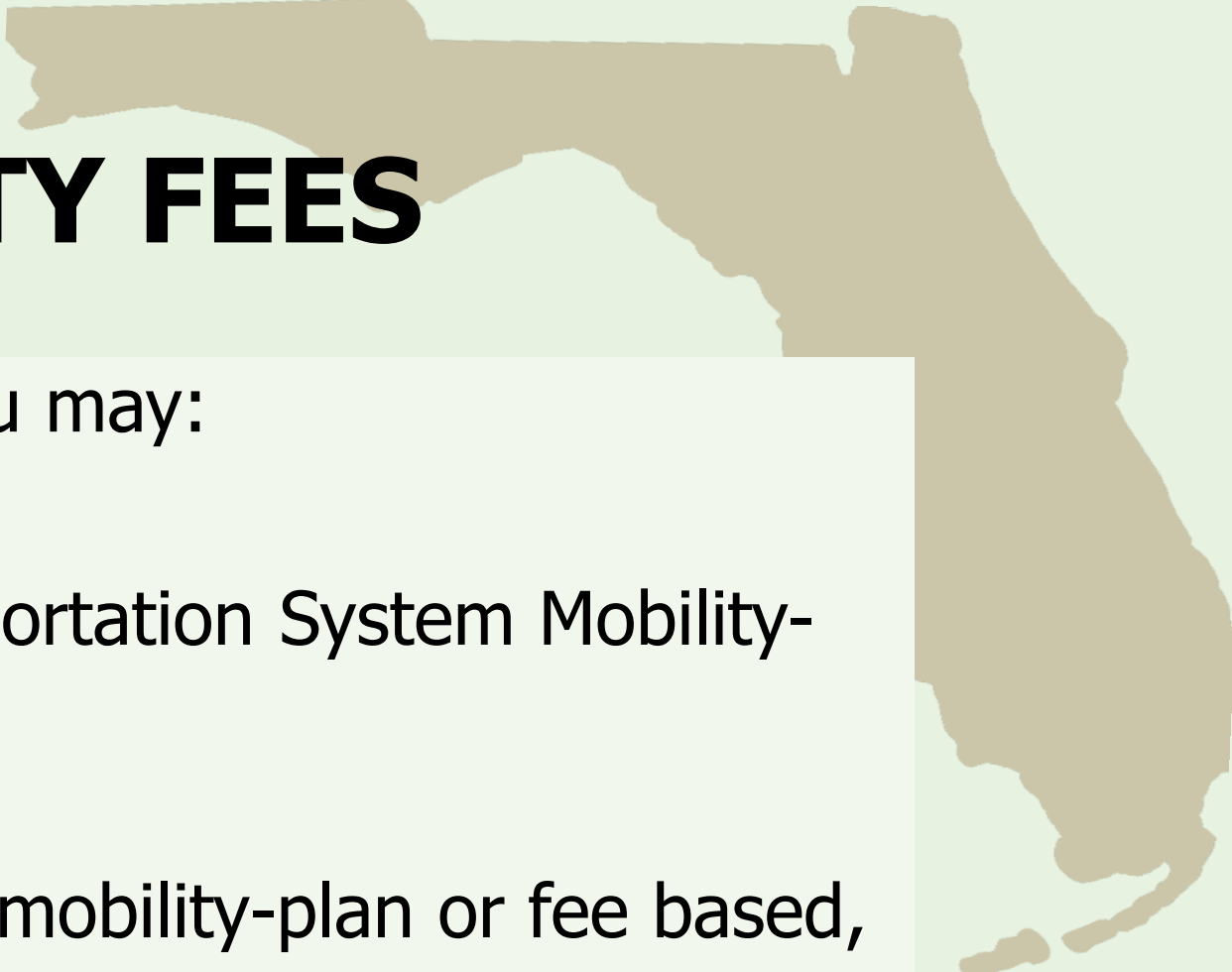
2011 – Florida Legislature eliminated mandatory transportation concurrency

2013 – Local Governments “encouraged” to adopt alternative mobility funding system as alternatives to concurrency and proportionate fair share systems in § 163.3180, Fla. Stat.

2019 – Mobility Fees are required to be consistent with § 163.31801, Fla. Stat., the Florida Impact Fee Act

2024 – Mobility Fees and Mobility Plan defined in state law

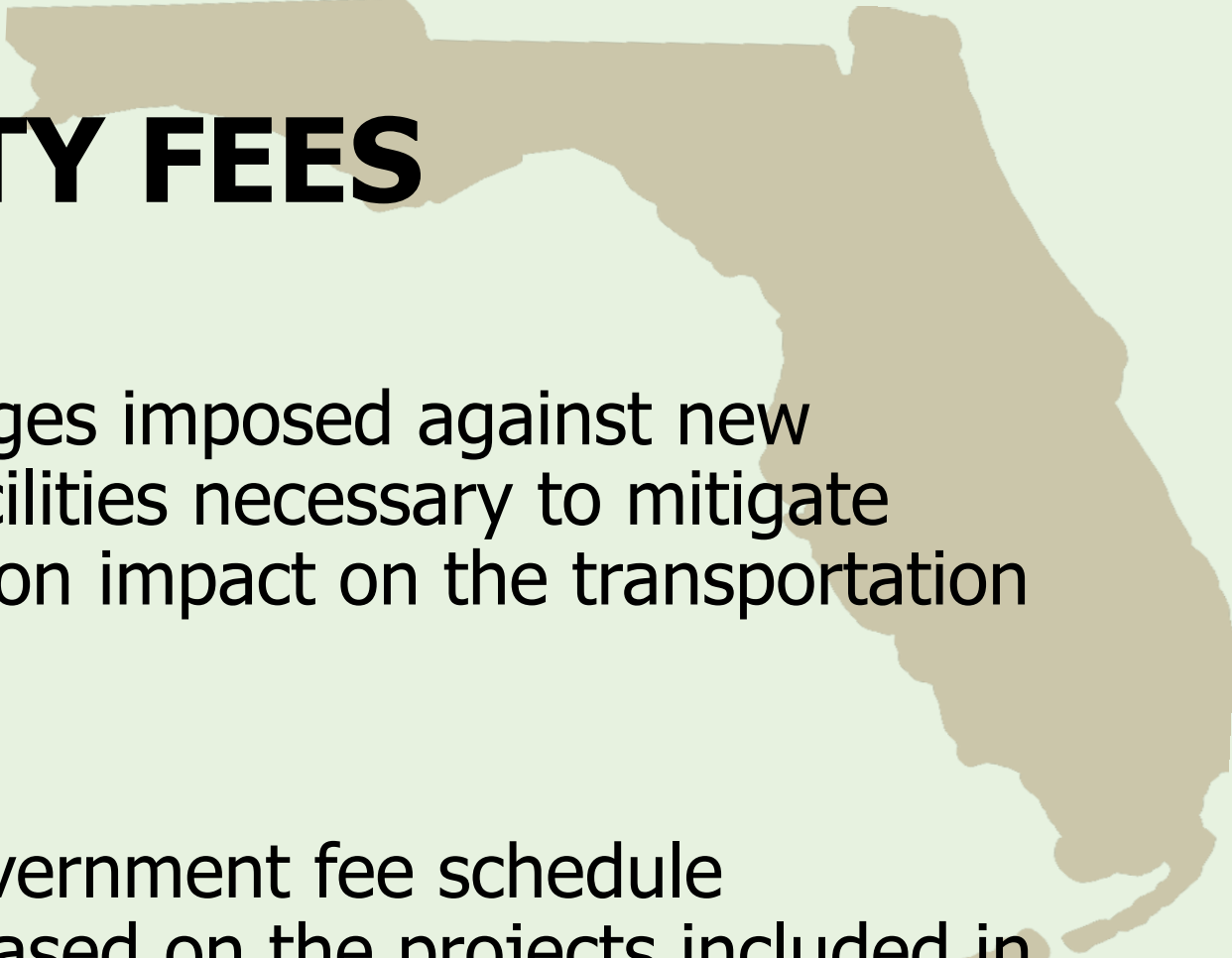
MOBILITY FEES



If you repeal concurrency, you may:

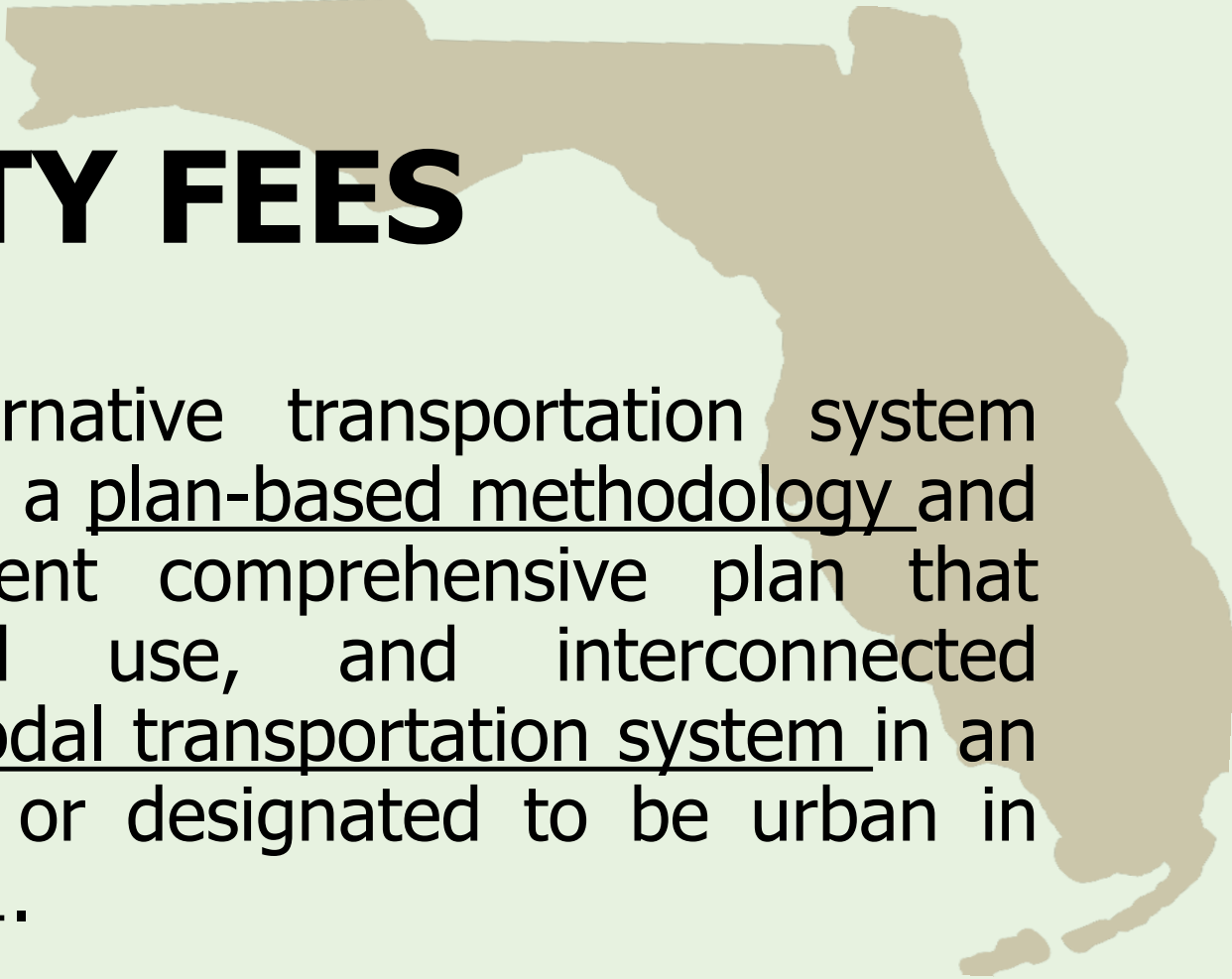
- Adopt an alternative Transportation System Mobility-plan and Fee based
- Or another plan that is not mobility-plan or fee based, including impact fee.

MOBILITY FEES



- Mobility fees are one-time charges imposed against new development to fund capital facilities necessary to mitigate that development's transportation impact on the transportation system.
- "Mobility fee" means a local government fee schedule established by ordinance and based on the projects included in the local government's adopted mobility plan.
 - § 163.3164(32), Fla. Stat.

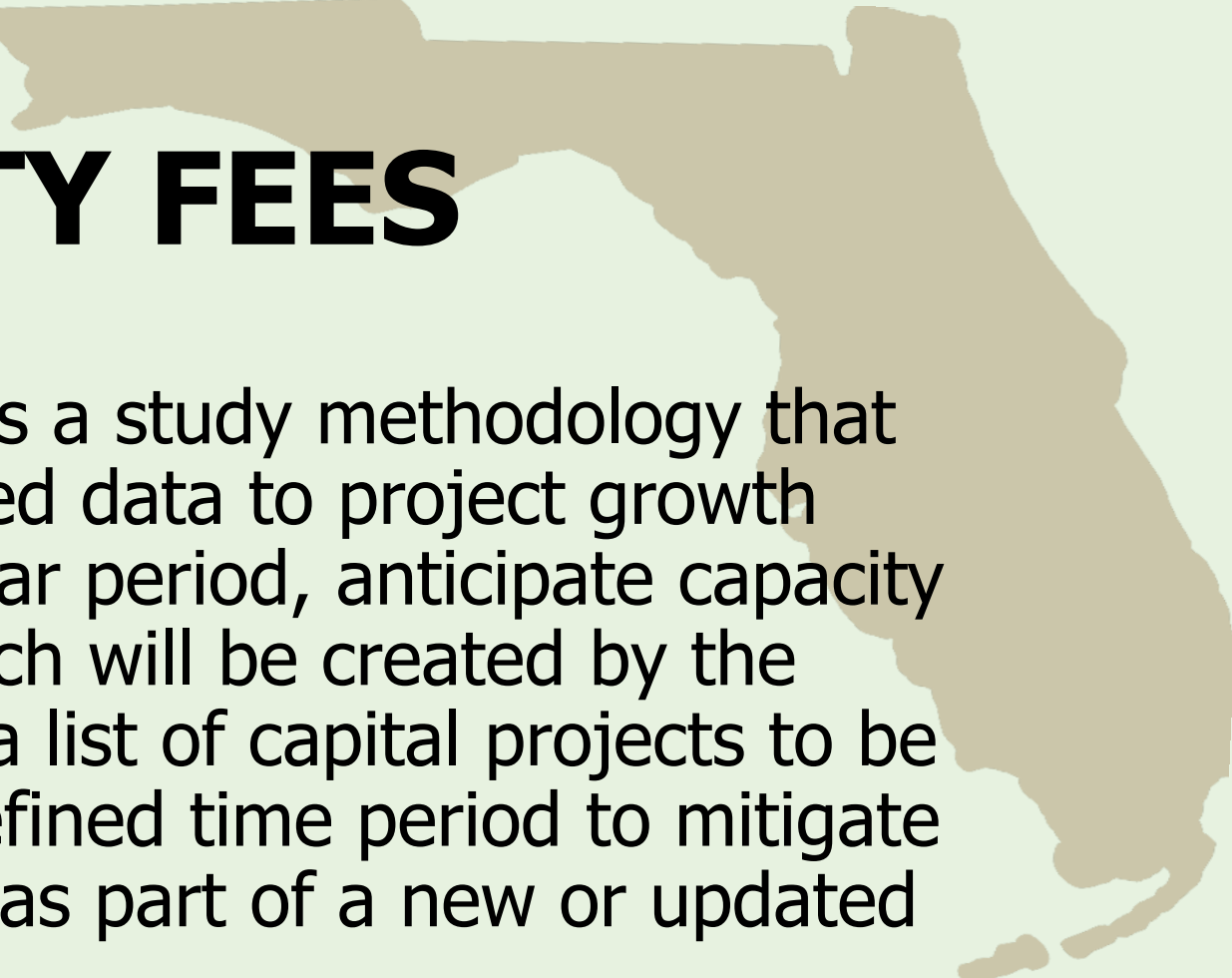
MOBILITY FEES



“Mobility plan” means an alternative transportation system mobility study developed by using a plan-based methodology and adopted into a local government comprehensive plan that promotes a compact, mixed use, and interconnected development served by a multimodal transportation system in an area that is urban in character, or designated to be urban in character, as defined in s. 171.031.

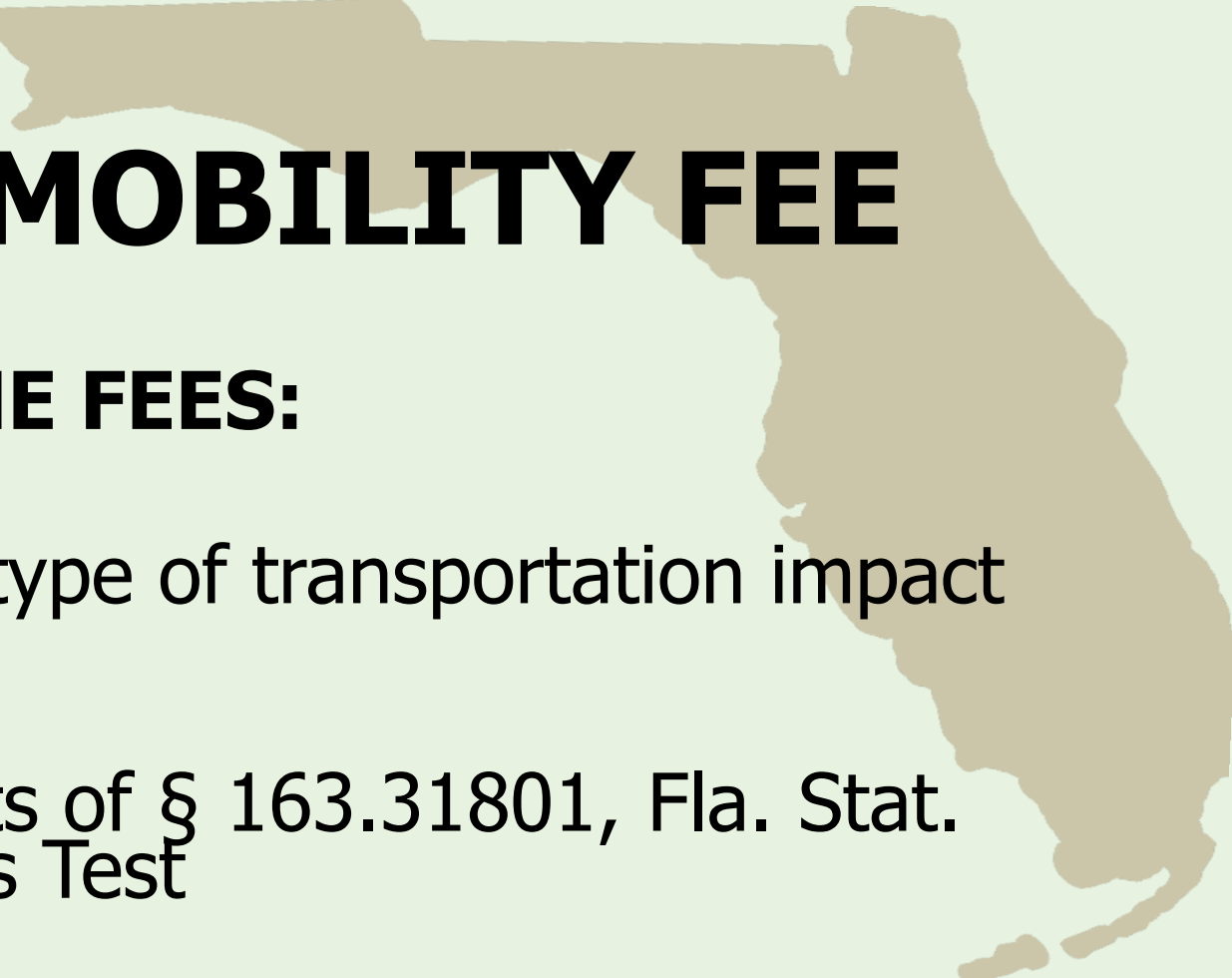
§ 163.3164(33), Fla. Stat. (emphasis added)

MOBILITY FEES



- “Plan-based methodology” means a study methodology that uses the most recent and localized data to project growth within a jurisdiction over a 10-year period, anticipate capacity impacts on relevant systems which will be created by the projected growth, and 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.
 - § 163.3164(42), Fla. Stat.

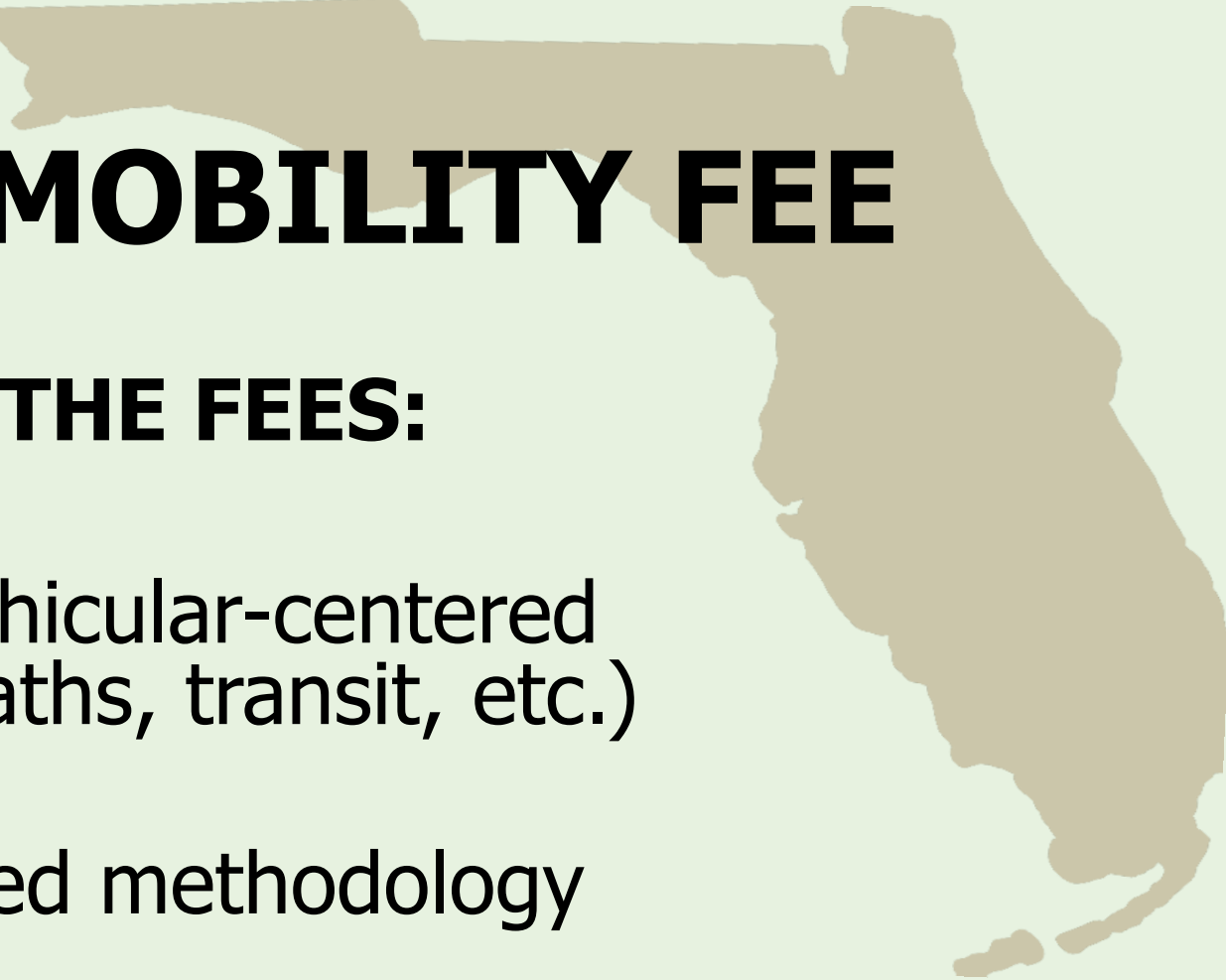
IMPACT FEE v. MOBILITY FEE



SIMILARITIES BETWEEN THE FEES:

- Mobility Fees are a specific type of transportation impact fee
- Both subject to requirements of § 163.31801, Fla. Stat. and the Dual Rational Nexus Test
- Both are required to use a plan-based methodology
- Credits

IMPACT FEE v. MOBILITY FEE



DISTINCTIONS BETWEEN THE FEES:

- Expanded uses beyond vehicular-centered infrastructure (*i.e.*, bike paths, transit, etc.)
- Specific improvement-based methodology
- Mobility Fees are intended to replace transportation concurrency and Proportionate Fair Share mitigation

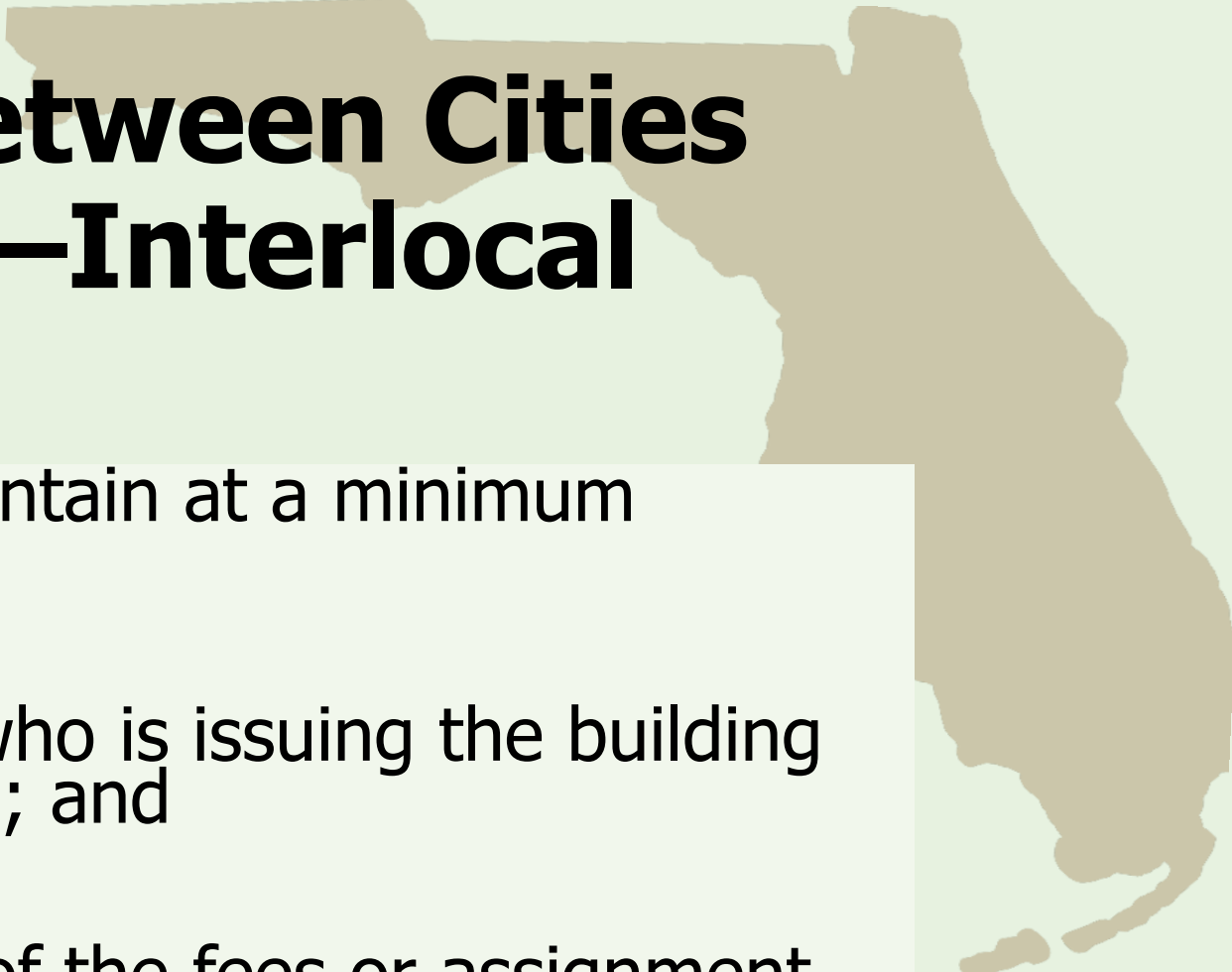
Coordination Between Cities and Counties –Interlocal



Interlocal Agreement must contain at a minimum:

- Assure that a development is not charged twice for the same improvement;
- Establish a plan based methodology for determining what is legally permissible fee;

Coordination Between Cities and Counties –Interlocal



Interlocal Agreement must contain at a minimum (cont.):

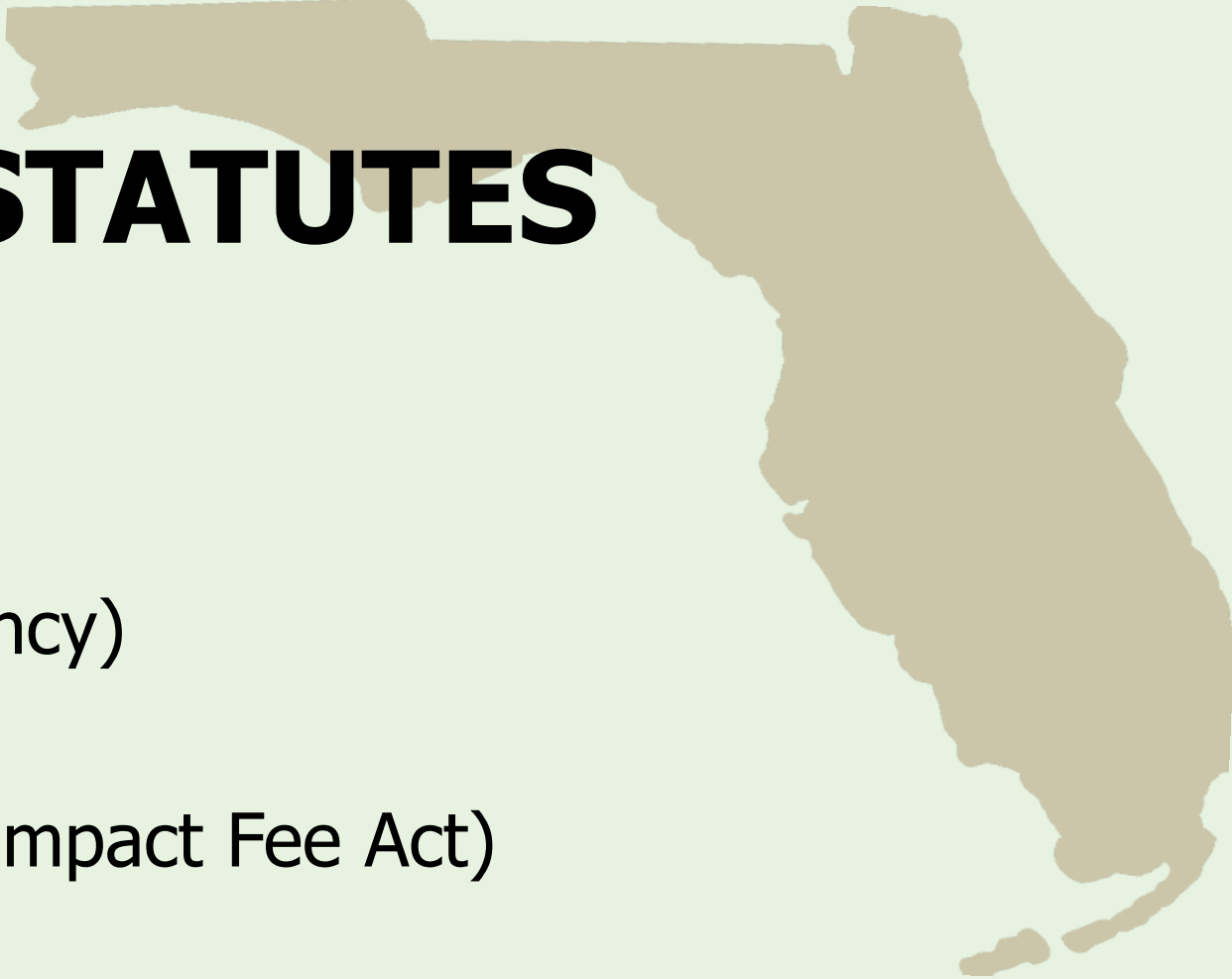
- The Governmental Entity who is issuing the building permit must collect the fee; and
- Proportionate distribution of the fees or assignment of responsibility for mitigating impact between the county and the cities

Coordination Between Cities and Counties –Interlocal

If no Interlocal Agreement is entered into by October 1, 2025, then:

- The fee shall be established based upon the transportation capacity as apportioned between the County and the City in the developer's impact or mobility fee study;
- Developer shall receive a 10% reduction in total fee; and
- Entity issuing the building permit must collect the fee and distribute to the appropriate entity within in 60 days of payment.

FLORIDA STATUTES

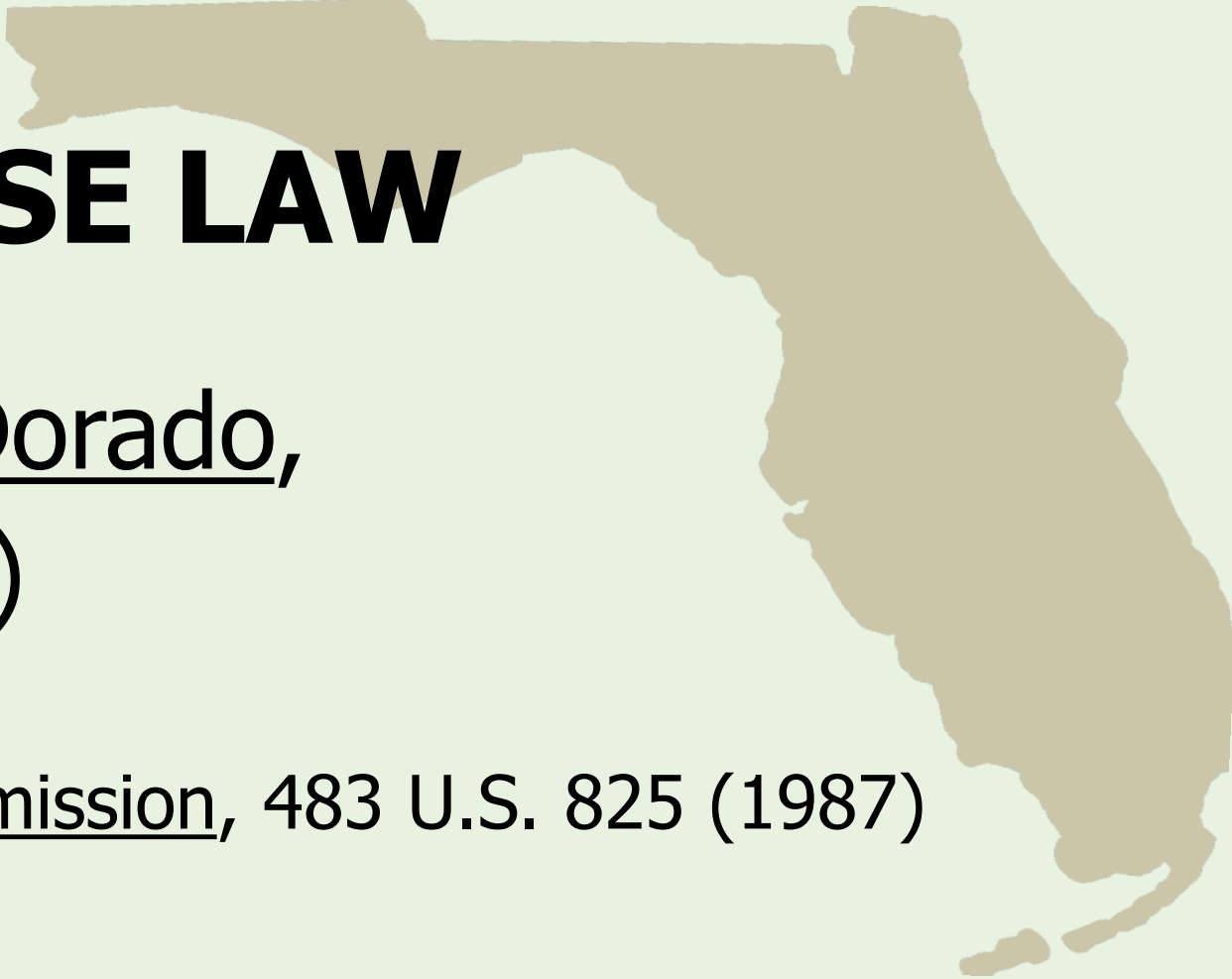


- § 163.3164, Fla. Stat.
- § 163.3180, Fla. Stat. (Concurrency)
- § 163.31801, Fla. Stat. (Florida Impact Fee Act)

SECTION 163.3180, F.S. (Concurrency)

- Proportionate Fair Share – § 163.3180(5)(h)(1)c., Fla. Stat.
- Alternative Mobility Plan – § 163.3180(5)(i), Fla. Stat.
- County/City Mobility Fees – § 163.3180(5)(j), Fla. Stat.

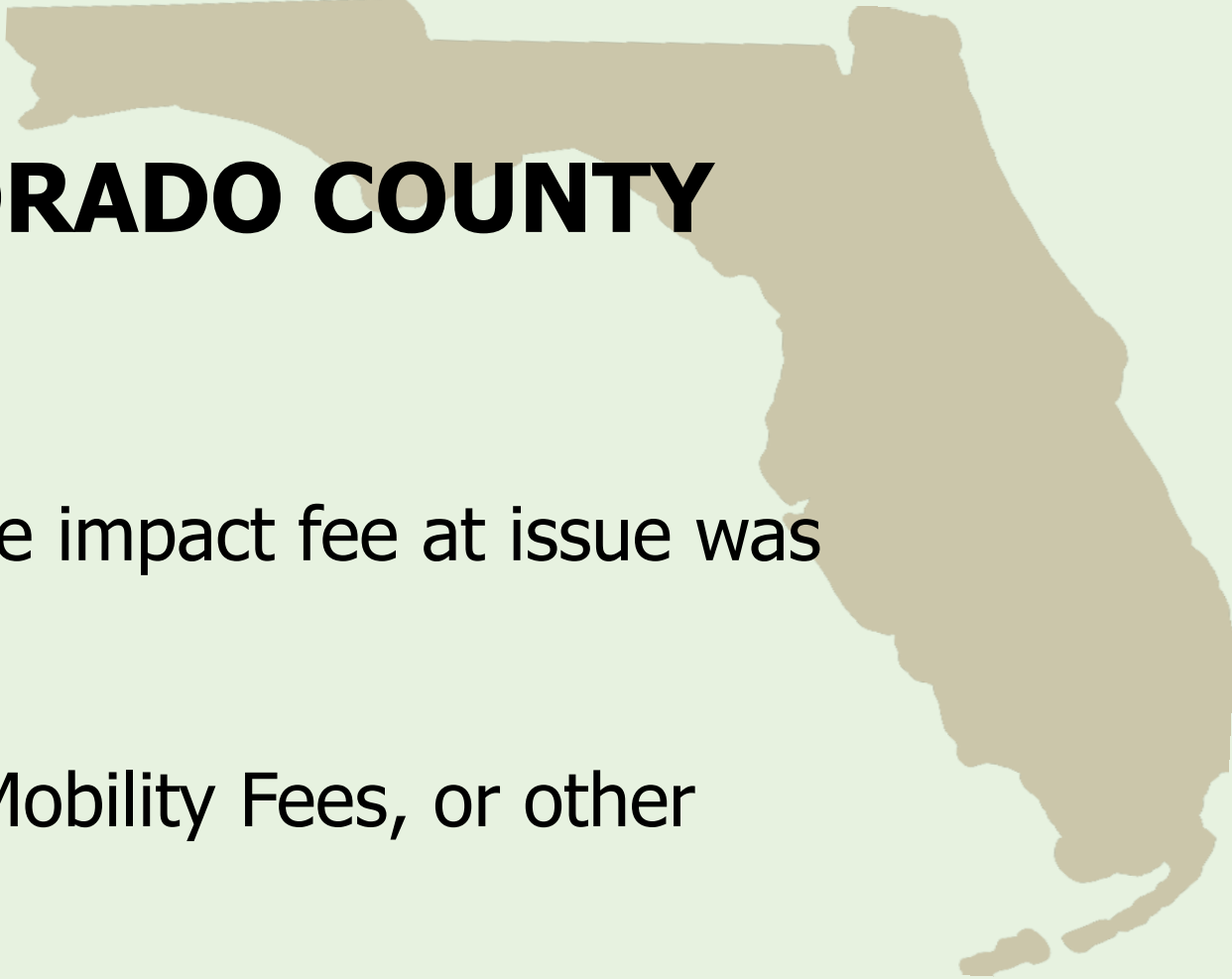
NEW CASE LAW



Sheetz v. County of El Dorado,
601 U.S. 267 (2024)

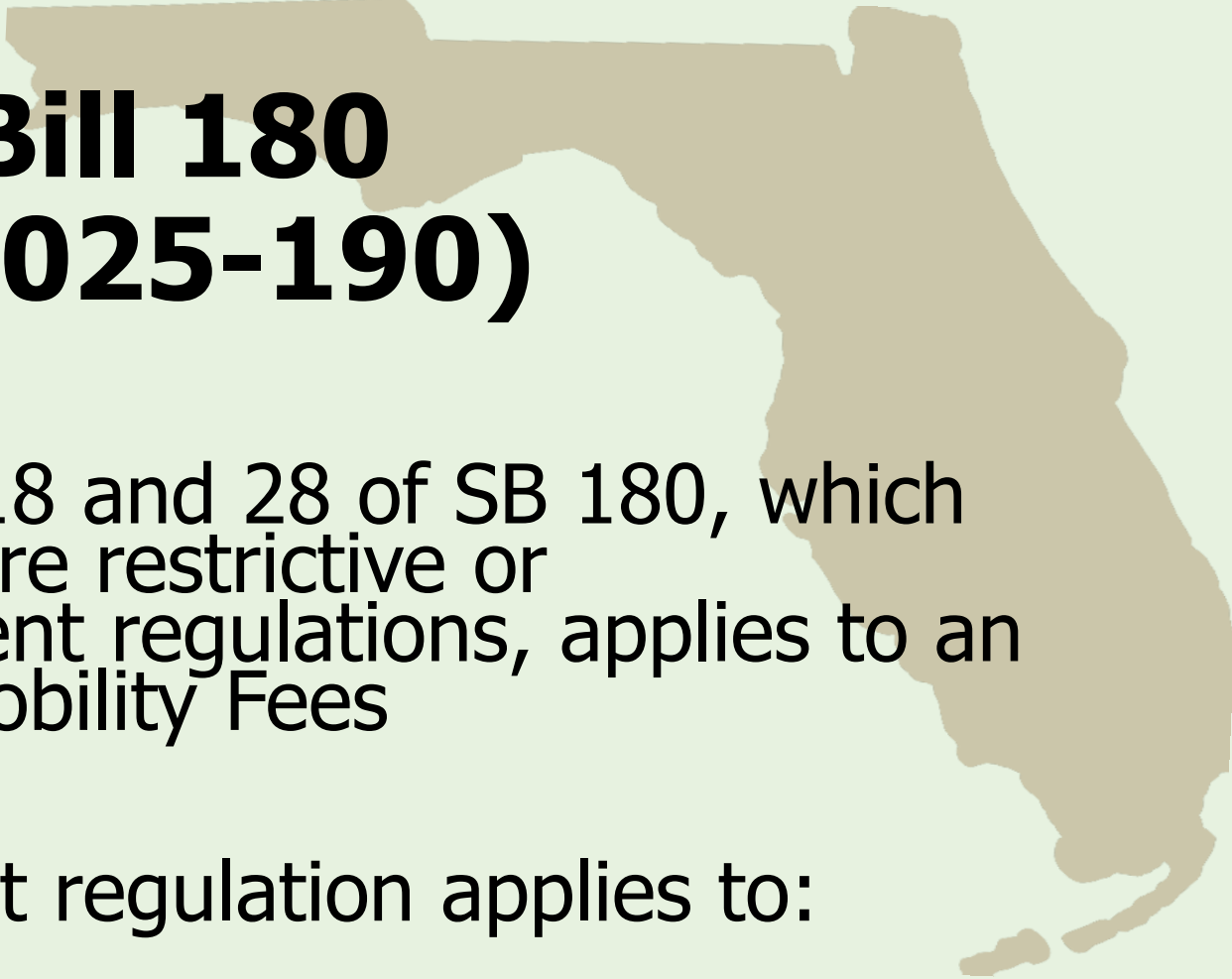
- Nollan v. California Coastal Commission, 483 U.S. 825 (1987)
- Dolan v. City of Tigard, 512 U.S. 374 (1994)

SHEETZ v. EL DORADO COUNTY



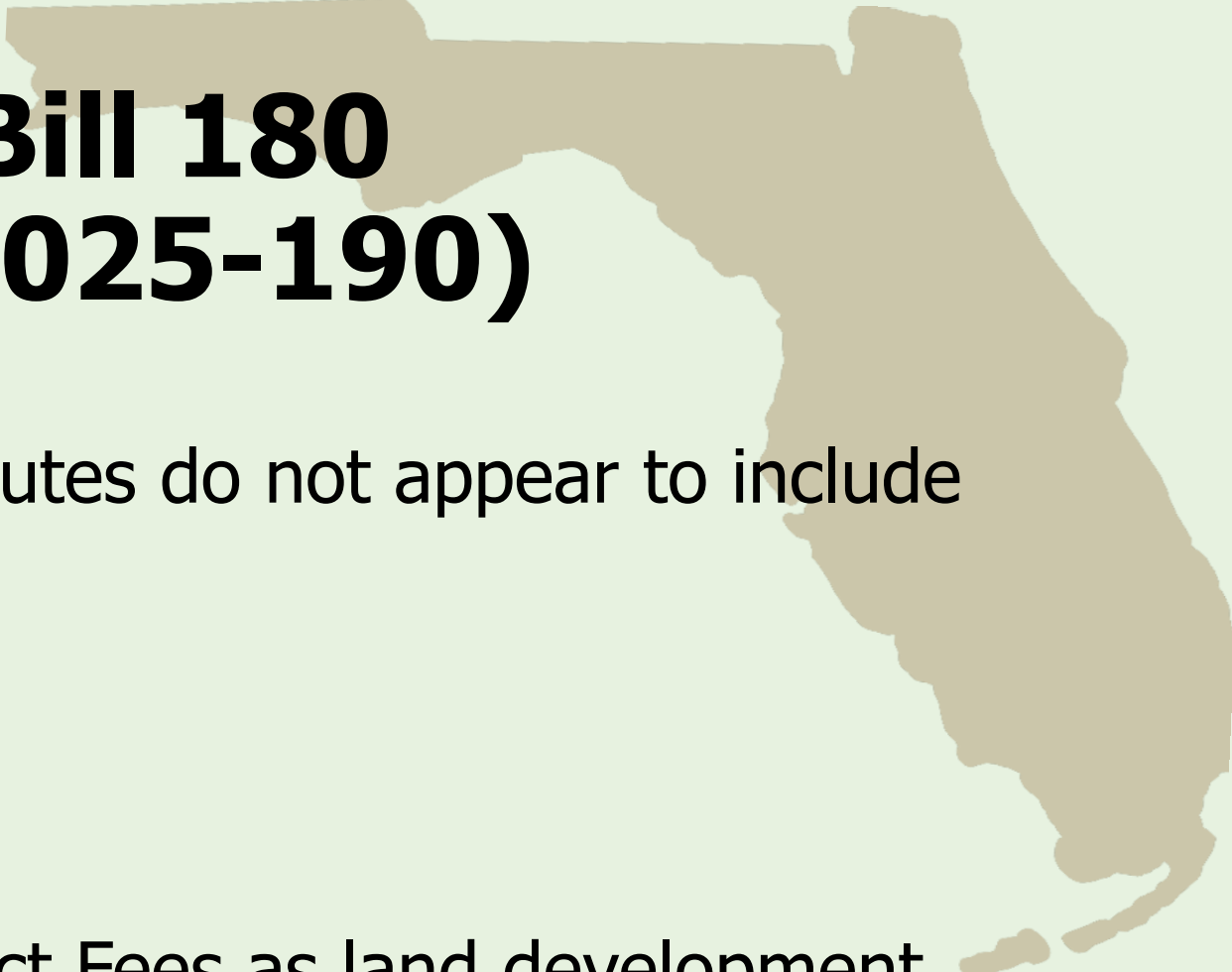
- Narrow Ruling
- Court did not rule on whether the impact fee at issue was a taking
- Does not prohibit Impact Fees, Mobility Fees, or other reasonable permitting conditions
- Impact Fees and Mobility Fees will need to comply with Nollan and Dolan

Senate Bill 180 (Chapter 2025-190)



- Issue as to whether sections 18 and 28 of SB 180, which prohibits the adoption of “more restrictive or burdensome” land development regulations, applies to an increase of Impact Fees or Mobility Fees
- Generally, a land development regulation applies to:
 - what may be developed,
 - where it may be developed, and
 - the specific limits as to how it may be developed.

Senate Bill 180 (Chapter 2025-190)



- Various definitions in Florida statutes do not appear to include Impact Fees:
 - § 163.3202(2), Fla. Stat.
 - § 163.3164(26), Fla. Stat.
 - § 163.3213, Fla. Stat.
 - § 380.031, Fla. Stat.
- Case law does not support Impact Fees as land development regulations
 - Baywood Constr. Inc v. Cape Coral, 507 So. 2d 768 (Fla. 2d DCA 1987)

Senate Bill 180 (Chapter 2025-190)

- **Flagler County**

- Palm Coast Homebuilders Ass'n v. City of Palm Coast,
 - Case Number 2025-CA-000621 (7th Jud. Cir., Flagler Cnty.)

- **Orange County**

- Lake Picket North, LLC v. Orange County, Florida,
 - Case Number 2025-CA-007327 (9th Jud. Cir., Orange Cnty.)

- **Manatee County**

- Freedom Housing Alliance, Inc. v. Manatee County,
 - Case Number 2025-CA-1549 (12th Jud. Cir., Manatee Cnty.)



Questions?