



191038

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2019	.	
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The Committee on Community Affairs (Lee) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 125.01055, Florida Statutes, is amended  
to read:

125.01055 Affordable housing.—

(1) Notwithstanding any other provision of law, a county  
may adopt and maintain in effect any law, ordinance, rule, or  
other measure that is adopted for the purpose of increasing the



11 supply of affordable housing using land use mechanisms such as  
12 inclusionary housing ordinances. A county may not, however,  
13 adopt or impose a requirement in any form, including, without  
14 limitation, by way of a comprehensive plan amendment, ordinance,  
15 or land development regulation or as a condition of a  
16 development order or development permit, which has any of the  
17 following effects:

18 (a) Mandating or establishing a maximum sales price or  
19 lease rental for privately produced dwelling units.

20 (b) Requiring the allocation or designation, whether  
21 directly or indirectly, of privately produced dwelling units for  
22 sale or rental to any particular class or group of purchasers or  
23 tenants.

24 (c) Requiring the provision of any onsite or offsite  
25 workforce or affordable housing units or a contribution of land  
26 or money for such housing, including, but not limited to, the  
27 payment of any flat or percentage-based fee, whether calculated  
28 on the basis of the number of approved dwelling units, the  
29 amount of approved square footage, or otherwise.

30 (2) This section does not limit the authority of a county  
31 to create or implement a voluntary density bonus program or any  
32 other voluntary incentive-based program designed to increase the  
33 supply of workforce or affordable housing units.

34 Section 2. Section 125.022, Florida Statutes, is amended to  
35 read:

36 125.022 Development permits and orders.—

37 (1) Within 30 days after receiving an application for a  
38 development permit or development order, a county must review  
39 the application for completeness and issue a letter indicating



40 that all required information is submitted or specifying with  
41 particularity any areas that are deficient. If deficient, the  
42 applicant has 30 days to address the deficiencies by submitting  
43 the required additional information. Within 90 days after the  
44 initial submission, if complete, or the supplemental submission,  
45 whichever is later, the county shall approve, approve with  
46 conditions, or deny the application for a development permit or  
47 development order. The time periods contained in this section  
48 may be waived in writing by the applicant. An approval, approval  
49 with conditions, or denial of the application for a development  
50 permit or development order must include written findings  
51 supporting the county's decision.

52 (2)~~(1)~~ When reviewing an application for a development  
53 permit or development order that is certified by a professional  
54 listed in s. 403.0877, a county may not request additional  
55 information from the applicant more than three times, unless the  
56 applicant waives the limitation in writing. Before a third  
57 request for additional information, the applicant must be  
58 offered a meeting to attempt to resolve outstanding issues.  
59 Except as provided in subsection (5)~~(4)~~, if the applicant  
60 believes the request for additional information is not  
61 authorized by ordinance, rule, statute, or other legal  
62 authority, the county, at the applicant's request, shall proceed  
63 to process the application for approval or denial.

64 (3)~~(2)~~ When a county denies an application for a  
65 development permit or development order, the county shall give  
66 written notice to the applicant. The notice must include a  
67 citation to the applicable portions of an ordinance, rule,  
68 statute, or other legal authority for the denial of the permit



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69 or order.

70 (4)~~(3)~~ As used in this section, the terms ~~term~~ "development  
71 permit" and "development order" have ~~has~~ the same meaning as in  
72 s. 163.3164, but do ~~does~~ not include building permits.

73 (5)~~(4)~~ For any development permit application filed with  
74 the county after July 1, 2012, a county may not require as a  
75 condition of processing or issuing a development permit or  
76 development order that an applicant obtain a permit or approval  
77 from any state or federal agency unless the agency has issued a  
78 final agency action that denies the federal or state permit  
79 before the county action on the local development permit.

80 (6)~~(5)~~ Issuance of a development permit or development  
81 order by a county does not in any way create any rights on the  
82 part of the applicant to obtain a permit from a state or federal  
83 agency and does not create any liability on the part of the  
84 county for issuance of the permit if the applicant fails to  
85 obtain requisite approvals or fulfill the obligations imposed by  
86 a state or federal agency or undertakes actions that result in a  
87 violation of state or federal law. A county shall attach such a  
88 disclaimer to the issuance of a development permit and shall  
89 include a permit condition that all other applicable state or  
90 federal permits be obtained before commencement of the  
91 development.

92 (7)~~(6)~~ This section does not prohibit a county from  
93 providing information to an applicant regarding what other state  
94 or federal permits may apply.

95 Section 3. Paragraph (h) of subsection (6) of section  
96 163.3180, Florida Statutes, is amended to read:

97 163.3180 Concurrency.—



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98 (6)

99 (h)1. In order to limit the liability of local governments,  
100 a local government may allow a landowner to proceed with  
101 development of a specific parcel of land notwithstanding a  
102 failure of the development to satisfy school concurrency, if all  
103 the following factors are shown to exist:

104 a. The proposed development would be consistent with the  
105 future land use designation for the specific property and with  
106 pertinent portions of the adopted local plan, as determined by  
107 the local government.

108 b. The local government's capital improvements element and  
109 the school board's educational facilities plan provide for  
110 school facilities adequate to serve the proposed development,  
111 and the local government or school board has not implemented  
112 that element or the project includes a plan that demonstrates  
113 that the capital facilities needed as a result of the project  
114 can be reasonably provided.

115 c. The local government and school board have provided a  
116 means by which the landowner will be assessed a proportionate  
117 share of the cost of providing the school facilities necessary  
118 to serve the proposed development.

119 2. If a local government applies school concurrency, it may  
120 not deny an application for site plan, final subdivision  
121 approval, or the functional equivalent for a development or  
122 phase of a development authorizing residential development for  
123 failure to achieve and maintain the level-of-service standard  
124 for public school capacity in a local school concurrency  
125 management system where adequate school facilities will be in  
126 place or under actual construction within 3 years after the



127 issuance of final subdivision or site plan approval, or the  
128 functional equivalent. School concurrency is satisfied if the  
129 developer executes a legally binding commitment to provide  
130 mitigation proportionate to the demand for public school  
131 facilities to be created by actual development of the property,  
132 including, but not limited to, the options described in sub-  
133 subparagraph a. Options for proportionate-share mitigation of  
134 impacts on public school facilities must be established in the  
135 comprehensive plan and the interlocal agreement pursuant to s.  
136 163.31777.

137       a. Appropriate mitigation options include the contribution  
138 of land; the construction, expansion, or payment for land  
139 acquisition or construction of a public school facility; the  
140 construction of a charter school that complies with the  
141 requirements of s. 1002.33(18); or the creation of mitigation  
142 banking based on the construction of a public school facility in  
143 exchange for the right to sell capacity credits. Such options  
144 must include execution by the applicant and the local government  
145 of a development agreement that constitutes a legally binding  
146 commitment to pay proportionate-share mitigation for the  
147 additional residential units approved by the local government in  
148 a development order and actually developed on the property,  
149 taking into account residential density allowed on the property  
150 prior to the plan amendment that increased the overall  
151 residential density. The district school board must be a party  
152 to such an agreement. As a condition of its entry into such a  
153 development agreement, the local government may require the  
154 landowner to agree to continuing renewal of the agreement upon  
155 its expiration.



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156           b. If the interlocal agreement and the local government  
157 comprehensive plan authorize a contribution of land; the  
158 construction, expansion, or payment for land acquisition; the  
159 construction or expansion of a public school facility, or a  
160 portion thereof; or the construction of a charter school that  
161 complies with the requirements of s. 1002.33(18), as  
162 proportionate-share mitigation, the local government shall  
163 credit such a contribution, construction, expansion, or payment  
164 toward any other impact fee or exaction imposed by local  
165 ordinance for public educational facilities ~~the same need~~, on a  
166 dollar-for-dollar basis at fair market value. The credit must be  
167 based on the total impact fee assessed and not upon the impact  
168 fee for any particular type of school.

169           c. Any proportionate-share mitigation must be directed by  
170 the school board toward a school capacity improvement identified  
171 in the 5-year school board educational facilities plan that  
172 satisfies the demands created by the development in accordance  
173 with a binding developer's agreement.

174           3. This paragraph does not limit the authority of a local  
175 government to deny a development permit or its functional  
176 equivalent pursuant to its home rule regulatory powers, except  
177 as provided in this part.

178           Section 4. Section 163.31801, Florida Statutes, is amended  
179 to read:

180           163.31801 Impact fees; short title; intent; minimum  
181 requirements; audits; challenges ~~definitions; ordinances levying~~  
182 ~~impact fees.~~

183           (1) This section may be cited as the "Florida Impact Fee  
184 Act."



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185 (2) The Legislature finds that impact fees are an important  
186 source of revenue for a local government to use in funding the  
187 infrastructure necessitated by new growth. The Legislature  
188 further finds that impact fees are an outgrowth of the home rule  
189 power of a local government to provide certain services within  
190 its jurisdiction. Due to the growth of impact fee collections  
191 and local governments' reliance on impact fees, it is the intent  
192 of the Legislature to ensure that, when a county or municipality  
193 adopts an impact fee by ordinance or a special district adopts  
194 an impact fee by resolution, the governing authority complies  
195 with this section.

196 (3) At a minimum, an impact fee adopted by ordinance of a  
197 county or municipality or by resolution of a special district  
198 must satisfy all of the following conditions, ~~at minimum~~:

199 (a) ~~Require that~~ The calculation of the impact fee must be  
200 based on the most recent and localized data.

201 (b) The local government must provide for accounting and  
202 reporting of impact fee collections and expenditures. If a local  
203 governmental entity imposes an impact fee to address its  
204 infrastructure needs, the entity must ~~shall~~ account for the  
205 revenues and expenditures of such impact fee in a separate  
206 accounting fund.

207 (c) ~~Limit~~ Administrative charges for the collection of  
208 impact fees must be limited to actual costs.

209 (d) The local government must provide ~~Require that~~ notice  
210 not be provided ~~no~~ less than 90 days before the effective date  
211 of an ordinance or resolution imposing a new or increased impact  
212 fee. A county or municipality is not required to wait 90 days to  
213 decrease, suspend, or eliminate an impact fee.





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214       (e) Collection of the impact fee may not be required to  
215 occur earlier than the date of issuance of the building permit  
216 for the property that is subject to the fee.

217       (f) The impact fee must be proportional and reasonably  
218 connected to, or have a rational nexus with, the need for  
219 additional capital facilities and the increased impact generated  
220 by the new residential or commercial construction.

221       (g) The impact fee must be proportional and reasonably  
222 connected to, or have a rational nexus with, the expenditures of  
223 the funds collected and the benefits accruing to the new  
224 residential or nonresidential construction.

225       (h) The local government must specifically earmark funds  
226 collected under the impact fee for use in acquiring,  
227 constructing, or improving capital facilities to benefit new  
228 users.

229       (i) Revenues generated by the impact fee may not be used,  
230 in whole or in part, to pay existing debt or for previously  
231 approved projects unless the expenditure is reasonably connected  
232 to, or has a rational nexus with, the increased impact generated  
233 by the new residential or nonresidential construction.

234       (j) The local government must credit against the collection  
235 of the impact fee any contributions related to public  
236 educational facilities, including, but not limited to, land  
237 dedication, site planning and design, and construction, whether  
238 provided in a proportionate share agreement or any other form of  
239 exaction. Any such contributions must be applied to reduce  
240 impact fees on a dollar-for-dollar basis at fair market value.

241       (4) If the holder of impact fee or mobility fee credits  
242 granted by a local government, whether granted under this



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243 section, s. 380.06, or otherwise, uses such credits in lieu of  
244 the actual payment of an impact fee or mobility fee and the  
245 impact fee or mobility fee is greater than the rate that was in  
246 effect when such credits were first established, the holder of  
247 those credits must, whenever they are utilized, receive the full  
248 value of the credits as of the date on which they were first  
249 established based on the impact fee or mobility fee rate that  
250 was in effect on such date.

251 (5)~~(4)~~ Audits of financial statements of local governmental  
252 entities and district school boards which are performed by a  
253 certified public accountant pursuant to s. 218.39 and submitted  
254 to the Auditor General must include an affidavit signed by the  
255 chief financial officer of the local governmental entity or  
256 district school board stating that the local governmental entity  
257 or district school board has complied with this section.

258 (6)~~(5)~~ In any action challenging an impact fee or the  
259 government's failure to provide required dollar-for-dollar  
260 credits for the payment of impact fees as provided in s.  
261 163.3180(6)(h)2.b, the government has the burden of proving by a  
262 preponderance of the evidence that the imposition or amount of  
263 the fee or credit meets the requirements of state legal  
264 precedent ~~or~~ and this section. The court may not use a  
265 deferential standard for the benefit of the government.

266 (7) This section applies to mobility fees adopted pursuant  
267 to s. 163.3180(5)(i).

268 (8) A county, municipality, or special district may provide  
269 an exception or waiver for an impact fee for the development or  
270 construction of housing that is affordable, as defined in s.  
271 420.9071. If a county, municipality, or special district



272 provides such an exception or waiver, it is not required to use  
273 any revenues to offset the impact.

274 Section 5. Section 166.033, Florida Statutes, is amended to  
275 read:

276 166.033 Development permits and orders.-

277 (1) Within 30 days after receiving an application for  
278 approval of a development permit or development order, a  
279 municipality must review the application for completeness and  
280 issue a letter indicating that all required information is  
281 submitted or specifying with particularity any areas that are  
282 deficient. If deficient, the applicant has 30 days to address  
283 the deficiencies by submitting the required additional  
284 information. Within 90 days of the initial submission, if  
285 complete, or the supplemental submission, whichever is later,  
286 the municipality must approve, approve with conditions, or deny  
287 the application for a development permit or development order.  
288 The time periods contained in this subsection may be waived in  
289 writing by the applicant. An approval, approval with conditions,  
290 or denial of the application for a development permit or  
291 development order must include written findings supporting the  
292 county's decision.

293 (2)~~(1)~~ When reviewing an application for a development  
294 permit or development order that is certified by a professional  
295 listed in s. 403.0877, a municipality may not request additional  
296 information from the applicant more than three times, unless the  
297 applicant waives the limitation in writing. Before a third  
298 request for additional information, the applicant must be  
299 offered a meeting to attempt to resolve outstanding issues.  
300 Except as provided in subsection (5)~~(4)~~, if the applicant



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301 believes the request for additional information is not  
302 authorized by ordinance, rule, statute, or other legal  
303 authority, the municipality, at the applicant's request, shall  
304 proceed to process the application for approval or denial.

305 ~~(3)~~(2) When a municipality denies an application for a  
306 development permit or development order, the municipality shall  
307 give written notice to the applicant. The notice must include a  
308 citation to the applicable portions of an ordinance, rule,  
309 statute, or other legal authority for the denial of the permit  
310 or order.

311 ~~(4)~~(3) As used in this section, the terms ~~term~~ "development  
312 permit" and "development order" have ~~has~~ the same meaning as in  
313 s. 163.3164, but do ~~does~~ not include building permits.

314 ~~(5)~~(4) For any development permit application filed with  
315 the municipality after July 1, 2012, a municipality may not  
316 require as a condition of processing or issuing a development  
317 permit or development order that an applicant obtain a permit or  
318 approval from any state or federal agency unless the agency has  
319 issued a final agency action that denies the federal or state  
320 permit before the municipal action on the local development  
321 permit.

322 ~~(6)~~(5) Issuance of a development permit or development  
323 order by a municipality does not ~~in any way~~ create any right on  
324 the part of an applicant to obtain a permit from a state or  
325 federal agency and does not create any liability on the part of  
326 the municipality for issuance of the permit if the applicant  
327 fails to obtain requisite approvals or fulfill the obligations  
328 imposed by a state or federal agency or undertakes actions that  
329 result in a violation of state or federal law. A municipality



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330 shall attach such a disclaimer to the issuance of development  
331 permits and shall include a permit condition that all other  
332 applicable state or federal permits be obtained before  
333 commencement of the development.

334 (7)~~(6)~~ This section does not prohibit a municipality from  
335 providing information to an applicant regarding what other state  
336 or federal permits may apply.

337 Section 6. Section 166.04151, Florida Statutes, is amended  
338 to read:

339 166.04151 Affordable housing.—

340 (1) Notwithstanding any other provision of law, a  
341 municipality may adopt and maintain in effect any law,  
342 ordinance, rule, or other measure that is adopted for the  
343 purpose of increasing the supply of affordable housing using  
344 land use mechanisms such as inclusionary housing ordinances. A  
345 municipality may not, however, adopt or impose a requirement in  
346 any form, including, without limitation, by way of a  
347 comprehensive plan amendment, ordinance, or land development  
348 regulation or as a condition of a development order or  
349 development permit, which has any of the following effects:

350 (a) Mandating or establishing a maximum sales price or  
351 lease rental for privately produced dwelling units.

352 (b) Requiring the allocation or designation, whether  
353 directly or indirectly, of privately produced dwelling units for  
354 sale or rental to any particular class or group of purchasers or  
355 tenants.

356 (c) Requiring the provision of any on-site or off-site  
357 workforce or affordable housing units or a contribution of land  
358 or money for such housing, including, but not limited to, the



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359 payment of any flat or percentage-based fee whether calculated  
360 on the basis of the number of approved dwelling units, the  
361 amount of approved square footage, or otherwise.

362 (2) This section does not limit the authority of a  
363 municipality to create or implement a voluntary density bonus  
364 program or any other voluntary incentive-based program designed  
365 to increase the supply of workforce or affordable housing units.

366 Section 7. Subsection (24) of section 494.001, Florida  
367 Statutes, is amended to read:

368 494.001 Definitions.—As used in this chapter, the term:

369 (24) "Mortgage loan" means any:

370 (a) Residential loan ~~that primarily for personal, family,~~  
371 ~~or household use which~~ is secured by a mortgage, deed of trust,  
372 or other equivalent consensual security interest on a dwelling,  
373 as defined in s. 103(w) ~~s. 103(v)~~ of the federal Truth in  
374 Lending Act, or for the purchase of residential real estate upon  
375 which a dwelling is to be constructed;

376 (b) Loan on commercial real property if the borrower is an  
377 individual or the lender is a noninstitutional investor; or

378 (c) Loan on improved real property consisting of five or  
379 more dwelling units if the borrower is an individual or the  
380 lender is a noninstitutional investor.

381 Section 8. This act shall take effect upon becoming a law.

382  
383 ===== T I T L E A M E N D M E N T =====

384 And the title is amended as follows:

385 Delete everything before the enacting clause  
386 and insert:

387 A bill to be entitled



388 An act relating to community development and housing;  
389 amending s. 125.01055, F.S.; prohibiting a county from  
390 adopting or imposing a requirement in any form  
391 relating to affordable housing which has specified  
392 effects; providing construction; amending s. 125.022,  
393 F.S.; requiring that a county review the application  
394 for completeness and issue a certain letter within a  
395 specified period after receiving an application for  
396 approval of a development permit or development order;  
397 providing procedures for addressing deficiencies in,  
398 and for approving or denying, the application;  
399 conforming provisions to changes made by the act;  
400 defining the term "development order"; amending s.  
401 163.3180, F.S.; requiring a local government to credit  
402 certain contributions, constructions, expansions, or  
403 payments toward any other impact fee or exaction  
404 imposed by local ordinance for public educational  
405 facilities; providing requirements for the basis of  
406 the credit; amending s. 163.31801, F.S.; adding  
407 minimum conditions that certain impact fees must  
408 satisfy; requiring that, under certain circumstances,  
409 a holder of certain impact fee or mobility fee credits  
410 receive the full value of the credits as of the date  
411 they were first established based on the impact fee or  
412 mobility fee rate that was in effect on such date;  
413 providing that the government, in certain actions, has  
414 the burden of proving by a preponderance of the  
415 evidence that the imposition or amount of impact fees  
416 or required dollar-for-dollar credits for the payment



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417 of impact fees meets certain requirements; prohibiting  
418 the court from using a deferential standard for the  
419 benefit of the government; providing applicability;  
420 authorizing a county, municipality, or special  
421 district to provide an exception or waiver for an  
422 impact fee for the development or construction of  
423 housing that is affordable; providing that if a  
424 county, municipality, or special district provides  
425 such an exception or waiver, it is not required to use  
426 any revenues to offset the impact; amending s.  
427 166.033, F.S.; requiring that a municipality review  
428 the application for completeness and issue a certain  
429 letter within a specified period after receiving an  
430 application for approval of a development permit or  
431 development order; providing procedures for addressing  
432 deficiencies in, and for approving or denying, the  
433 application; conforming provisions to changes made by  
434 the act; defining the term "development order";  
435 amending s. 166.04151, F.S.; prohibiting a  
436 municipality from adopting or imposing a requirement  
437 in any form relating to affordable housing which has  
438 specified effects; providing construction; amending s.  
439 494.001, F.S.; revising the definition of the term  
440 "mortgage loan"; providing an effective date.