

By Senator Lee

20-01705A-19

20191730__

1 A bill to be entitled
2 An act relating to growth management; amending s.
3 125.01055, F.S.; prohibiting a county from adopting or
4 imposing a requirement in any form relating to
5 affordable housing which has specified effects;
6 providing construction; amending s. 125.022, F.S.;
7 requiring that a county review the application for
8 completeness and issue a certain letter within a
9 specified period after receiving an application for
10 approval of a development permit or development order;
11 providing procedures for addressing deficiencies in,
12 and for approving or denying, the application;
13 conforming provisions to changes made by the act;
14 defining the term "development order"; amending s.
15 163.3180, F.S.; requiring a local government to credit
16 certain contributions, constructions, expansions, or
17 payments toward any other impact fee or exaction
18 imposed by local ordinance for public educational
19 facilities; providing requirements for the basis of
20 the credit; amending s. 163.31801, F.S.; adding
21 minimum conditions that certain impact fees must
22 satisfy; requiring that, under certain circumstances,
23 a holder of certain impact fee or mobility fee credits
24 receive the full value of the credit as of the date it
25 was first established based on the impact fee or
26 mobility fee rate that was in effect on such date;
27 providing that the government, in certain actions, has
28 the burden of proving by a preponderance of the
29 evidence that the imposition or amount of impact fees

20-01705A-19

20191730__

30 or required dollar-for-dollar credits for the payment
31 of impact fees meets certain requirements; prohibiting
32 the court from using a deferential standard for the
33 benefit of the government; authorizing the court to
34 award attorney fees and costs to the prevailing party
35 in any action challenging an impact fee; requiring
36 that the court award attorney fees and costs to a
37 prevailing property owner if the court makes specified
38 determinations regarding the impact fee; providing
39 applicability; prohibiting a local government from
40 imposing concurrency mitigation conditions of any kind
41 on a project if the government does not provide
42 certain required credits; prohibiting a local
43 government, beginning on a specified date, from
44 charging an impact fee for the development or
45 construction of housing that is affordable; amending
46 s. 166.033, F.S.; requiring that a municipality review
47 the application for completeness and issue a certain
48 letter within a specified period after receiving an
49 application for approval of a development permit or
50 development order; providing procedures for addressing
51 deficiencies in, and for approving or denying, the
52 application; conforming provisions to changes made by
53 the act; defining the term "development order";
54 amending s. 166.04151, F.S.; prohibiting a
55 municipality from adopting or imposing a requirement
56 in any form relating to affordable housing which has
57 specified effects; providing construction; providing
58 an effective date.

20-01705A-19

20191730__

59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87

Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

(2) This section does not limit the authority of a county

20-01705A-19

20191730__

88 to create or implement a voluntary density bonus program or any
89 other voluntary incentive-based program designed to increase the
90 supply of workforce or affordable housing units.

91 Section 2. Section 125.022, Florida Statutes, is amended to
92 read:

93 125.022 Development permits and orders.—

94 (1) Within 30 days after receiving an application for a
95 development permit or development order, a county must review
96 the application for completeness and issue a letter indicating
97 that all required information is submitted or specifying with
98 particularity any areas that are deficient. If deficient, the
99 applicant has 30 days to address the deficiencies by submitting
100 the required additional information. Within 90 days after the
101 initial submission, if complete, or the supplemental submission,
102 whichever is later, the county shall approve, approve with
103 conditions, or deny the application for a development permit or
104 development order. The time periods contained in this section
105 may be waived in writing by the applicant. An approval, approval
106 with conditions, or denial of the application for a development
107 permit or development order must include written findings
108 supporting the county's decision.

109 (2)~~(1)~~ When reviewing an application for a development
110 permit or development order that is certified by a professional
111 listed in s. 403.0877, a county may not request additional
112 information from the applicant more than three times, unless the
113 applicant waives the limitation in writing. Before a third
114 request for additional information, the applicant must be
115 offered a meeting to attempt to resolve outstanding issues.
116 Except as provided in subsection (5)~~(4)~~, if the applicant

20-01705A-19

20191730__

117 believes the request for additional information is not
118 authorized by ordinance, rule, statute, or other legal
119 authority, the county, at the applicant's request, shall proceed
120 to process the application for approval or denial.

121 (3)~~(2)~~ When a county denies an application for a
122 development permit or development order, the county shall give
123 written notice to the applicant. The notice must include a
124 citation to the applicable portions of an ordinance, rule,
125 statute, or other legal authority for the denial of the permit
126 or order.

127 (4)~~(3)~~ As used in this section, the terms ~~term~~ "development
128 permit" and "development order" have ~~has~~ the same meaning as in
129 s. 163.3164, but do ~~does~~ not include building permits.

130 (5)~~(4)~~ For any development permit application filed with
131 the county after July 1, 2012, a county may not require as a
132 condition of processing or issuing a development permit or
133 development order that an applicant obtain a permit or approval
134 from any state or federal agency unless the agency has issued a
135 final agency action that denies the federal or state permit
136 before the county action on the local development permit.

137 (6)~~(5)~~ Issuance of a development permit or development
138 order by a county does not in any way create any rights on the
139 part of the applicant to obtain a permit from a state or federal
140 agency and does not create any liability on the part of the
141 county for issuance of the permit if the applicant fails to
142 obtain requisite approvals or fulfill the obligations imposed by
143 a state or federal agency or undertakes actions that result in a
144 violation of state or federal law. A county shall attach such a
145 disclaimer to the issuance of a development permit and shall

20-01705A-19

20191730__

146 include a permit condition that all other applicable state or
147 federal permits be obtained before commencement of the
148 development.

149 (7)~~(6)~~ This section does not prohibit a county from
150 providing information to an applicant regarding what other state
151 or federal permits may apply.

152 Section 3. Paragraph (h) of subsection (6) of section
153 163.3180, Florida Statutes, is amended to read:

154 163.3180 Concurrency.—

155 (6)

156 (h)1. In order to limit the liability of local governments,
157 a local government may allow a landowner to proceed with
158 development of a specific parcel of land notwithstanding a
159 failure of the development to satisfy school concurrency, if all
160 the following factors are shown to exist:

161 a. The proposed development would be consistent with the
162 future land use designation for the specific property and with
163 pertinent portions of the adopted local plan, as determined by
164 the local government.

165 b. The local government's capital improvements element and
166 the school board's educational facilities plan provide for
167 school facilities adequate to serve the proposed development,
168 and the local government or school board has not implemented
169 that element or the project includes a plan that demonstrates
170 that the capital facilities needed as a result of the project
171 can be reasonably provided.

172 c. The local government and school board have provided a
173 means by which the landowner will be assessed a proportionate
174 share of the cost of providing the school facilities necessary

20-01705A-19

20191730__

175 to serve the proposed development.

176 2. If a local government applies school concurrency, it may
177 not deny an application for site plan, final subdivision
178 approval, or the functional equivalent for a development or
179 phase of a development authorizing residential development for
180 failure to achieve and maintain the level-of-service standard
181 for public school capacity in a local school concurrency
182 management system where adequate school facilities will be in
183 place or under actual construction within 3 years after the
184 issuance of final subdivision or site plan approval, or the
185 functional equivalent. School concurrency is satisfied if the
186 developer executes a legally binding commitment to provide
187 mitigation proportionate to the demand for public school
188 facilities to be created by actual development of the property,
189 including, but not limited to, the options described in sub-
190 subparagraph a. Options for proportionate-share mitigation of
191 impacts on public school facilities must be established in the
192 comprehensive plan and the interlocal agreement pursuant to s.
193 163.31777.

194 a. Appropriate mitigation options include the contribution
195 of land; the construction, expansion, or payment for land
196 acquisition or construction of a public school facility; the
197 construction of a charter school that complies with the
198 requirements of s. 1002.33(18); or the creation of mitigation
199 banking based on the construction of a public school facility in
200 exchange for the right to sell capacity credits. Such options
201 must include execution by the applicant and the local government
202 of a development agreement that constitutes a legally binding
203 commitment to pay proportionate-share mitigation for the

20-01705A-19

20191730__

204 additional residential units approved by the local government in
205 a development order and actually developed on the property,
206 taking into account residential density allowed on the property
207 prior to the plan amendment that increased the overall
208 residential density. The district school board must be a party
209 to such an agreement. As a condition of its entry into such a
210 development agreement, the local government may require the
211 landowner to agree to continuing renewal of the agreement upon
212 its expiration.

213 b. If the interlocal agreement and the local government
214 comprehensive plan authorize a contribution of land; the
215 construction, expansion, or payment for land acquisition; the
216 construction or expansion of a public school facility, or a
217 portion thereof; or the construction of a charter school that
218 complies with the requirements of s. 1002.33(18), as
219 proportionate-share mitigation, the local government shall
220 credit such a contribution, construction, expansion, or payment
221 toward any other impact fee or exaction imposed by local
222 ordinance for public educational facilities ~~the same need~~, on a
223 dollar-for-dollar basis at fair market value. The credit must be
224 based on the total impact fee assessed and not upon the impact
225 fee for any particular type of school.

226 c. Any proportionate-share mitigation must be directed by
227 the school board toward a school capacity improvement identified
228 in the 5-year school board educational facilities plan that
229 satisfies the demands created by the development in accordance
230 with a binding developer's agreement.

231 3. This paragraph does not limit the authority of a local
232 government to deny a development permit or its functional

20-01705A-19

20191730__

233 equivalent pursuant to its home rule regulatory powers, except
234 as provided in this part.

235 Section 4. Section 163.31801, Florida Statutes, is amended
236 to read:

237 163.31801 Impact fees; short title; intent; minimum
238 requirements; audits; challenges ~~definitions; ordinances levying~~
239 ~~impact fees.~~-

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

242 (2) The Legislature finds that impact fees are an important
243 source of revenue for a local government to use in funding the
244 infrastructure necessitated by new growth. The Legislature
245 further finds that impact fees are an outgrowth of the home rule
246 power of a local government to provide certain services within
247 its jurisdiction. Due to the growth of impact fee collections
248 and local governments' reliance on impact fees, it is the intent
249 of the Legislature to ensure that, when a county or municipality
250 adopts an impact fee by ordinance or a special district adopts
251 an impact fee by resolution, the governing authority complies
252 with this section.

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

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

258 (b) The local government must provide for accounting and
259 reporting of impact fee collections and expenditures. If a local
260 governmental entity imposes an impact fee to address its
261 infrastructure needs, the entity must ~~shall~~ account for the

20-01705A-19

20191730__

262 revenues and expenditures of such impact fee in a separate
263 accounting fund.

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

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

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

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

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

282 (h) The local government must specifically earmark funds
283 collected under the impact fee for use in acquiring,
284 constructing, or improving capital facilities to benefit new
285 users.

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

20-01705A-19

20191730__

291 (j) The local government must credit against the collection
292 of the impact fee any contributions related to public
293 educational facilities, including, but not limited to, land
294 dedication, site planning and design, and construction, whether
295 provided in a proportionate share agreement or any other form of
296 exaction. Any such contributions must be applied to reduce
297 impact fees on a dollar-for-dollar basis at fair market value.
298 If the local government adjusts the amount of impact fees
299 assessed, outstanding and unused credits must be adjusted
300 accordingly.

301 (4) If the holder of impact fee or mobility fee credits
302 granted by a local government, whether granted under this
303 section, s. 380.06, or otherwise, uses such credits in lieu of
304 the actual payment of an impact fee or mobility fee, the holder
305 of those credits must, whenever they are utilized, receive the
306 full value of the credit as of the date on which it was first
307 established based on the impact fee or mobility fee rate that
308 was in effect on such date.

309 (5)~~(4)~~ Audits of financial statements of local governmental
310 entities and district school boards which are performed by a
311 certified public accountant pursuant to s. 218.39 and submitted
312 to the Auditor General must include an affidavit signed by the
313 chief financial officer of the local governmental entity or
314 district school board stating that the local governmental entity
315 or district school board has complied with this section.

316 (6) (a)~~(5)~~ In any action challenging an impact fee or the
317 government's failure to provide required dollar-for-dollar
318 credits for the payment of impact fees as provided in s.
319 163.3180(6)(h)2.b, the government has the burden of proving by a

20-01705A-19

20191730__

320 preponderance of the evidence that the imposition or amount of
321 the fee or credit meets the requirements of state legal
322 precedent ~~or~~ and this section. The court may not use a
323 deferential standard for the benefit of the government.

324 (b) In any action challenging an impact fee, the court may
325 award attorney fees and costs to the prevailing party. However,
326 the court must award attorney fees and costs to a prevailing
327 property owner if the court determines that the impact fee is
328 not:

329 1. Reasonably connected to, or does not have a rational
330 nexus with, the need for additional capital facilities and the
331 increased impact generated by the new residential or
332 nonresidential construction;

333 2. Reasonably connected to, or does not have a rational
334 nexus with, the expenditures of the funds collected and the
335 benefits accruing to the new residential or nonresidential
336 construction; or

337 3. Proportionate to and exceeds the impacts of the proposed
338 use that the governmental entity seeks to avoid, minimize, or
339 mitigate.

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

342 (8) Notwithstanding anything to the contrary in this
343 chapter, if a local government does not provide the credit
344 required in subsection (3)(j) for a project, then the local
345 government may not impose concurrency mitigation conditions of
346 any kind on the project.

347 (9) Beginning July 1, 2019, a local government may not
348 charge an impact fee for the development or construction of

20-01705A-19

20191730__

349 housing that is affordable, as defined in s. 420.9071.

350 Section 5. Section 166.033, Florida Statutes, is amended to
351 read:

352 166.033 Development permits and orders.—

353 (1) Within 30 days after receiving an application for
354 approval of a development permit or development order, a
355 municipality must review the application for completeness and
356 issue a letter indicating that all required information is
357 submitted or specifying with particularity any areas that are
358 deficient. If deficient, the applicant has 30 days to address
359 the deficiencies by submitting the required additional
360 information. Within 90 days of the initial submission, if
361 complete, or the supplemental submission, whichever is later,
362 the municipality must approve, approve with conditions, or deny
363 the application for a development permit or development order.
364 The time periods contained in this subsection may be waived in
365 writing by the applicant. An approval, approval with conditions,
366 or denial of the application for a development permit or
367 development order must include written findings supporting the
368 municipality's decision.

369 (2)~~(1)~~ When reviewing an application for a development
370 permit or development order that is certified by a professional
371 listed in s. 403.0877, a municipality may not request additional
372 information from the applicant more than three times, unless the
373 applicant waives the limitation in writing. Before a third
374 request for additional information, the applicant must be
375 offered a meeting to attempt to resolve outstanding issues.
376 Except as provided in subsection (5)~~(4)~~, if the applicant
377 believes the request for additional information is not

20-01705A-19

20191730__

378 authorized by ordinance, rule, statute, or other legal
379 authority, the municipality, at the applicant's request, shall
380 proceed to process the application for approval or denial.

381 (3)~~(2)~~ When a municipality denies an application for a
382 development permit or development order, the municipality shall
383 give written notice to the applicant. The notice must include a
384 citation to the applicable portions of an ordinance, rule,
385 statute, or other legal authority for the denial of the permit
386 or order.

387 (4)~~(3)~~ As used in this section, the terms ~~term~~ "development
388 permit" and "development order" have ~~has~~ the same meaning as in
389 s. 163.3164, but do ~~does~~ not include building permits.

390 (5)~~(4)~~ For any development permit application filed with
391 the municipality after July 1, 2012, a municipality may not
392 require as a condition of processing or issuing a development
393 permit or development order that an applicant obtain a permit or
394 approval from any state or federal agency unless the agency has
395 issued a final agency action that denies the federal or state
396 permit before the municipal action on the local development
397 permit.

398 (6)~~(5)~~ Issuance of a development permit or development
399 order by a municipality does not ~~in any way~~ create any right on
400 the part of an applicant to obtain a permit from a state or
401 federal agency and does not create any liability on the part of
402 the municipality for issuance of the permit if the applicant
403 fails to obtain requisite approvals or fulfill the obligations
404 imposed by a state or federal agency or undertakes actions that
405 result in a violation of state or federal law. A municipality
406 shall attach such a disclaimer to the issuance of development

20-01705A-19

20191730__

407 permits and shall include a permit condition that all other
408 applicable state or federal permits be obtained before
409 commencement of the development.

410 ~~(7)(6)~~ This section does not prohibit a municipality from
411 providing information to an applicant regarding what other state
412 or federal permits may apply.

413 Section 6. Section 166.04151, Florida Statutes, is amended
414 to read:

415 166.04151 Affordable housing.—

416 (1) Notwithstanding any other provision of law, a
417 municipality may adopt and maintain in effect any law,
418 ordinance, rule, or other measure that is adopted for the
419 purpose of increasing the supply of affordable housing using
420 land use mechanisms such as inclusionary housing ordinances. A
421 municipality may not, however, adopt or impose a requirement in
422 any form, including, without limitation, by way of a
423 comprehensive plan amendment, ordinance, or land development
424 regulation or as a condition of a development order or
425 development permit, which has any of the following effects:

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

428 (b) Requiring the allocation or designation, whether
429 directly or indirectly, of privately produced dwelling units for
430 sale or rental to any particular class or group of purchasers or
431 tenants.

432 (c) Requiring the provision of any on-site or off-site
433 workforce or affordable housing units or a contribution of land
434 or money for such housing, including, but not limited to, the
435 payment of any flat or percentage-based fee whether calculated

20-01705A-19

20191730__

436 on the basis of the number of approved dwelling units, the
437 amount of approved square footage, or otherwise.

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

442 Section 7. This act shall take effect upon becoming a law.