By Senator Lee

20-01705A-19 20191730__

A bill to be entitled

An act relating to growth management; amending s. 125.01055, F.S.; prohibiting a county from adopting or imposing a requirement in any form relating to affordable housing which has specified effects; providing construction; amending s. 125.022, F.S.; requiring that a county review the application for completeness and issue a certain letter within a specified period after receiving an application for approval of a development permit or development order; providing procedures for addressing deficiencies in, and for approving or denying, the application; conforming provisions to changes made by the act; defining the term "development order"; amending s. 163.3180, F.S.; requiring a local government to credit certain contributions, constructions, expansions, or payments toward any other impact fee or exaction imposed by local ordinance for public educational facilities; providing requirements for the basis of the credit; amending s. 163.31801, F.S.; adding minimum conditions that certain impact fees must satisfy; requiring that, under certain circumstances, a holder of certain impact fee or mobility fee credits receive the full value of the credit as of the date it was first established based on the impact fee or mobility fee rate that was in effect on such date; providing that the government, in certain actions, has the burden of proving by a preponderance of the evidence that the imposition or amount of impact fees

or required dollar-for-dollar credits for the payment of impact fees meets certain requirements; prohibiting the court from using a deferential standard for the benefit of the government; authorizing the court to award attorney fees and costs to the prevailing party in any action challenging an impact fee; requiring that the court award attorney fees and costs to a prevailing property owner if the court makes specified determinations regarding the impact fee; providing applicability; prohibiting a local government from imposing concurrency mitigation conditions of any kind on a project if the government does not provide certain required credits; prohibiting a local government, beginning on a specified date, from charging an impact fee for the development or construction of housing that is affordable; amending s. 166.033, F.S.; requiring that a municipality review the application for completeness and issue a certain letter within a specified period after receiving an application for approval of a development permit or development order; providing procedures for addressing deficiencies in, and for approving or denying, the application; conforming provisions to changes made by the act; defining the term "development order"; amending s. 166.04151, F.S.; prohibiting a municipality from adopting or imposing a requirement in any form relating to affordable housing which has specified effects; providing construction; providing an effective date.

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

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

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

125.022 Development permits and orders.—

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

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

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

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

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

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

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

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

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

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

163.3180 Concurrency.—

(6)

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

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

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

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

to serve the proposed development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

166.033 Development permits and orders.—

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

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

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

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

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

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

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

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

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

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

166.04151 Affordable housing.—

(1) Notwithstanding any other provision of law, a municipality 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 municipality 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 municipality to create or implement a voluntary density bonus program or any other voluntary incentive-based program designed to increase the supply of workforce or affordable housing units.

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