

By the Committee on Community Affairs; and Senator Lee

578-03299-19

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1                                   A bill to be entitled  
2           An act relating to community development and housing;  
3           amending s. 125.01055, F.S.; prohibiting a county from  
4           adopting or imposing a requirement in any form  
5           relating to affordable housing which has specified  
6           effects; providing construction; amending s. 125.022,  
7           F.S.; requiring that a county review the application  
8           for 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 credits as of the date  
25          they were 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

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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; providing applicability;  
34 authorizing a county, municipality, or special  
35 district to provide an exception or waiver for an  
36 impact fee for the development or construction of  
37 housing that is affordable; providing that if a  
38 county, municipality, or special district provides  
39 such an exception or waiver, it is not required to use  
40 any revenues to offset the impact; amending s.  
41 166.033, F.S.; requiring that a municipality review  
42 the application for completeness and issue a certain  
43 letter within a specified period after receiving an  
44 application for approval of a development permit or  
45 development order; providing procedures for addressing  
46 deficiencies in, and for approving or denying, the  
47 application; conforming provisions to changes made by  
48 the act; defining the term "development order";  
49 amending s. 166.04151, F.S.; prohibiting a  
50 municipality from adopting or imposing a requirement  
51 in any form relating to affordable housing which has  
52 specified effects; providing construction; amending s.  
53 494.001, F.S.; revising the definition of the term  
54 "mortgage loan"; providing an effective date.

55  
56 Be It Enacted by the Legislature of the State of Florida:

57  
58 Section 1. Section 125.01055, Florida Statutes, is amended

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59 to read:

60 125.01055 Affordable housing.—

61 (1) Notwithstanding any other provision of law, a county  
62 may adopt and maintain in effect any law, ordinance, rule, or  
63 other measure that is adopted for the purpose of increasing the  
64 supply of affordable housing using land use mechanisms such as  
65 inclusionary housing ordinances. A county may not, however,  
66 adopt or impose a requirement in any form, including, without  
67 limitation, by way of a comprehensive plan amendment, ordinance,  
68 or land development regulation or as a condition of a  
69 development order or development permit, which has any of the  
70 following effects:

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

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

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

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

87 Section 2. Section 125.022, Florida Statutes, is amended to

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88 read:

89 125.022 Development permits and orders.-

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

105 (2)~~(1)~~ When reviewing an application for a development  
106 permit or development order that is certified by a professional  
107 listed in s. 403.0877, a county may not request additional  
108 information from the applicant more than three times, unless the  
109 applicant waives the limitation in writing. Before a third  
110 request for additional information, the applicant must be  
111 offered a meeting to attempt to resolve outstanding issues.  
112 Except as provided in subsection (5)~~(4)~~, if the applicant  
113 believes the request for additional information is not  
114 authorized by ordinance, rule, statute, or other legal  
115 authority, the county, at the applicant's request, shall proceed  
116 to process the application for approval or denial.

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117       ~~(3)~~(2) When a county denies an application for a  
118 development permit or development order, the county shall give  
119 written notice to the applicant. The notice must include a  
120 citation to the applicable portions of an ordinance, rule,  
121 statute, or other legal authority for the denial of the permit  
122 or order.

123       ~~(4)~~(3) As used in this section, the terms ~~term~~ "development  
124 permit" and "development order" have ~~has~~ the same meaning as in  
125 s. 163.3164, but do ~~does~~ not include building permits.

126       ~~(5)~~(4) For any development permit application filed with  
127 the county after July 1, 2012, a county may not require as a  
128 condition of processing or issuing a development permit or  
129 development order that an applicant obtain a permit or approval  
130 from any state or federal agency unless the agency has issued a  
131 final agency action that denies the federal or state permit  
132 before the county action on the local development permit.

133       ~~(6)~~(5) Issuance of a development permit or development  
134 order by a county does not in any way create any rights on the  
135 part of the applicant to obtain a permit from a state or federal  
136 agency and does not create any liability on the part of the  
137 county for issuance of the permit if the applicant fails to  
138 obtain requisite approvals or fulfill the obligations imposed by  
139 a state or federal agency or undertakes actions that result in a  
140 violation of state or federal law. A county shall attach such a  
141 disclaimer to the issuance of a development permit and shall  
142 include a permit condition that all other applicable state or  
143 federal permits be obtained before commencement of the  
144 development.

145       ~~(7)~~(6) This section does not prohibit a county from

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146 providing information to an applicant regarding what other state  
147 or federal permits may apply.

148 Section 3. Paragraph (h) of subsection (6) of section  
149 163.3180, Florida Statutes, is amended to read:

150 163.3180 Concurrency.—

151 (6)

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

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

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

168 c. The local government and school board have provided a  
169 means by which the landowner will be assessed a proportionate  
170 share of the cost of providing the school facilities necessary  
171 to serve the proposed development.

172 2. If a local government applies school concurrency, it may  
173 not deny an application for site plan, final subdivision  
174 approval, or the functional equivalent for a development or

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

190 a. Appropriate mitigation options include the contribution  
191 of land; the construction, expansion, or payment for land  
192 acquisition or construction of a public school facility; the  
193 construction of a charter school that complies with the  
194 requirements of s. 1002.33(18); or the creation of mitigation  
195 banking based on the construction of a public school facility in  
196 exchange for the right to sell capacity credits. Such options  
197 must include execution by the applicant and the local government  
198 of a development agreement that constitutes a legally binding  
199 commitment to pay proportionate-share mitigation for the  
200 additional residential units approved by the local government in  
201 a development order and actually developed on the property,  
202 taking into account residential density allowed on the property  
203 prior to the plan amendment that increased the overall

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204 residential density. The district school board must be a party  
205 to such an agreement. As a condition of its entry into such a  
206 development agreement, the local government may require the  
207 landowner to agree to continuing renewal of the agreement upon  
208 its expiration.

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

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

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

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

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233           163.31801 Impact fees; short title; intent; minimum  
234 requirements; audits; challenges ~~definitions; ordinances levying~~  
235 ~~impact fees.~~-

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

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

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

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

254           (b) The local government must provide for accounting and  
255 reporting of impact fee collections and expenditures. If a local  
256 governmental entity imposes an impact fee to address its  
257 infrastructure needs, the entity must ~~shall~~ account for the  
258 revenues and expenditures of such impact fee in a separate  
259 accounting fund.

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

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

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

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

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

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

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

287           (j) The local government must credit against the collection  
288 of the impact fee any contributions related to public  
289 educational facilities, including, but not limited to, land  
290 dedication, site planning and design, and construction, whether

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291 provided in a proportionate share agreement or any other form of  
292 exaction. Any such contributions must be applied to reduce  
293 impact fees on a dollar-for-dollar basis at fair market value.

294 (4) If the holder of impact fee or mobility fee credits  
295 granted by a local government, whether granted under this  
296 section, s. 380.06, or otherwise, uses such credits in lieu of  
297 the actual payment of an impact fee or mobility fee and the  
298 impact fee or mobility fee is greater than the rate that was in  
299 effect when such credits were first established, the holder of  
300 those credits must, whenever they are utilized, receive the full  
301 value of the credits as of the date on which they were first  
302 established based on the impact fee or mobility fee rate that  
303 was in effect on such date.

304 (5)~~(4)~~ Audits of financial statements of local governmental  
305 entities and district school boards which are performed by a  
306 certified public accountant pursuant to s. 218.39 and submitted  
307 to the Auditor General must include an affidavit signed by the  
308 chief financial officer of the local governmental entity or  
309 district school board stating that the local governmental entity  
310 or district school board has complied with this section.

311 (6)~~(5)~~ In any action challenging an impact fee or the  
312 government's failure to provide required dollar-for-dollar  
313 credits for the payment of impact fees as provided in s.  
314 163.3180(6)(h)2.b, the government has the burden of proving by a  
315 preponderance of the evidence that the imposition or amount of  
316 the fee or credit meets the requirements of state legal  
317 precedent ~~or~~ and this section. The court may not use a  
318 deferential standard for the benefit of the government.

319 (7) This section applies to mobility fees adopted pursuant

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320 to s. 163.3180(5)(i).

321 (8) A county, municipality, or special district may provide  
322 an exception or waiver for an impact fee for the development or  
323 construction of housing that is affordable, as defined in s.  
324 420.9071. If a county, municipality, or special district  
325 provides such an exception or waiver, it is not required to use  
326 any revenues to offset the impact.

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

329 166.033 Development permits and orders.—

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

346 (2)~~(1)~~ When reviewing an application for a development  
347 permit or development order that is certified by a professional  
348 listed in s. 403.0877, a municipality may not request additional

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349 information from the applicant more than three times, unless the  
350 applicant waives the limitation in writing. Before a third  
351 request for additional information, the applicant must be  
352 offered a meeting to attempt to resolve outstanding issues.  
353 Except as provided in subsection (5)~~(4)~~, if the applicant  
354 believes the request for additional information is not  
355 authorized by ordinance, rule, statute, or other legal  
356 authority, the municipality, at the applicant's request, shall  
357 proceed to process the application for approval or denial.

358 (3)~~(2)~~ When a municipality denies an application for a  
359 development permit or development order, the municipality shall  
360 give written notice to the applicant. The notice must include a  
361 citation to the applicable portions of an ordinance, rule,  
362 statute, or other legal authority for the denial of the permit  
363 or order.

364 (4)~~(3)~~ As used in this section, the terms ~~term~~ "development  
365 permit" and "development order" have ~~has~~ the same meaning as in  
366 s. 163.3164, but do ~~does~~ not include building permits.

367 (5)~~(4)~~ For any development permit application filed with  
368 the municipality after July 1, 2012, a municipality may not  
369 require as a condition of processing or issuing a development  
370 permit or development order that an applicant obtain a permit or  
371 approval from any state or federal agency unless the agency has  
372 issued a final agency action that denies the federal or state  
373 permit before the municipal action on the local development  
374 permit.

375 (6)~~(5)~~ Issuance of a development permit or development  
376 order by a municipality does not ~~in any way~~ create any right on  
377 the part of an applicant to obtain a permit from a state or

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378 federal agency and does not create any liability on the part of  
379 the municipality for issuance of the permit if the applicant  
380 fails to obtain requisite approvals or fulfill the obligations  
381 imposed by a state or federal agency or undertakes actions that  
382 result in a violation of state or federal law. A municipality  
383 shall attach such a disclaimer to the issuance of development  
384 permits and shall include a permit condition that all other  
385 applicable state or federal permits be obtained before  
386 commencement of the development.

387 ~~(7)(6)~~ This section does not prohibit a municipality from  
388 providing information to an applicant regarding what other state  
389 or federal permits may apply.

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

392 166.04151 Affordable housing.—

393 (1) Notwithstanding any other provision of law, a  
394 municipality may adopt and maintain in effect any law,  
395 ordinance, rule, or other measure that is adopted for the  
396 purpose of increasing the supply of affordable housing using  
397 land use mechanisms such as inclusionary housing ordinances. A  
398 municipality may not, however, adopt or impose a requirement in  
399 any form, including, without limitation, by way of a  
400 comprehensive plan amendment, ordinance, or land development  
401 regulation or as a condition of a development order or  
402 development permit, which has any of the following effects:

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

405 (b) Requiring the allocation or designation, whether  
406 directly or indirectly, of privately produced dwelling units for

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407 sale or rental to any particular class or group of purchasers or  
408 tenants.

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

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

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

421 494.001 Definitions.—As used in this chapter, the term:

422 (24) "Mortgage loan" means any:

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

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

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

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