

By the Committee on Community Affairs; and Senator Lee

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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.