

By the Committees on Infrastructure and Security; and Community Affairs; and Senator Lee

596-04073A-19

20191730c2

1 A bill to be entitled
2 An act relating to community development and housing;
3 amending s. 125.01055, F.S.; authorizing an
4 inclusionary housing ordinance to require a developer
5 to provide a specified number or percentage of
6 affordable housing units to be included in a
7 development or allow a developer to contribute to a
8 housing fund or other alternatives; requiring a county
9 to provide certain incentives to fully offset all
10 costs to the developer of its affordable housing
11 contribution; amending s. 125.022, F.S.; requiring
12 that a county review the application for completeness
13 and issue a certain letter within a specified period
14 after receiving an application for approval of a
15 development permit or development order; providing
16 procedures for addressing deficiencies in, and for
17 approving or denying, the application; conforming
18 provisions to changes made by the act; defining the
19 term "development order"; amending s. 163.3180, F.S.;
20 revising compliance requirements for a mobility fee-
21 based funding system; requiring a local government to
22 credit certain contributions, constructions,
23 expansions, or payments toward any other impact fee or
24 exaction imposed by local ordinance for public
25 educational facilities; providing requirements for the
26 basis of the credit; amending s. 163.31801, F.S.;
27 adding minimum conditions that certain impact fees
28 must satisfy; requiring a local government to credit
29 against the collection of an impact fee any

596-04073A-19

20191730c2

30 contribution related to public education facilities,
31 subject to certain requirements; requiring the holder
32 of certain impact fee credits to be entitled to a
33 proportionate increase in the credit balance if a
34 local government increases its impact fee rates;
35 providing that the government, in certain actions, has
36 the burden of proving by a preponderance of the
37 evidence that the imposition or amount of certain
38 required dollar-for-dollar credits for the payment of
39 impact fees meets certain requirements; prohibiting
40 the court from using a deferential standard for the
41 benefit of the government; authorizing a county,
42 municipality, or special district to provide an
43 exception or waiver for an impact fee for the
44 development or construction of housing that is
45 affordable; providing that if a county, municipality,
46 or special district provides such an exception or
47 waiver, it is not required to use any revenues to
48 offset the impact; amending s. 166.033, F.S.;
49 requiring that a municipality review the application
50 for completeness and issue a certain letter within a
51 specified period after receiving an application for
52 approval of a development permit or development order;
53 providing procedures for addressing deficiencies in,
54 and for approving or denying, the application;
55 conforming provisions to changes made by the act;
56 defining the term "development order"; amending s.
57 166.04151, F.S.; authorizing an inclusionary housing
58 ordinance to require a developer to provide a

596-04073A-19

20191730c2

59 specified number or percentage of affordable housing
60 units to be included in a development or allow a
61 developer to contribute to a housing fund or other
62 alternatives; requiring a municipality to provide
63 certain incentives to fully offset all costs to the
64 developer of its affordable housing contribution;
65 amending s. 494.001, F.S.; revising the definition of
66 the term "mortgage loan"; providing an effective date.
67

68 Be It Enacted by the Legislature of the State of Florida:
69

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

72 125.01055 Affordable housing.—

73 (1) Notwithstanding any other provision of law, a county
74 may adopt and maintain in effect any law, ordinance, rule, or
75 other measure that is adopted for the purpose of increasing the
76 supply of affordable housing using land use mechanisms such as
77 inclusionary housing ordinances.

78 (2) An inclusionary housing ordinance may require a
79 developer to provide a specified number or percentage of
80 affordable housing units to be included in a development or
81 allow a developer to contribute to a housing fund or other
82 alternatives in lieu of building the affordable housing units.
83 However, in exchange, a county must provide incentives to fully
84 offset all costs to the developer of its affordable housing
85 contribution. Such incentives may include, but are not limited
86 to:

87 (a) Allowing the developer density or intensity bonus

596-04073A-19

20191730c2

88 incentives or more floor space than allowed under the current or
89 proposed future land use designation or zoning;

90 (b) Reducing or waiving fees, such as impact fees or water
91 and sewer charges; or

92 (c) Granting other incentives.

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

95 125.022 Development permits and orders.—

96 (1) Within 30 days after receiving an application for
97 approval of a development permit or development order, a county
98 must review the application for completeness and issue a letter
99 indicating that all required information is submitted or
100 specifying with particularity any areas that are deficient. If
101 the application is deficient, the applicant has 30 days to
102 address the deficiencies by submitting the required additional
103 information. Within 120 days after the county has deemed the
104 application complete, the county must approve, approve with
105 conditions, or deny the application for a development permit or
106 development order. The time periods contained in this section
107 may be waived in writing by the applicant. An approval, approval
108 with conditions, or denial of the application for a development
109 permit or development order must include written findings
110 supporting the county's decision.

111 (2)~~(1)~~ When reviewing an application for a development
112 permit or development order that is certified by a professional
113 listed in s. 403.0877, a county may not request additional
114 information from the applicant more than three times, unless the
115 applicant waives the limitation in writing. Before a third
116 request for additional information, the applicant must be

596-04073A-19

20191730c2

117 offered a meeting to attempt to resolve outstanding issues.
118 Except as provided in subsection (5)~~(4)~~, if the applicant
119 believes the request for additional information is not
120 authorized by ordinance, rule, statute, or other legal
121 authority, the county, at the applicant's request, shall proceed
122 to process the application for approval or denial.

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

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

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

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

596-04073A-19

20191730c2

146 violation of state or federal law. A county shall attach such a
147 disclaimer to the issuance of a development permit and shall
148 include a permit condition that all other applicable state or
149 federal permits be obtained before commencement of the
150 development.

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

154 Section 3. Paragraph (i) of subsection (5) and paragraph
155 (h) of subsection (6) of section 163.3180, Florida Statutes, are
156 amended to read:

157 163.3180 Concurrency.—

158 (5)

159 (i) If a local government elects to repeal transportation
160 concurrency, it is encouraged to adopt an alternative mobility
161 funding system that uses one or more of the tools and techniques
162 identified in paragraph (f). Any alternative mobility funding
163 system adopted may not be used to deny, time, or phase an
164 application for site plan approval, plat approval, final
165 subdivision approval, building permits, or the functional
166 equivalent of such approvals provided that the developer agrees
167 to pay for the development's identified transportation impacts
168 via the funding mechanism implemented by the local government.
169 The revenue from the funding mechanism used in the alternative
170 system must be used to implement the needs of the local
171 government's plan which serves as the basis for the fee imposed.
172 A mobility fee-based funding system must comply with s.
173 163.31801 governing the dual-rational nexus test applicable to
174 impact fees. An alternative system that is not mobility fee-

596-04073A-19

20191730c2

175 based shall not be applied in a manner that imposes upon new
176 development any responsibility for funding an existing
177 transportation deficiency as defined in paragraph (h).

178 (6)

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

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

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

195 c. The local government and school board have provided a
196 means by which the landowner will be assessed a proportionate
197 share of the cost of providing the school facilities necessary
198 to serve the proposed development.

199 2. If a local government applies school concurrency, it may
200 not deny an application for site plan, final subdivision
201 approval, or the functional equivalent for a development or
202 phase of a development authorizing residential development for
203 failure to achieve and maintain the level-of-service standard

596-04073A-19

20191730c2

204 for public school capacity in a local school concurrency
205 management system where adequate school facilities will be in
206 place or under actual construction within 3 years after the
207 issuance of final subdivision or site plan approval, or the
208 functional equivalent. School concurrency is satisfied if the
209 developer executes a legally binding commitment to provide
210 mitigation proportionate to the demand for public school
211 facilities to be created by actual development of the property,
212 including, but not limited to, the options described in sub-
213 subparagraph a. Options for proportionate-share mitigation of
214 impacts on public school facilities must be established in the
215 comprehensive plan and the interlocal agreement pursuant to s.
216 163.31777.

217 a. Appropriate mitigation options include the contribution
218 of land; the construction, expansion, or payment for land
219 acquisition or construction of a public school facility; the
220 construction of a charter school that complies with the
221 requirements of s. 1002.33(18); or the creation of mitigation
222 banking based on the construction of a public school facility in
223 exchange for the right to sell capacity credits. Such options
224 must include execution by the applicant and the local government
225 of a development agreement that constitutes a legally binding
226 commitment to pay proportionate-share mitigation for the
227 additional residential units approved by the local government in
228 a development order and actually developed on the property,
229 taking into account residential density allowed on the property
230 prior to the plan amendment that increased the overall
231 residential density. The district school board must be a party
232 to such an agreement. As a condition of its entry into such a

596-04073A-19

20191730c2

233 development agreement, the local government may require the
234 landowner to agree to continuing renewal of the agreement upon
235 its expiration.

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

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

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

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

260 163.31801 Impact fees; short title; intent; minimum
261 requirements; audits; challenges ~~definitions; ordinances levying~~

596-04073A-19

20191730c2

262 ~~impact fees.~~

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

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

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

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

281 (b) The local government must provide for accounting and
282 reporting of impact fee collections and expenditures. If a local
283 governmental entity imposes an impact fee to address its
284 infrastructure needs, the entity must ~~shall~~ account for the
285 revenues and expenditures of such impact fee in a separate
286 accounting fund.

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

289 (d) The local government must provide ~~Require that~~ notice
290 not be provided ~~no~~ less than 90 days before the effective date

596-04073A-19

20191730c2

291 of an ordinance or resolution imposing a new or increased impact
292 fee. A county or municipality is not required to wait 90 days to
293 decrease, suspend, or eliminate an impact fee.

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

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

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

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

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

314 (4) The local government must credit against the collection
315 of the impact fee any contribution, whether identified in a
316 proportionate share agreement or other form of exaction, related
317 to public education facilities, including land dedication, site
318 planning and design, or construction. Any contribution must be
319 applied to reduce impact fees on a dollar-for-dollar basis at

596-04073A-19

20191730c2

320 fair market value.

321 (5) If a local government increases its impact fee rates,
322 the holder of any impact fee credits, whether such credits are
323 granted under s. 163.3180, s. 380.06, or otherwise, which were
324 in existence prior to the increase, is entitled to a
325 proportionate increase in the credit balance.

326 (6)~~(4)~~ Audits of financial statements of local governmental
327 entities and district school boards which are performed by a
328 certified public accountant pursuant to s. 218.39 and submitted
329 to the Auditor General must include an affidavit signed by the
330 chief financial officer of the local governmental entity or
331 district school board stating that the local governmental entity
332 or district school board has complied with this section.

333 (7)~~(5)~~ In any action challenging an impact fee or the
334 government's failure to provide required dollar-for-dollar
335 credits for the payment of impact fees as provided in s.
336 163.3180(6)(h)2.b., the government has the burden of proving by
337 a preponderance of the evidence that the imposition or amount of
338 the fee or credit meets the requirements of state legal
339 precedent and ~~or~~ this section. The court may not use a
340 deferential standard for the benefit of the government.

341 (8) A county, municipality, or special district may provide
342 an exception or waiver for an impact fee for the development or
343 construction of housing that is affordable, as defined in s.
344 420.9071. If a county, municipality, or special district
345 provides such an exception or waiver, it is not required to use
346 any revenues to offset the impact.

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

596-04073A-19

20191730c2

349 166.033 Development permits and orders.—

350 (1) Within 30 days after receiving an application for
351 approval of a development permit or development order, a
352 municipality must review the application for completeness and
353 issue a letter indicating that all required information is
354 submitted or specifying with particularity any areas that are
355 deficient. If the application is deficient, the applicant has 30
356 days to address the deficiencies by submitting the required
357 additional information. Within 120 days after the municipality
358 has deemed the application complete, the municipality must
359 approve, approve with conditions, or deny the application for a
360 development permit or development order. The time periods
361 contained in this subsection may be waived in writing by the
362 applicant. An approval, approval with conditions, or denial of
363 the application for a development permit or development order
364 must include written findings supporting the municipality's
365 decision.

366 (2)~~(1)~~ When reviewing an application for a development
367 permit or development order that is certified by a professional
368 listed in s. 403.0877, a municipality may not request additional
369 information from the applicant more than three times, unless the
370 applicant waives the limitation in writing. Before a third
371 request for additional information, the applicant must be
372 offered a meeting to attempt to resolve outstanding issues.
373 Except as provided in subsection (5)~~(4)~~, if the applicant
374 believes the request for additional information is not
375 authorized by ordinance, rule, statute, or other legal
376 authority, the municipality, at the applicant's request, shall
377 proceed to process the application for approval or denial.

596-04073A-19

20191730c2

378 (3)~~(2)~~ When a municipality denies an application for a
379 development permit or development order, the municipality shall
380 give written notice to the applicant. The notice must include a
381 citation to the applicable portions of an ordinance, rule,
382 statute, or other legal authority for the denial of the permit
383 or order.

384 (4)~~(3)~~ As used in this section, the terms ~~term~~ "development
385 permit" and "development order" have ~~has~~ the same meaning as in
386 s. 163.3164, but do ~~does~~ not include building permits.

387 (5)~~(4)~~ For any development permit application filed with
388 the municipality after July 1, 2012, a municipality may not
389 require as a condition of processing or issuing a development
390 permit or development order that an applicant obtain a permit or
391 approval from any state or federal agency unless the agency has
392 issued a final agency action that denies the federal or state
393 permit before the municipal action on the local development
394 permit.

395 (6)~~(5)~~ Issuance of a development permit or development
396 order by a municipality does not ~~in any way~~ create any right on
397 the part of an applicant to obtain a permit from a state or
398 federal agency and does not create any liability on the part of
399 the municipality for issuance of the permit if the applicant
400 fails to obtain requisite approvals or fulfill the obligations
401 imposed by a state or federal agency or undertakes actions that
402 result in a violation of state or federal law. A municipality
403 shall attach such a disclaimer to the issuance of development
404 permits and shall include a permit condition that all other
405 applicable state or federal permits be obtained before
406 commencement of the development.

596-04073A-19

20191730c2

407 (7)~~(6)~~ This section does not prohibit a municipality from
408 providing information to an applicant regarding what other state
409 or federal permits may apply.

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

412 166.04151 Affordable housing.—

413 (1) Notwithstanding any other provision of law, a
414 municipality may adopt and maintain in effect any law,
415 ordinance, rule, or other measure that is adopted for the
416 purpose of increasing the supply of affordable housing using
417 land use mechanisms such as inclusionary housing ordinances.

418 (2) An inclusionary housing ordinance may require a
419 developer to provide a specified number or percentage of
420 affordable housing units to be included in a development or
421 allow a developer to contribute to a housing fund or other
422 alternatives in lieu of building the affordable housing units.
423 However, in exchange, a municipality must provide incentives to
424 fully offset all costs to the developer of its affordable
425 housing contribution. Such incentives may include, but are not
426 limited to:

427 (a) Allowing the developer density or intensity bonus
428 incentives or more floor space than allowed under the current or
429 proposed future land use designation or zoning;

430 (b) Reducing or waiving fees, such as impact fees or water
431 and sewer charges; or

432 (c) Granting other incentives.

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

435 494.001 Definitions.—As used in this chapter, the term:

596-04073A-19

20191730c2

436 (24) "Mortgage loan" means any:

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

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

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

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