

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

595-04848-19

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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.; 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. 163.3167, F.S.;  
20      providing requirements for a comprehensive plan  
21      adopted after a specified date and all land  
22      development regulations adopted to implement the  
23      comprehensive plan; amending s. 163.3180, F.S.;  
24      revising compliance requirements for a mobility fee-  
25      based funding system; requiring a local government to  
26      credit certain contributions, constructions,  
27      expansions, or payments toward any other impact fee or  
28      exaction imposed by local ordinance for public  
29      educational facilities; providing requirements for the

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30 basis of the credit; amending s. 163.31801, F.S.;

31 adding minimum conditions that certain impact fees

32 must satisfy; requiring a local government to credit

33 against the collection of an impact fee any

34 contribution related to public education facilities,

35 subject to certain requirements; requiring the holder

36 of certain impact fee credits to be entitled to a

37 proportionate increase in the credit balance if a

38 local government increases its impact fee rates;

39 providing that the government, in certain actions, has

40 the burden of proving by a preponderance of the

41 evidence that the imposition or amount of certain

42 required dollar-for-dollar credits for the payment of

43 impact fees meets certain requirements; prohibiting

44 the court from using a deferential standard for the

45 benefit of the government; authorizing a county,

46 municipality, or special district to provide an

47 exception or waiver for an impact fee for the

48 development or construction of housing that is

49 affordable; providing that if a county, municipality,

50 or special district provides such an exception or

51 waiver, it is not required to use any revenues to

52 offset the impact; providing applicability; amending

53 s. 163.3202, F.S.; requiring local land development

54 regulations to incorporate certain preexisting

55 development orders; amending s. 166.033, F.S.;

56 requiring that a municipality review the application

57 for completeness and issue a certain letter within a

58 specified period after receiving an application for

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59 approval of a development permit or development order;  
60 providing procedures for addressing deficiencies in,  
61 and for approving or denying, the application;  
62 conforming provisions to changes made by the act;  
63 defining the term "development order"; amending s.  
64 166.04151, F.S.; authorizing an inclusionary housing  
65 ordinance to require a developer to provide a  
66 specified number or percentage of affordable housing  
67 units to be included in a development or allow a  
68 developer to contribute to a housing fund or other  
69 alternatives; requiring a municipality to provide  
70 certain incentives to fully offset all costs to the  
71 developer of its affordable housing contribution;  
72 amending s. 494.001, F.S.; revising the definition of  
73 the term "mortgage loan"; providing an effective date.  
74

75 Be It Enacted by the Legislature of the State of Florida:  
76

77 Section 1. Section 125.01055, Florida Statutes, is amended  
78 to read:

79 125.01055 Affordable housing.—

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

85 (2) An inclusionary housing ordinance may require a  
86 developer to provide a specified number or percentage of  
87 affordable housing units to be included in a development or

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88 allow a developer to contribute to a housing fund or other  
89 alternatives in lieu of building the affordable housing units.  
90 However, in exchange, a county must provide incentives to fully  
91 offset all costs to the developer of its affordable housing  
92 contribution. Such incentives may include, but are not limited  
93 to:

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

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

99 (c) Granting other incentives.

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

102 125.022 Development permits and orders.-

103 (1) Within 30 days after receiving an application for  
104 approval of a development permit or development order, a county  
105 must review the application for completeness and issue a letter  
106 indicating that all required information is submitted or  
107 specifying with particularity any areas that are deficient. If  
108 the application is deficient, the applicant has 30 days to  
109 address the deficiencies by submitting the required additional  
110 information. Within 120 days after the county has deemed the  
111 application complete, or 180 days for applications that require  
112 final action through a quasi-judicial hearing or a public  
113 hearing, the county must approve, approve with conditions, or  
114 deny the application for a development permit or development  
115 order. Both parties may agree to a reasonable request for an  
116 extension of time, particularly in the event of a force majeure

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117 or other extraordinary circumstance. An approval, approval with  
118 conditions, or denial of the application for a development  
119 permit or development order must include written findings  
120 supporting the county's decision.

121 (2)~~(1)~~ When reviewing an application for a development  
122 permit or development order that is certified by a professional  
123 listed in s. 403.0877, a county may not request additional  
124 information from the applicant more than three times, unless the  
125 applicant waives the limitation in writing. Before a third  
126 request for additional information, the applicant must be  
127 offered a meeting to attempt to resolve outstanding issues.  
128 Except as provided in subsection (5) ~~(4)~~, if the applicant  
129 believes the request for additional information is not  
130 authorized by ordinance, rule, statute, or other legal  
131 authority, the county, at the applicant's request, shall proceed  
132 to process the application for approval or denial.

133 (3)~~(2)~~ When a county denies an application for a  
134 development permit or development order, the county shall give  
135 written notice to the applicant. The notice must include a  
136 citation to the applicable portions of an ordinance, rule,  
137 statute, or other legal authority for the denial of the permit  
138 or order.

139 (4)~~(3)~~ As used in this section, the terms ~~term~~ "development  
140 permit" and "development order" have ~~has~~ the same meaning as in  
141 s. 163.3164, but do ~~does~~ not include building permits.

142 (5)~~(4)~~ For any development permit application filed with  
143 the county after July 1, 2012, a county may not require as a  
144 condition of processing or issuing a development permit or  
145 development order that an applicant obtain a permit or approval

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146 from any state or federal agency unless the agency has issued a  
147 final agency action that denies the federal or state permit  
148 before the county action on the local development permit.

149 (6)~~(5)~~ Issuance of a development permit or development  
150 order by a county does not in any way create any rights on the  
151 part of the applicant to obtain a permit from a state or federal  
152 agency and does not create any liability on the part of the  
153 county for issuance of the permit if the applicant fails to  
154 obtain requisite approvals or fulfill the obligations imposed by  
155 a state or federal agency or undertakes actions that result in a  
156 violation of state or federal law. A county shall attach such a  
157 disclaimer to the issuance of a development permit and shall  
158 include a permit condition that all other applicable state or  
159 federal permits be obtained before commencement of the  
160 development.

161 (7)~~(6)~~ This section does not prohibit a county from  
162 providing information to an applicant regarding what other state  
163 or federal permits may apply.

164 Section 3. Subsection (3) of section 163.3167, Florida  
165 Statutes, is amended to read:

166 163.3167 Scope of act.—

167 (3) A municipality established after the effective date of  
168 this act shall, within 1 year after incorporation, establish a  
169 local planning agency, pursuant to s. 163.3174, and prepare and  
170 adopt a comprehensive plan of the type and in the manner set out  
171 in this act within 3 years after the date of such incorporation.  
172 A county comprehensive plan is ~~shall be deemed~~ controlling until  
173 the municipality adopts a comprehensive plan in accordance  
174 ~~accord~~ with this act. A comprehensive plan adopted after January

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175 1, 2019, and all land development regulations adopted to  
176 implement the comprehensive plan must incorporate each  
177 development order existing before the comprehensive plan's  
178 effective date, may not impair the completion of a development  
179 in accordance with such existing development order, and must  
180 vest the density and intensity approved by such development  
181 order existing on the effective date of the comprehensive plan  
182 without limitation or modification.

183 Section 4. Paragraph (i) of subsection (5) and paragraph  
184 (h) of subsection (6) of section 163.3180, Florida Statutes, are  
185 amended to read:

186 163.3180 Concurrency.—

187 (5)

188 (i) If a local government elects to repeal transportation  
189 concurrency, it is encouraged to adopt an alternative mobility  
190 funding system that uses one or more of the tools and techniques  
191 identified in paragraph (f). Any alternative mobility funding  
192 system adopted may not be used to deny, time, or phase an  
193 application for site plan approval, plat approval, final  
194 subdivision approval, building permits, or the functional  
195 equivalent of such approvals provided that the developer agrees  
196 to pay for the development's identified transportation impacts  
197 via the funding mechanism implemented by the local government.  
198 The revenue from the funding mechanism used in the alternative  
199 system must be used to implement the needs of the local  
200 government's plan which serves as the basis for the fee imposed.  
201 A mobility fee-based funding system must comply with s.  
202 163.31801 governing the dual-rational nexus test applicable to  
203 impact fees. An alternative system that is not mobility fee-

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

207 (6)

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

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

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

224 c. The local government and school board have provided a  
225 means by which the landowner will be assessed a proportionate  
226 share of the cost of providing the school facilities necessary  
227 to serve the proposed development.

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



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233 for public school capacity in a local school concurrency  
234 management system where adequate school facilities will be in  
235 place or under actual construction within 3 years after the  
236 issuance of final subdivision or site plan approval, or the  
237 functional equivalent. School concurrency is satisfied if the  
238 developer executes a legally binding commitment to provide  
239 mitigation proportionate to the demand for public school  
240 facilities to be created by actual development of the property,  
241 including, but not limited to, the options described in sub-  
242 subparagraph a. Options for proportionate-share mitigation of  
243 impacts on public school facilities must be established in the  
244 comprehensive plan and the interlocal agreement pursuant to s.  
245 163.31777.

246 a. Appropriate mitigation options include the contribution  
247 of land; the construction, expansion, or payment for land  
248 acquisition or construction of a public school facility; the  
249 construction of a charter school that complies with the  
250 requirements of s. 1002.33(18); or the creation of mitigation  
251 banking based on the construction of a public school facility in  
252 exchange for the right to sell capacity credits. Such options  
253 must include execution by the applicant and the local government  
254 of a development agreement that constitutes a legally binding  
255 commitment to pay proportionate-share mitigation for the  
256 additional residential units approved by the local government in  
257 a development order and actually developed on the property,  
258 taking into account residential density allowed on the property  
259 prior to the plan amendment that increased the overall  
260 residential density. The district school board must be a party  
261 to such an agreement. As a condition of its entry into such a

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262 development agreement, the local government may require the  
263 landowner to agree to continuing renewal of the agreement upon  
264 its expiration.

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

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

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

287 Section 5. Section 163.31801, Florida Statutes, is amended  
288 to read:

289 163.31801 Impact fees; short title; intent; minimum  
290 requirements; audits; challenges ~~definitions; ordinances levying~~

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291 ~~impact fees.~~

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

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

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

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

310 (b) The local government must provide for accounting and  
311 reporting of impact fee collections and expenditures. If a local  
312 governmental entity imposes an impact fee to address its  
313 infrastructure needs, the entity must ~~shall~~ account for the  
314 revenues and expenditures of such impact fee in a separate  
315 accounting fund.

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

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

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

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

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

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

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

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

343 (4) The local government must credit against the collection  
344 of the impact fee any contribution, whether identified in a  
345 proportionate share agreement or other form of exaction, related  
346 to public education facilities, including land dedication, site  
347 planning and design, or construction. Any contribution must be  
348 applied to reduce any education-based impact fees on a dollar-

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349 for-dollar basis at fair market value.

350 (5) If a local government increases its impact fee rates,  
351 the holder of any impact fee credits, whether such credits are  
352 granted under s. 163.3180, s. 380.06, or otherwise, which were  
353 in existence before the increase, is entitled to the full  
354 benefit of the intensity or density prepaid by the credit  
355 balance as of the date it was first established.

356 (6)~~(4)~~ Audits of financial statements of local governmental  
357 entities and district school boards which are performed by a  
358 certified public accountant pursuant to s. 218.39 and submitted  
359 to the Auditor General must include an affidavit signed by the  
360 chief financial officer of the local governmental entity or  
361 district school board stating that the local governmental entity  
362 or district school board has complied with this section.

363 (7)~~(5)~~ In any action challenging an impact fee or the  
364 government's failure to provide required dollar-for-dollar  
365 credits for the payment of impact fees as provided in s.  
366 163.3180(6)(h)2.b., the government has the burden of proving by  
367 a preponderance of the evidence that the imposition or amount of  
368 the fee or credit meets the requirements of state legal  
369 precedent and ~~or~~ this section. The court may not use a  
370 deferential standard for the benefit of the government.

371 (8) A county, municipality, or special district may provide  
372 an exception or waiver for an impact fee for the development or  
373 construction of housing that is affordable, as defined in s.  
374 420.9071. If a county, municipality, or special district  
375 provides such an exception or waiver, it is not required to use  
376 any revenues to offset the impact.

377 (9) This section does not apply to water and sewer

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378 connection fees.

379 Section 6. Paragraph (j) is added to subsection (2) of  
380 section 163.3202, Florida Statutes, to read:

381 163.3202 Land development regulations.—

382 (2) Local land development regulations shall contain  
383 specific and detailed provisions necessary or desirable to  
384 implement the adopted comprehensive plan and shall at a minimum:

385 (j) Incorporate preexisting development orders identified  
386 pursuant to s. 163.3167(3).

387 Section 7. Section 166.033, Florida Statutes, is amended to  
388 read:

389 166.033 Development permits and orders.—

390 (1) Within 30 days after receiving an application for  
391 approval of a development permit or development order, a  
392 municipality must review the application for completeness and  
393 issue a letter indicating that all required information is  
394 submitted or specifying with particularity any areas that are  
395 deficient. If the application is deficient, the applicant has 30  
396 days to address the deficiencies by submitting the required  
397 additional information. Within 120 days after the municipality  
398 has deemed the application complete, or 180 days for  
399 applications that require final action through a quasi-judicial  
400 hearing or a public hearing, the municipality must approve,  
401 approve with conditions, or deny the application for a  
402 development permit or development order. Both parties may agree  
403 to a reasonable request for an extension of time, particularly  
404 in the event of a force majeure or other extraordinary  
405 circumstance. An approval, approval with conditions, or denial  
406 of the application for a development permit or development order

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407 must include written findings supporting the municipality's  
408 decision.

409 (2)~~(1)~~ When reviewing an application for a development  
410 permit or development order that is certified by a professional  
411 listed in s. 403.0877, a municipality may not request additional  
412 information from the applicant more than three times, unless the  
413 applicant waives the limitation in writing. Before a third  
414 request for additional information, the applicant must be  
415 offered a meeting to attempt to resolve outstanding issues.  
416 Except as provided in subsection (5)~~(4)~~, if the applicant  
417 believes the request for additional information is not  
418 authorized by ordinance, rule, statute, or other legal  
419 authority, the municipality, at the applicant's request, shall  
420 proceed to process the application for approval or denial.

421 (3)~~(2)~~ When a municipality denies an application for a  
422 development permit or development order, the municipality shall  
423 give written notice to the applicant. The notice must include a  
424 citation to the applicable portions of an ordinance, rule,  
425 statute, or other legal authority for the denial of the permit  
426 or order.

427 (4)~~(3)~~ As used in this section, the terms ~~term~~ "development  
428 permit" and "development order" have ~~has~~ the same meaning as in  
429 s. 163.3164, but do ~~does~~ not include building permits.

430 (5)~~(4)~~ For any development permit application filed with  
431 the municipality after July 1, 2012, a municipality may not  
432 require as a condition of processing or issuing a development  
433 permit or development order that an applicant obtain a permit or  
434 approval from any state or federal agency unless the agency has  
435 issued a final agency action that denies the federal or state

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436 permit before the municipal action on the local development  
437 permit.

438 (6)~~(5)~~ Issuance of a development permit or development  
439 order by a municipality does not ~~in any way~~ create any right on  
440 the part of an applicant to obtain a permit from a state or  
441 federal agency and does not create any liability on the part of  
442 the municipality for issuance of the permit if the applicant  
443 fails to obtain requisite approvals or fulfill the obligations  
444 imposed by a state or federal agency or undertakes actions that  
445 result in a violation of state or federal law. A municipality  
446 shall attach such a disclaimer to the issuance of development  
447 permits and shall include a permit condition that all other  
448 applicable state or federal permits be obtained before  
449 commencement of the development.

450 (7)~~(6)~~ This section does not prohibit a municipality from  
451 providing information to an applicant regarding what other state  
452 or federal permits may apply.

453 Section 8. Section 166.04151, Florida Statutes, is amended  
454 to read:

455 166.04151 Affordable housing.—

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

461 (2) An inclusionary housing ordinance may require a  
462 developer to provide a specified number or percentage of  
463 affordable housing units to be included in a development or  
464 allow a developer to contribute to a housing fund or other



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465 alternatives in lieu of building the affordable housing units.  
466 However, in exchange, a municipality must provide incentives to  
467 fully offset all costs to the developer of its affordable  
468 housing contribution. Such incentives may include, but are not  
469 limited to:

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

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

475 (c) Granting other incentives.

476 Section 9. Subsection (24) of section 494.001, Florida  
477 Statutes, is amended to read:

478 494.001 Definitions.—As used in this chapter, the term:

479 (24) "Mortgage loan" means any:

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

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

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

491 Section 10. This act shall take effect upon becoming a law.