

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.