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LEGISLATIVE ACTION

Senate	.	House
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Floor: 1/RE/2R	.	
05/02/2019 02:18 PM	.	
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Senator Lee moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

125.01055 Affordable housing.—

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



155860

12 inclusionary housing ordinances.

13 (2) An inclusionary housing ordinance may require a
14 developer to provide a specified number or percentage of
15 affordable housing units to be included in a development or
16 allow a developer to contribute to a housing fund or other
17 alternatives in lieu of building the affordable housing units.
18 However, in exchange, a county must provide incentives to fully
19 offset all costs to the developer of its affordable housing
20 contribution. Such incentives may include, but are not limited
21 to:

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

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

27 (c) Granting other incentives.

28 (3) Subsection (2) does not apply in an area of critical
29 state concern, as designated in s. 380.0552.

30 Section 2. Section 125.022, Florida Statutes, is amended to
31 read:

32 125.022 Development permits and orders.—

33 (1) Within 30 days after receiving an application for
34 approval of a development permit or development order, a county
35 must review the application for completeness and issue a letter
36 indicating that all required information is submitted or
37 specifying with particularity any areas that are deficient. If
38 the application is deficient, the applicant has 30 days to
39 address the deficiencies by submitting the required additional
40 information. Within 120 days after the county has deemed the



155860

41 application complete, or 180 days for applications that require
42 final action through a quasi-judicial hearing or a public
43 hearing, the county must approve, approve with conditions, or
44 deny the application for a development permit or development
45 order. Both parties may agree to a reasonable request for an
46 extension of time, particularly in the event of a force majeure
47 or other extraordinary circumstance. An approval, approval with
48 conditions, or denial of the application for a development
49 permit or development order must include written findings
50 supporting the county's decision. The timeframes contained in
51 this subsection do not apply in an area of critical state
52 concern, as designated in s. 380.0552.

53 (2)~~(1)~~ When reviewing an application for a development
54 permit or development order that is certified by a professional
55 listed in s. 403.0877, a county may not request additional
56 information from the applicant more than three times, unless the
57 applicant waives the limitation in writing. Before a third
58 request for additional information, the applicant must be
59 offered a meeting to attempt to resolve outstanding issues.
60 Except as provided in subsection (5)~~(4)~~, if the applicant
61 believes the request for additional information is not
62 authorized by ordinance, rule, statute, or other legal
63 authority, the county, at the applicant's request, shall proceed
64 to process the application for approval or denial.

65 (3)~~(2)~~ When a county denies an application for a
66 development permit or development order, the county shall give
67 written notice to the applicant. The notice must include a
68 citation to the applicable portions of an ordinance, rule,
69 statute, or other legal authority for the denial of the permit



155860

70 or order.

71 (4)~~(3)~~ As used in this section, the terms ~~term~~ "development
72 permit" and "development order" have ~~has~~ the same meaning as in
73 s. 163.3164, but do ~~does~~ not include building permits.

74 (5)~~(4)~~ For any development permit application filed with
75 the county after July 1, 2012, a county may not require as a
76 condition of processing or issuing a development permit or
77 development order that an applicant obtain a permit or approval
78 from any state or federal agency unless the agency has issued a
79 final agency action that denies the federal or state permit
80 before the county action on the local development permit.

81 (6)~~(5)~~ Issuance of a development permit or development
82 order by a county does not in any way create any rights on the
83 part of the applicant to obtain a permit from a state or federal
84 agency and does not create any liability on the part of the
85 county for issuance of the permit if the applicant fails to
86 obtain requisite approvals or fulfill the obligations imposed by
87 a state or federal agency or undertakes actions that result in a
88 violation of state or federal law. A county shall attach such a
89 disclaimer to the issuance of a development permit and shall
90 include a permit condition that all other applicable state or
91 federal permits be obtained before commencement of the
92 development.

93 (7)~~(6)~~ This section does not prohibit a county from
94 providing information to an applicant regarding what other state
95 or federal permits may apply.

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

98 163.3167 Scope of act.—



155860

99 (3) A municipality established after the effective date of
100 this act shall, within 1 year after incorporation, establish a
101 local planning agency, pursuant to s. 163.3174, and prepare and
102 adopt a comprehensive plan of the type and in the manner set out
103 in this act within 3 years after the date of such incorporation.
104 A county comprehensive plan is shall be deemed controlling until
105 the municipality adopts a comprehensive plan in accordance
106 accord with this act. A comprehensive plan adopted after January
107 1, 2019, and all land development regulations adopted to
108 implement the comprehensive plan must incorporate each
109 development order existing before the comprehensive plan's
110 effective date, may not impair the completion of a development
111 in accordance with such existing development order, and must
112 vest the density and intensity approved by such development
113 order existing on the effective date of the comprehensive plan
114 without limitation or modification.

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

118 163.3180 Concurrency.—

119 (5)

120 (i) If a local government elects to repeal transportation
121 concurrency, it is encouraged to adopt an alternative mobility
122 funding system that uses one or more of the tools and techniques
123 identified in paragraph (f). Any alternative mobility funding
124 system adopted may not be used to deny, time, or phase an
125 application for site plan approval, plat approval, final
126 subdivision approval, building permits, or the functional
127 equivalent of such approvals provided that the developer agrees



155860

128 to pay for the development's identified transportation impacts
129 via the funding mechanism implemented by the local government.
130 The revenue from the funding mechanism used in the alternative
131 system must be used to implement the needs of the local
132 government's plan which serves as the basis for the fee imposed.
133 A mobility fee-based funding system must comply with s.
134 163.31801 governing the dual rational nexus test applicable to
135 impact fees. An alternative system that is not mobility fee-
136 based shall not be applied in a manner that imposes upon new
137 development any responsibility for funding an existing
138 transportation deficiency as defined in paragraph (h).

139 (6)

140 (h)1. In order to limit the liability of local governments,
141 a local government may allow a landowner to proceed with
142 development of a specific parcel of land notwithstanding a
143 failure of the development to satisfy school concurrency, if all
144 the following factors are shown to exist:

145 a. The proposed development would be consistent with the
146 future land use designation for the specific property and with
147 pertinent portions of the adopted local plan, as determined by
148 the local government.

149 b. The local government's capital improvements element and
150 the school board's educational facilities plan provide for
151 school facilities adequate to serve the proposed development,
152 and the local government or school board has not implemented
153 that element or the project includes a plan that demonstrates
154 that the capital facilities needed as a result of the project
155 can be reasonably provided.

156 c. The local government and school board have provided a



157 means by which the landowner will be assessed a proportionate
158 share of the cost of providing the school facilities necessary
159 to serve the proposed development.

160 2. If a local government applies school concurrency, it may
161 not deny an application for site plan, final subdivision
162 approval, or the functional equivalent for a development or
163 phase of a development authorizing residential development for
164 failure to achieve and maintain the level-of-service standard
165 for public school capacity in a local school concurrency
166 management system where adequate school facilities will be in
167 place or under actual construction within 3 years after the
168 issuance of final subdivision or site plan approval, or the
169 functional equivalent. School concurrency is satisfied if the
170 developer executes a legally binding commitment to provide
171 mitigation proportionate to the demand for public school
172 facilities to be created by actual development of the property,
173 including, but not limited to, the options described in sub-
174 subparagraph a. Options for proportionate-share mitigation of
175 impacts on public school facilities must be established in the
176 comprehensive plan and the interlocal agreement pursuant to s.
177 163.31777.

178 a. Appropriate mitigation options include the contribution
179 of land; the construction, expansion, or payment for land
180 acquisition or construction of a public school facility; the
181 construction of a charter school that complies with the
182 requirements of s. 1002.33(18); or the creation of mitigation
183 banking based on the construction of a public school facility in
184 exchange for the right to sell capacity credits. Such options
185 must include execution by the applicant and the local government



155860

186 of a development agreement that constitutes a legally binding
187 commitment to pay proportionate-share mitigation for the
188 additional residential units approved by the local government in
189 a development order and actually developed on the property,
190 taking into account residential density allowed on the property
191 prior to the plan amendment that increased the overall
192 residential density. The district school board must be a party
193 to such an agreement. As a condition of its entry into such a
194 development agreement, the local government may require the
195 landowner to agree to continuing renewal of the agreement upon
196 its expiration.

197 b. If the interlocal agreement and the local government
198 comprehensive plan authorize a contribution of land; the
199 construction, expansion, or payment for land acquisition; the
200 construction or expansion of a public school facility, or a
201 portion thereof; or the construction of a charter school that
202 complies with the requirements of s. 1002.33(18), as
203 proportionate-share mitigation, the local government shall
204 credit such a contribution, construction, expansion, or payment
205 toward any other impact fee or exaction imposed by local
206 ordinance for public educational facilities ~~the same need~~, on a
207 dollar-for-dollar basis at fair market value. The credit must be
208 based on the total impact fee assessed and not on the impact fee
209 for any particular type of school.

210 c. Any proportionate-share mitigation must be directed by
211 the school board toward a school capacity improvement identified
212 in the 5-year school board educational facilities plan that
213 satisfies the demands created by the development in accordance
214 with a binding developer's agreement.



155860

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

219 Section 5. Section 163.31801, Florida Statutes, is amended
220 to read:

221 163.31801 Impact fees; short title; intent; minimum
222 requirements; audits; challenges definitions; ordinances levying
223 impact fees.—

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

226 (2) The Legislature finds that impact fees are an important
227 source of revenue for a local government to use in funding the
228 infrastructure necessitated by new growth. The Legislature
229 further finds that impact fees are an outgrowth of the home rule
230 power of a local government to provide certain services within
231 its jurisdiction. Due to the growth of impact fee collections
232 and local governments' reliance on impact fees, it is the intent
233 of the Legislature to ensure that, when a county or municipality
234 adopts an impact fee by ordinance or a special district adopts
235 an impact fee by resolution, the governing authority complies
236 with this section.

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

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

242 (b) The local government must provide for accounting and
243 reporting of impact fee collections and expenditures. If a local



155860

244 governmental entity imposes an impact fee to address its
245 infrastructure needs, the entity must ~~shall~~ account for the
246 revenues and expenditures of such impact fee in a separate
247 accounting fund.

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

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

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

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

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

266 (h) The local government must specifically earmark funds
267 collected under the impact fee for use in acquiring,
268 constructing, or improving capital facilities to benefit new
269 users.

270 (i) Revenues generated by the impact fee may not be used,
271 in whole or in part, to pay existing debt or for previously
272 approved projects unless the expenditure is reasonably connected



155860

273 to, or has a rational nexus with, the increased impact generated
274 by the new residential or nonresidential construction.

275 (4) The local government must credit against the collection
276 of the impact fee any contribution, whether identified in a
277 proportionate share agreement or other form of exaction, related
278 to public education facilities, including land dedication, site
279 planning and design, or construction. Any contribution must be
280 applied to reduce any education-based impact fees on a dollar-
281 for-dollar basis at fair market value.

282 (5) If a local government increases its impact fee rates,
283 the holder of any impact fee credits, whether such credits are
284 granted under s. 163.3180, s. 380.06, or otherwise, which were
285 in existence before the increase, is entitled to the full
286 benefit of the intensity or density prepaid by the credit
287 balance as of the date it was first established. This subsection
288 shall operate prospectively and not retrospectively.

289 ~~(6)~~(4) Audits of financial statements of local governmental
290 entities and district school boards which are performed by a
291 certified public accountant pursuant to s. 218.39 and submitted
292 to the Auditor General must include an affidavit signed by the
293 chief financial officer of the local governmental entity or
294 district school board stating that the local governmental entity
295 or district school board has complied with this section.

296 ~~(7)~~(5) In any action challenging an impact fee or the
297 government's failure to provide required dollar-for-dollar
298 credits for the payment of impact fees as provided in s.
299 163.3180(6)(h)2.b., the government has the burden of proving by
300 a preponderance of the evidence that the imposition or amount of
301 the fee or credit meets the requirements of state legal



155860

302 precedent and ~~or~~ this section. The court may not use a
303 deferential standard for the benefit of the government.

304 (8) A county, municipality, or special district may provide
305 an exception or waiver for an impact fee for the development or
306 construction of housing that is affordable, as defined in s.
307 420.9071. If a county, municipality, or special district
308 provides such an exception or waiver, it is not required to use
309 any revenues to offset the impact.

310 (9) This section does not apply to water and sewer
311 connection fees.

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

314 163.3202 Land development regulations.—

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

318 (j) Incorporate preexisting development orders identified
319 pursuant to s. 163.3167(3).

320 Section 7. Section 166.033, Florida Statutes, is amended to
321 read:

322 166.033 Development permits and orders.—

323 (1) Within 30 days after receiving an application for
324 approval of a development permit or development order, a
325 municipality must review the application for completeness and
326 issue a letter indicating that all required information is
327 submitted or specifying with particularity any areas that are
328 deficient. If the application is deficient, the applicant has 30
329 days to address the deficiencies by submitting the required
330 additional information. Within 120 days after the municipality



155860

331 has deemed the application complete, or 180 days for
332 applications that require final action through a quasi-judicial
333 hearing or a public hearing, the municipality must approve,
334 approve with conditions, or deny the application for a
335 development permit or development order. Both parties may agree
336 to a reasonable request for an extension of time, particularly
337 in the event of a force majeure or other extraordinary
338 circumstance. An approval, approval with conditions, or denial
339 of the application for a development permit or development order
340 must include written findings supporting the municipality's
341 decision. The timeframes contained in this subsection do not
342 apply in an area of critical state concern, as designated in s.
343 380.0552 or chapter 28-36, Florida Administrative Code.

344 (2)~~(1)~~ When reviewing an application for a development
345 permit or development order that is certified by a professional
346 listed in s. 403.0877, a municipality may not request additional
347 information from the applicant more than three times, unless the
348 applicant waives the limitation in writing. Before a third
349 request for additional information, the applicant must be
350 offered a meeting to attempt to resolve outstanding issues.
351 Except as provided in subsection (5) ~~(4)~~, if the applicant
352 believes the request for additional information is not
353 authorized by ordinance, rule, statute, or other legal
354 authority, the municipality, at the applicant's request, shall
355 proceed to process the application for approval or denial.

356 (3)~~(2)~~ When a municipality denies an application for a
357 development permit or development order, the municipality shall
358 give written notice to the applicant. The notice must include a
359 citation to the applicable portions of an ordinance, rule,



155860

360 statute, or other legal authority for the denial of the permit
361 or order.

362 (4)~~(3)~~ As used in this section, the terms ~~term~~ "development
363 permit" and "development order" have ~~has~~ the same meaning as in
364 s. 163.3164, but do ~~does~~ not include building permits.

365 (5)~~(4)~~ For any development permit application filed with
366 the municipality after July 1, 2012, a municipality may not
367 require as a condition of processing or issuing a development
368 permit or development order that an applicant obtain a permit or
369 approval from any state or federal agency unless the agency has
370 issued a final agency action that denies the federal or state
371 permit before the municipal action on the local development
372 permit.

373 (6)~~(5)~~ Issuance of a development permit or development
374 order by a municipality does not ~~in any way~~ create any right on
375 the part of an applicant to obtain a permit from a state or
376 federal agency and does not create any liability on the part of
377 the municipality for issuance of the permit if the applicant
378 fails to obtain requisite approvals or fulfill the obligations
379 imposed by a state or federal agency or undertakes actions that
380 result in a violation of state or federal law. A municipality
381 shall attach such a disclaimer to the issuance of development
382 permits and shall include a permit condition that all other
383 applicable state or federal permits be obtained before
384 commencement of the development.

385 (7)~~(6)~~ This section does not prohibit a municipality from
386 providing information to an applicant regarding what other state
387 or federal permits may apply.

388 Section 8. Section 166.04151, Florida Statutes, is amended



155860

389 to read:

390 166.04151 Affordable housing.—

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

396 (2) An inclusionary housing ordinance may require a
397 developer to provide a specified number or percentage of
398 affordable housing units to be included in a development or
399 allow a developer to contribute to a housing fund or other
400 alternatives in lieu of building the affordable housing units.
401 However, in exchange, a municipality must provide incentives to
402 fully offset all costs to the developer of its affordable
403 housing contribution. Such incentives may include, but are not
404 limited to:

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

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

410 (c) Granting other incentives.

411 (3) Subsection (2) does not apply in an area of critical
412 state concern, as designated by s. 380.0552 or chapter 28-36,
413 Florida Administrative Code.

414 Section 9. This act shall take effect upon becoming a law.

415

416 ===== T I T L E A M E N D M E N T =====

417 And the title is amended as follows:



155860

418 Delete everything before the enacting clause
419 and insert:

420 A bill to be entitled
421 An act relating to community development and housing;
422 amending s. 125.01055, F.S.; authorizing an
423 inclusionary housing ordinance to require a developer
424 to provide a specified number or percentage of
425 affordable housing units to be included in a
426 development or allow a developer to contribute to a
427 housing fund or other alternatives; requiring a county
428 to provide certain incentives to fully offset all
429 costs to the developer of its affordable housing
430 contribution; providing applicability; amending s.
431 125.022, F.S.; requiring that a county review the
432 application for completeness and issue a certain
433 letter within a specified period after receiving an
434 application for approval of a development permit or
435 development order; providing procedures for addressing
436 deficiencies in, and for approving or denying, the
437 application; providing applicability of certain
438 timeframes; conforming provisions to changes made by
439 the act; defining the term "development order";
440 amending s. 163.3167, F.S.; providing requirements for
441 a comprehensive plan adopted after a specified date
442 and all land development regulations adopted to
443 implement the comprehensive plan; amending s.
444 163.3180, F.S.; revising compliance requirements for a
445 mobility fee-based funding system; requiring a local
446 government to credit certain contributions,



155860

447 constructions, expansions, or payments toward any
448 other impact fee or exaction imposed by local
449 ordinance for public educational facilities; providing
450 requirements for the basis of the credit; amending s.
451 163.31801, F.S.; adding minimum conditions that
452 certain impact fees must satisfy; requiring a local
453 government to credit against the collection of an
454 impact fee any contribution related to public
455 education facilities, subject to certain requirements;
456 requiring the holder of certain impact fee credits to
457 be entitled to a certain benefit if a local government
458 increases its impact fee rates; providing
459 applicability; providing that the government, in
460 certain actions, has the burden of proving by a
461 preponderance of the evidence that the imposition or
462 amount of certain required dollar-for-dollar credits
463 for the payment of impact fees meets certain
464 requirements; prohibiting the court from using a
465 deferential standard for the benefit of the
466 government; authorizing a county, municipality, or
467 special district to provide an exception or waiver for
468 an impact fee for the development or construction of
469 housing that is affordable; providing that if a
470 county, municipality, or special district provides
471 such exception or waiver, it is not required to use
472 any revenues to offset the impact; providing
473 applicability; amending s. 163.3202, F.S.; requiring
474 local land development regulations to incorporate
475 certain preexisting development orders; amending s.



155860

476 166.033, F.S.; requiring that a municipality review
477 the application for completeness and issue a certain
478 letter within a specified period after receiving an
479 application for approval of a development permit or
480 development order; providing procedures for addressing
481 deficiencies in, and for approving or denying, the
482 application; providing applicability of certain
483 timeframes; conforming provisions to changes made by
484 the act; defining the term "development order";
485 amending s. 166.04151, F.S.; authorizing an
486 inclusionary housing ordinance to require a developer
487 to provide a specified number or percentage of
488 affordable housing units to be included in a
489 development or allow a developer to contribute to a
490 housing fund or other alternatives; requiring a
491 municipality to provide certain incentives to fully
492 offset all costs to the developer of its affordable
493 housing contribution; providing applicability;
494 providing an effective date.