

1 A bill to be entitled
2 An act relating to property development; amending s.
3 125.01055, F.S.; prohibiting a county from adopting or
4 imposing a requirement in any form relating to
5 affordable housing which has specified effects;
6 providing construction; amending s. 125.022, F.S.;
7 requiring that a county review certain applications
8 for completeness and issue a certain letter within a
9 specified time period after receiving an application
10 for approval of a development permit or development
11 order; providing procedures for addressing
12 deficiencies in, and for approving or denying, the
13 application; conforming provisions to changes made by
14 the act; defining the term "development order";
15 amending s. 166.033, F.S.; requiring that a
16 municipality review certain applications for
17 completeness and issue a certain letter within a
18 specified time period after receiving an application
19 for approval of a development permit or development
20 order; providing procedures for addressing
21 deficiencies in, and for approving or denying, the
22 application; conforming provisions to changes made by
23 the act; defining the term "development order";
24 amending s. 166.04151, F.S.; prohibiting a
25 municipality from adopting or imposing a requirement

26 | in any form relating to affordable housing which has
27 | specified effects; providing construction; amending s.
28 | 163.3215, F.S.; specifying use of summary procedure in
29 | certain development order cases; amending s. 553.791,
30 | F.S.; providing and revising definitions; revising the
31 | timeframe an owner or contractor must notify the
32 | building official that he or she is using a private
33 | provider; revising the type of affidavit form to be
34 | used by private providers under certain circumstances;
35 | revising the timeframe within which a building
36 | official has to approve or deny a permit application;
37 | limiting a building official's review of a resubmitted
38 | permit application to previously identified
39 | deficiencies; authorizing a contractor to petition the
40 | circuit court to enforce the terms of certain building
41 | code inspection service laws; limiting the number of
42 | times a building official may audit a private
43 | provider, with exceptions; providing an effective
44 | date.

45 |
46 | Be It Enacted by the Legislature of the State of Florida:

47 |
48 | Section 1. Section 125.01055, Florida Statutes, is amended
49 | to read:

50 | 125.01055 Affordable housing.—

51 (1) Notwithstanding any other provision of law, a county
52 may adopt and maintain in effect any law, ordinance, rule, or
53 other measure that is adopted for the purpose of increasing the
54 supply of affordable housing using land use mechanisms such as
55 inclusionary housing ordinances. A county may not, however,
56 adopt or impose a requirement in any form, including, without
57 limitation, by way of a comprehensive plan amendment, ordinance,
58 or land development regulation or as a condition of a
59 development order or development permit, which has any of the
60 following effects:

61 (a) Mandating or establishing a maximum sales price or
62 lease rental for privately produced dwelling units.

63 (b) Requiring the allocation or designation, whether
64 directly or indirectly, of privately produced dwelling units for
65 sale or rental to any particular class or group of purchasers or
66 tenants.

67 (c) Requiring the provision of any onsite or offsite
68 workforce or affordable housing units or a contribution of land
69 or money for such housing, including, but not limited to, the
70 payment of any flat or percentage-based fee, whether calculated
71 on the basis of the number of approved dwelling units, the
72 amount of approved square footage, or otherwise.

73 (2) This section does not limit the authority of a county
74 to create or implement a voluntary density bonus program or any
75 other voluntary incentive-based program designed to increase the

76 supply of workforce or affordable housing units.

77 Section 2. Section 125.022, Florida Statutes, is amended
78 to read:

79 125.022 Development permits and development orders.-

80 (1) Within 30 days after receiving an application for a
81 development permit or development order, a county must review
82 the application for completeness and issue a letter indicating
83 all required information is submitted or specifying with
84 particularity any areas that are deficient. If deficient, the
85 applicant has 30 days to address the deficiencies by submitting
86 the required additional information. Within 90 days after the
87 initial submission, if complete, or the supplemental submission,
88 whichever is later, the county shall approve, approve with
89 conditions, or deny the application for a development permit or
90 development order. The time periods contained in this section
91 may be waived in writing by the applicant. An approval, approval
92 with conditions, or denial of the application for a development
93 permit or development order must include written findings
94 supporting the county's decision.

95 (2)~~(1)~~ When reviewing an application for a development
96 permit or development order that is certified by a professional
97 listed in s. 403.0877, a county may not request additional
98 information from the applicant more than three times, unless the
99 applicant waives the limitation in writing. Before a third
100 request for additional information, the applicant must be

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

107 (3)~~(2)~~ When a county denies an application for a
108 development permit or development order, the county shall give
109 written notice to the applicant. The notice must include a
110 citation to the applicable portions of an ordinance, rule,
111 statute, or other legal authority for the denial of the permit
112 or order.

113 (4)~~(3)~~ As used in this section, the terms ~~term~~
114 "development permit" and "development order" have ~~has~~ the same
115 meaning as in s. 163.3164, but do ~~does~~ not include building
116 permits.

117 (5)~~(4)~~ For any development permit application filed with
118 the county on or after July 1, 2012, a county may not require as
119 a condition of processing or issuing a development permit or
120 development order that an applicant obtain a permit or approval
121 from any state or federal agency unless the agency has issued a
122 final agency action that denies the federal or state permit
123 before the county action on the local development permit.

124 (6)~~(5)~~ Issuance of a development permit or development
125 order by a county does not in any way create any rights on the

126 part of the applicant to obtain a permit from a state or federal
 127 agency and does not create any liability on the part of the
 128 county for issuance of the permit if the applicant fails to
 129 obtain requisite approvals or fulfill the obligations imposed by
 130 a state or federal agency or undertakes actions that result in a
 131 violation of state or federal law. A county shall attach such a
 132 disclaimer to the issuance of a development permit and shall
 133 include a permit condition that all other applicable state or
 134 federal permits be obtained before commencement of the
 135 development.

136 ~~(7)-(6)~~ This section does not prohibit a county from
 137 providing information to an applicant regarding what other state
 138 or federal permits may apply.

139 Section 3. Section 166.033, Florida Statutes, is amended
 140 to read:

141 166.033 Development permits and development orders.—

142 (1) Within 30 days after receiving an application for a
 143 development permit or development order, a municipality must
 144 review the application for completeness and issue a letter
 145 indicating all required information is submitted or specifying
 146 with particularity any areas that are deficient. If deficient,
 147 the applicant has 30 days to address the deficiencies by
 148 submitting the required additional information. Within 90 days
 149 after the initial submission, if complete, or the supplemental
 150 submission, whichever is later, the municipality shall approve,

151 approve with conditions, or deny the application for a
152 development permit or development order. The time periods
153 contained in this section may be waived in writing by the
154 applicant. An approval, approval with conditions, or denial of
155 the application for a development permit or development order
156 must include written findings supporting the municipality's
157 decision.

158 (2)~~(1)~~ When reviewing an application for a development
159 permit or development order that is certified by a professional
160 listed in s. 403.0877, a municipality may not request additional
161 information from the applicant more than three times, unless the
162 applicant waives the limitation in writing. Before a third
163 request for additional information, the applicant must be
164 offered a meeting to attempt to resolve outstanding issues.
165 Except as provided in subsection (5)~~(4)~~, if the applicant
166 believes the request for additional information is not
167 authorized by ordinance, rule, statute, or other legal
168 authority, the municipality, at the applicant's request, shall
169 proceed to process the application for approval or denial.

170 (3)~~(2)~~ When a municipality denies an application for a
171 development permit or development order, the municipality shall
172 give written notice to the applicant. The notice must include a
173 citation to the applicable portions of an ordinance, rule,
174 statute, or other legal authority for the denial of the permit
175 or order.

176 (4)~~(3)~~ As used in this section, the terms ~~term~~
177 "development permit" and "development order" ~~have has~~ the same
178 meaning as in s. 163.3164, but do ~~does~~ not include building
179 permits.

180 (5)~~(4)~~ For any development permit application filed with
181 the municipality on or after July 1, 2012, a municipality may
182 not require as a condition of processing or issuing a
183 development permit or development order that an applicant obtain
184 a permit or approval from any state or federal agency unless the
185 agency has issued a final agency action that denies the federal
186 or state permit before the municipal action on the local
187 development permit.

188 (6)~~(5)~~ Issuance of a development permit or development
189 order by a municipality does not in any way create any right on
190 the part of an applicant to obtain a permit from a state or
191 federal agency and does not create any liability on the part of
192 the municipality for issuance of the permit if the applicant
193 fails to obtain requisite approvals or fulfill the obligations
194 imposed by a state or federal agency or undertakes actions that
195 result in a violation of state or federal law. A municipality
196 shall attach such a disclaimer to the issuance of development
197 permits and shall include a permit condition that all other
198 applicable state or federal permits be obtained before
199 commencement of the development.

200 (7)~~(6)~~ This section does not prohibit a municipality from

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201 providing information to an applicant regarding what other state
202 or federal permits may apply.

203 Section 4. Section 166.04151, Florida Statutes, is amended
204 to read:

205 166.04151 Affordable housing.—

206 (1) Notwithstanding any other provision of law, a
207 municipality may adopt and maintain in effect any law,
208 ordinance, rule, or other measure that is adopted for the
209 purpose of increasing the supply of affordable housing using
210 land use mechanisms such as inclusionary housing ordinances. A
211 municipality may not, however, adopt or impose a requirement in
212 any form, including, without limitation, by way of a
213 comprehensive plan amendment, ordinance, or land development
214 regulation or as a condition of a development order or
215 development permit, which has any of the following effects:

216 (a) Mandating or establishing a maximum sales price or
217 lease rental for privately produced dwelling units,

218 (b) Requiring the allocation or designation, whether
219 directly or indirectly, of privately produced dwelling units for
220 sale or rental to any particular class or group of purchasers or
221 tenants.

222 (c) Requiring the provision of any onsite or offsite
223 workforce or affordable housing units or a contribution of land
224 or money for such housing, including, but not limited to, the
225 payment of any flat or percentage-based fee, whether calculated

226 | on the basis of the number of approved dwelling units, the
 227 | amount of approved square footage, or otherwise.

228 | (2) This section does not limit the authority of a
 229 | municipality to create or implement a voluntary density bonus
 230 | program or any other voluntary incentive-based program designed
 231 | to increase the supply of workforce or affordable housing units.

232 | Section 5. Subsections (8) and (9) of section 163.3215,
 233 | Florida Statutes, are renumbered as subsections (9) and (10)
 234 | respectively, and a new subsection (8) is added to that section,
 235 | to read:

236 | 163.3215 Standing to enforce local comprehensive plans
 237 | through development orders.—

238 | (8) (a) In any proceeding under subsection (3), either
 239 | party is entitled to the summary procedure provided in s.
 240 | 51.011, and the court shall advance the cause on the calendar,
 241 | subject to paragraph (b).

242 | (b) Upon a showing by either party by clear and convincing
 243 | evidence that summary procedure is inappropriate, the court may
 244 | determine that summary procedure does not apply.

245 | Section 6. Subsections (1), (4), (5), (6), (7), and (18)
 246 | of section 553.791, Florida Statutes, are amended, and paragraph
 247 | (d) is added to subsection (15), to read:

248 | 553.791 Alternative plans review and inspection.—

249 | (1) As used in this section, the term:

250 | (a) "Applicable codes" means the Florida Building Code and

251 any local technical amendments to the Florida Building Code but
252 does not include the applicable minimum fire prevention and
253 firesafety codes adopted pursuant to chapter 633.

254 (b) "Audit" means the process to confirm that the building
255 code inspection services have been performed by the private
256 provider, including ensuring that the required affidavit for the
257 plan review has been properly completed and affixed to the
258 permit documents and that the minimum mandatory inspections
259 required under the building code have been performed and
260 properly recorded. The ~~term does not mean that the local~~
261 building official may not ~~is required to~~ replicate the plan
262 review or inspection being performed by the private provider,
263 unless expressly authorized by this section.

264 (c) "Building" means any construction, erection,
265 alteration, demolition, or improvement of, or addition to, any
266 structure or site work for which permitting by a local
267 enforcement agency is required.

268 (d) "Building code inspection services" means those
269 services described in s. 468.603(5) and (8) involving the review
270 of building plans as well as those services involving the review
271 of site plans and site work engineering plans or their
272 functional equivalent, to determine compliance with applicable
273 codes and those inspections required by law of each phase of
274 construction for which permitting by a local enforcement agency
275 is required to determine compliance with applicable codes.

276 (e) "Duly authorized representative" means an agent of the
277 private provider identified in the permit application who
278 reviews plans or performs inspections as provided by this
279 section and who is licensed as an engineer under chapter 471 or
280 as an architect under chapter 481 or who holds a standard
281 certificate under part XII of chapter 468.

282 (f) "Immediate threat to public safety and welfare" means
283 a building code violation that, if allowed to persist,
284 constitutes an immediate hazard that could result in death,
285 serious bodily injury, or significant property damage. This
286 paragraph does not limit the authority of the local building
287 official to issue a Notice of Corrective Action at any time
288 during the construction of a building project or any portion of
289 such project if the official determines that a condition of the
290 building or portion thereof may constitute a hazard when the
291 building is put into use following completion as long as the
292 condition cited is shown to be in violation of the building code
293 or approved plans.

294 (g) "Local building official" means the individual within
295 the governing jurisdiction responsible for direct regulatory
296 administration or supervision of plans review, enforcement, and
297 inspection of any construction, erection, alteration,
298 demolition, or substantial improvement of, or addition to, any
299 structure for which permitting is required to indicate
300 compliance with applicable codes and includes any duly

301 authorized designee of such person.

302 (h) "Permit application" means a properly completed and
303 submitted application for the requested building or construction
304 permit, including:

305 1. The plans reviewed by the private provider.

306 2. The affidavit from the private provider required under
307 subsection (6).

308 3. Any applicable fees.

309 4. Any documents required by the local building official
310 to determine that the fee owner has secured all other government
311 approvals required by law.

312 (i) "Plans" means building plans, site engineering plans,
313 or site plans, or their functional equivalent, submitted by a
314 fee owner or fee owner's contractor to a private provider or
315 duly authorized representative for review.

316 (j)~~(i)~~ "Private provider" means a person licensed as a
317 building code administrator under part XII of chapter 468, as an
318 engineer under chapter 471, or as an architect under chapter
319 481. For purposes of performing inspections under this section
320 for additions and alterations that are limited to 1,000 square
321 feet or less to residential buildings, the term "private
322 provider" also includes a person who holds a standard
323 certificate under part XII of chapter 468.

324 (k)~~(j)~~ "Request for certificate of occupancy or
325 certificate of completion" means a properly completed and

326 | executed application for:

327 | 1. A certificate of occupancy or certificate of
328 | completion.

329 | 2. A certificate of compliance from the private provider
330 | required under subsection (11).

331 | 3. Any applicable fees.

332 | 4. Any documents required by the local building official
333 | to determine that the fee owner has secured all other government
334 | approvals required by law.

335 | (1) "Site work" means the portion of a construction
336 | project that is not part of the building structure, including,
337 | but not limited to, grading, excavation, landscape irrigation,
338 | and installation of driveways.

339 | (m)-(k) "Stop-work order" means the issuance of any written
340 | statement, written directive, or written order which states the
341 | reason for the order and the conditions under which the cited
342 | work will be permitted to resume.

343 | (4) A fee owner or the fee owner's contractor using a
344 | private provider to provide building code inspection services
345 | shall notify the local building official at the time of permit
346 | application, or no less than 2 7 business days before ~~prior to~~
347 | the first scheduled inspection by the local building official or
348 | building code enforcement agency for a private provider
349 | performing required inspections of construction under this
350 | section, on a form to be adopted by the commission. This notice

351 shall include the following information:

352 (a) The services to be performed by the private provider.

353 (b) The name, firm, address, telephone number, and
354 facsimile number of each private provider who is performing or
355 will perform such services, his or her professional license or
356 certification number, qualification statements or resumes, and,
357 if required by the local building official, a certificate of
358 insurance demonstrating that professional liability insurance
359 coverage is in place for the private provider's firm, the
360 private provider, and any duly authorized representative in the
361 amounts required by this section.

362 (c) An acknowledgment from the fee owner in substantially
363 the following form:

364 I have elected to use one or more private providers to provide
365 building code plans review and/or inspection services on the
366 building or structure that is the subject of the enclosed permit
367 application, as authorized by s. 553.791, Florida Statutes. I
368 understand that the local building official may not review the
369 plans submitted or perform the required building inspections to
370 determine compliance with the applicable codes, except to the
371 extent specified in said law. Instead, plans review and/or
372 required building inspections will be performed by licensed or
373 certified personnel identified in the application. The law
374 requires minimum insurance requirements for such personnel, but
375 I understand that I may require more insurance to protect my

376 | interests. By executing this form, I acknowledge that I have
377 | made inquiry regarding the competence of the licensed or
378 | certified personnel and the level of their insurance and am
379 | satisfied that my interests are adequately protected. I agree to
380 | indemnify, defend, and hold harmless the local government, the
381 | local building official, and their building code enforcement
382 | personnel from any and all claims arising from my use of these
383 | licensed or certified personnel to perform building code
384 | inspection services with respect to the building or structure
385 | that is the subject of the enclosed permit application.
386 | If the fee owner or the fee owner's contractor makes any changes
387 | to the listed private providers or the services to be provided
388 | by those private providers, the fee owner or the fee owner's
389 | contractor shall, within 1 business day after any change, update
390 | the notice to reflect such changes. A change of a duly
391 | authorized representative named in the permit application does
392 | not require a revision of the permit, and the building code
393 | enforcement agency shall not charge a fee for making the change.
394 | In addition, the fee owner or the fee owner's contractor shall
395 | post at the project site, prior to the commencement of
396 | construction and updated within 1 business day after any change,
397 | on a form to be adopted by the commission, the name, firm,
398 | address, telephone number, and facsimile number of each private
399 | provider who is performing or will perform building code
400 | inspection services, the type of service being performed, and

401 similar information for the primary contact of the private
402 provider on the project.

403 (5) After construction has commenced and if the local
404 building official is unable to provide inspection services in a
405 timely manner, the fee owner or the fee owner's contractor may
406 elect to use a private provider to provide inspection services
407 by notifying the local building official of the owner's or
408 contractor's intention to do so no less than 2 ~~7~~ business days
409 before ~~prior to~~ the next scheduled inspection using the notice
410 provided for in paragraphs (4) (a)-(c).

411 (6) A private provider performing plans review under this
412 section shall review the ~~construction~~ plans to determine
413 compliance with the applicable codes. Upon determining that the
414 plans reviewed comply with the applicable codes, the private
415 provider shall prepare an affidavit or affidavits on a form
416 reasonably acceptable to ~~adopted by~~ the commission certifying,
417 under oath, that the following is true and correct to the best
418 of the private provider's knowledge and belief:

419 (a) The plans were reviewed by the affiant, who is duly
420 authorized to perform plans review pursuant to this section and
421 holds the appropriate license or certificate.

422 (b) The plans comply with the applicable codes.

423 (7) (a) No more than 5 ~~30~~ business days after receipt of a
424 permit application and the affidavit from the private provider
425 required pursuant to subsection (6), the local building official

426 shall issue the requested permit or provide a written notice to
427 the permit applicant identifying the specific plan features that
428 do not comply with the applicable codes, as well as the specific
429 code chapters and sections. If the local building official does
430 not provide a written notice of the plan deficiencies within the
431 prescribed 5-day ~~30-day~~ period, the permit application shall be
432 deemed approved as a matter of law, and the permit shall be
433 issued by the local building official on the next business day.

434 (b) If the local building official provides a written
435 notice of plan deficiencies to the permit applicant within the
436 prescribed 5-day ~~30-day~~ period, the 5-day ~~30-day~~ period shall be
437 tolled pending resolution of the matter. To resolve the plan
438 deficiencies, the permit applicant may elect to dispute the
439 deficiencies pursuant to subsection (13) or to submit revisions
440 to correct the deficiencies.

441 (c) If the permit applicant submits revisions, the local
442 building official has 3 ~~the remainder of the tolled 30-day~~
443 ~~period plus 5~~ business days from the date of resubmittal to
444 issue the requested permit or to provide a second written notice
445 to the permit applicant stating which of the previously
446 identified plan features remain in noncompliance with the
447 applicable codes, with specific reference to the relevant code
448 chapters and sections. Any subsequent review by the local
449 building official is limited to the deficiencies cited in the
450 written notice. If the local building official does not provide

451 the second written notice within the prescribed time period, the
452 permit shall be deemed approved as a matter of law, and issued
453 ~~by~~ the local building official must issue the permit on the next
454 business day.

455 (d) If the local building official provides a second
456 written notice of plan deficiencies to the permit applicant
457 within the prescribed time period, the permit applicant may
458 elect to dispute the deficiencies pursuant to subsection (13) or
459 to submit additional revisions to correct the deficiencies. For
460 all revisions submitted after the first revision, the local
461 building official has 3 ~~an additional 5~~ business days from the
462 date of resubmittal to issue the requested permit or to provide
463 a written notice to the permit applicant stating which of the
464 previously identified plan features remain in noncompliance with
465 the applicable codes, with specific reference to the relevant
466 code chapters and sections.

467 (15)

468 (d) If the local jurisdiction fails to comply with the
469 provisions set forth in this section, the fee owner's contractor
470 that has requested to use a private provider to provide building
471 code inspection services under this section may petition the
472 circuit court for the local jurisdiction to enforce the terms of
473 this section by writ of injunctive or other equitable relief.

474 (18) Each local building code enforcement agency may audit
475 the performance of building code inspection services by private

476 providers operating within the local jurisdiction. However, the
477 same private provider may not be audited more than four times in
478 a calendar year unless the local building official determines a
479 condition of a building constitutes an immediate threat to
480 public safety and welfare. Work on a building or structure may
481 proceed after inspection and approval by a private provider if
482 the provider has given notice of the inspection pursuant to
483 subsection (9) and, subsequent to such inspection and approval,
484 the work shall not be delayed for completion of an inspection
485 audit by the local building code enforcement agency.

486 Section 7. This act shall take effect July 1, 2019.