

By Senator Perry

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1 A bill to be entitled
2 An act relating to school concurrency; amending s.
3 163.3180, F.S.; requiring, instead of encouraging,
4 local governments that adopt school concurrency to
5 apply such concurrency to development on a
6 districtwide basis; removing provisions addressing
7 school concurrency on a less than districtwide basis;
8 revising provisions specifying when school concurrency
9 is satisfied; specifying that proportionate-share
10 mitigation must be set aside and not spent if an
11 improvement has not been identified; providing an
12 effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Paragraphs (f) and (h) of subsection (6) of
17 section 163.3180, Florida Statutes, are amended to read:

18 163.3180 Concurrency.—

19 (6)

20 (f)~~1~~. In order to balance competing interests, preserve the
21 constitutional concept of uniformity, and avoid disruption of
22 existing educational and growth management processes, local
23 governments ~~are encouraged~~, if they elect to adopt school
24 concurrency, must ~~to~~ apply school concurrency to development on
25 a districtwide basis so that a concurrency determination for a
26 specific development will be based upon the availability of
27 school capacity districtwide.

28 ~~2. If a local government elects to apply school concurrency~~
29 ~~on a less than districtwide basis, by using school attendance~~

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30 ~~zones or concurrency service areas:~~

31 ~~a. Local governments and school boards shall have the~~
32 ~~burden to demonstrate that the utilization of school capacity is~~
33 ~~maximized to the greatest extent possible in the comprehensive~~
34 ~~plan and amendment, taking into account transportation costs and~~
35 ~~court approved desegregation plans, as well as other factors. In~~
36 ~~addition, in order to achieve concurrency within the service~~
37 ~~area boundaries selected by local governments and school boards,~~
38 ~~the service area boundaries, together with the standards for~~
39 ~~establishing those boundaries, shall be identified and included~~
40 ~~as supporting data and analysis for the comprehensive plan.~~

41 ~~b. Where school capacity is available on a districtwide~~
42 ~~basis but school concurrency is applied on a less than~~
43 ~~districtwide basis in the form of concurrency service areas, if~~
44 ~~the adopted level of service standard cannot be met in a~~
45 ~~particular service area as applied to an application for a~~
46 ~~development permit and if the needed capacity for the particular~~
47 ~~service area is available in one or more contiguous service~~
48 ~~areas, as adopted by the local government, then the local~~
49 ~~government may not deny an application for site plan or final~~
50 ~~subdivision approval or the functional equivalent for a~~
51 ~~development or phase of a development on the basis of school~~
52 ~~concurrency, and if issued, development impacts shall be~~
53 ~~subtracted from the contiguous service area's capacity totals.~~
54 ~~Students from the development may not be required to go to the~~
55 ~~adjacent service area unless the school board rezones the area~~
56 ~~in which the development occurs.~~

57 (h)1. In order to limit the liability of local governments,
58 a local government may allow a landowner to proceed with

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59 development of a specific parcel of land notwithstanding a
60 failure of the development to satisfy school concurrency, if all
61 the following factors are shown to exist:

62 a. The proposed development would be consistent with the
63 future land use designation for the specific property and with
64 pertinent portions of the adopted local plan, as determined by
65 the local government.

66 b. The local government's capital improvements element and
67 the school board's educational facilities plan provide for
68 school facilities adequate to serve the proposed development,
69 and the local government or school board has not implemented
70 that element or the project includes a plan that demonstrates
71 that the capital facilities needed as a result of the project
72 can be reasonably provided.

73 c. The local government and school board have provided a
74 means by which the landowner will be assessed a proportionate
75 share of the cost of providing the school facilities necessary
76 to serve the proposed development.

77 2. If a local government applies school concurrency, it may
78 not deny an application for site plan, final subdivision
79 approval, or the functional equivalent for a development or
80 phase of a development authorizing residential development for
81 failure to achieve and maintain the level-of-service standard
82 for public school capacity in a local school concurrency
83 management system where adequate school facilities will be in
84 place or under actual construction within 3 years after the
85 issuance of final subdivision or site plan approval, or the
86 functional equivalent. School concurrency is satisfied if the
87 developer in good faith offers to execute ~~executes~~ a legally

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88 binding commitment to provide mitigation proportionate to the
89 demand for public school facilities to be created by actual
90 development of the property, including, but not limited to, the
91 options described in sub-subparagraph a. Options for
92 proportionate-share mitigation of impacts on public school
93 facilities must be established in the comprehensive plan and the
94 interlocal agreement pursuant to s. 163.31777.

95 a. Appropriate mitigation options include the contribution
96 of land; the construction, expansion, or payment for land
97 acquisition or construction of a public school facility; the
98 construction of a charter school that complies with the
99 requirements of s. 1002.33(18); or the creation of mitigation
100 banking based on the construction of a public school facility in
101 exchange for the right to sell capacity credits. Such options
102 must include execution by the applicant and the local government
103 of a development agreement that constitutes a legally binding
104 commitment to pay proportionate-share mitigation for the
105 additional residential units approved by the local government in
106 a development order and actually developed on the property,
107 taking into account residential density allowed on the property
108 prior to the plan amendment that increased the overall
109 residential density. The district school board must be a party
110 to such an agreement. As a condition of its entry into such a
111 development agreement, the local government may require the
112 landowner to agree to continuing renewal of the agreement upon
113 its expiration.

114 b. If the interlocal agreement and the local government
115 comprehensive plan authorize a contribution of land; the
116 construction, expansion, or payment for land acquisition; the

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117 construction or expansion of a public school facility, or a
118 portion thereof; or the construction of a charter school that
119 complies with the requirements of s. 1002.33(18), as
120 proportionate-share mitigation, the local government shall
121 credit such a contribution, construction, expansion, or payment
122 toward any other impact fee or exaction imposed by local
123 ordinance for public educational facilities, on a dollar-for-
124 dollar basis at fair market value. The credit must be based on
125 the total impact fee assessed and not on the impact fee for any
126 particular type of school.

127 c. Any proportionate-share mitigation must be directed by
128 the school board toward a school capacity improvement identified
129 in the 5-year school board educational facilities plan or must
130 be set aside and not spent until such an improvement has been
131 identified that satisfies the demands created by the development
132 in accordance with a binding developer's agreement.

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

137 Section 2. This act shall take effect July 1, 2022.