

By the Committee on Community Affairs; and Senator Perry

578-02325-22

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1 A bill to be entitled
2 An act relating to school concurrency; amending s.
3 163.3180, F.S.; revising provisions specifying when
4 school concurrency is satisfied; specifying that
5 proportionate-share mitigation must be set aside and
6 not spent if an improvement has not been identified;
7 providing an effective date.

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9 Be It Enacted by the Legislature of the State of Florida:

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11 Section 1. Paragraph (h) of subsection (6) of section
12 163.3180, Florida Statutes, is amended to read:

13 163.3180 Concurrency.—

14 (6)

15 (h)1. In order to limit the liability of local governments,
16 a local government may allow a landowner to proceed with
17 development of a specific parcel of land notwithstanding a
18 failure of the development to satisfy school concurrency, if all
19 the following factors are shown to exist:

20 a. The proposed development would be consistent with the
21 future land use designation for the specific property and with
22 pertinent portions of the adopted local plan, as determined by
23 the local government.

24 b. The local government's capital improvements element and
25 the school board's educational facilities plan provide for
26 school facilities adequate to serve the proposed development,
27 and the local government or school board has not implemented
28 that element or the project includes a plan that demonstrates
29 that the capital facilities needed as a result of the project

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30 can be reasonably provided.

31 c. The local government and school board have provided a
32 means by which the landowner will be assessed a proportionate
33 share of the cost of providing the school facilities necessary
34 to serve the proposed development.

35 2. If a local government applies school concurrency, it may
36 not deny an application for site plan, final subdivision
37 approval, or the functional equivalent for a development or
38 phase of a development authorizing residential development for
39 failure to achieve and maintain the level-of-service standard
40 for public school capacity in a local school concurrency
41 management system where adequate school facilities will be in
42 place or under actual construction within 3 years after the
43 issuance of final subdivision or site plan approval, or the
44 functional equivalent. School concurrency is satisfied if the
45 developer in good faith offers to execute ~~executes~~ a legally
46 binding commitment to provide mitigation proportionate to the
47 demand for public school facilities to be created by actual
48 development of the property, including, but not limited to, the
49 options described in sub-subparagraph a. Options for
50 proportionate-share mitigation of impacts on public school
51 facilities must be established in the comprehensive plan and the
52 interlocal agreement pursuant to s. 163.31777.

53 a. Appropriate mitigation options include the contribution
54 of land; the construction, expansion, or payment for land
55 acquisition or construction of a public school facility; the
56 construction of a charter school that complies with the
57 requirements of s. 1002.33(18); or the creation of mitigation
58 banking based on the construction of a public school facility in

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59 exchange for the right to sell capacity credits. Such options
60 must include execution by the applicant and the local government
61 of a development agreement that constitutes a legally binding
62 commitment to pay proportionate-share mitigation for the
63 additional residential units approved by the local government in
64 a development order and actually developed on the property,
65 taking into account residential density allowed on the property
66 prior to the plan amendment that increased the overall
67 residential density. The district school board must be a party
68 to such an agreement. As a condition of its entry into such a
69 development agreement, the local government may require the
70 landowner to agree to continuing renewal of the agreement upon
71 its expiration.

72 b. If the interlocal agreement and the local government
73 comprehensive plan authorize a contribution of land; the
74 construction, expansion, or payment for land acquisition; the
75 construction or expansion of a public school facility, or a
76 portion thereof; or the construction of a charter school that
77 complies with the requirements of s. 1002.33(18), as
78 proportionate-share mitigation, the local government shall
79 credit such a contribution, construction, expansion, or payment
80 toward any other impact fee or exaction imposed by local
81 ordinance for public educational facilities, on a dollar-for-
82 dollar basis at fair market value. The credit must be based on
83 the total impact fee assessed and not on the impact fee for any
84 particular type of school.

85 c. Any proportionate-share mitigation must be directed by
86 the school board toward a school capacity improvement identified
87 in the 5-year school board educational facilities plan or must

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88 be set aside and not spent until such an improvement has been
89 identified that satisfies the demands created by the development
90 in accordance with a binding developer's agreement.

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

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