By the Committees on Infrastructure and Security; and Community Affairs; and Senator Lee

A bill to be entitled
An act relating to community development and housing;
amending s. 125.01055, F.S.; authorizing an
inclusionary housing ordinance to require a developer
to provide a specified number or percentage of
affordable housing units to be included in a
development or allow a developer to contribute to a
housing fund or other alternatives; requiring a county
to provide certain incentives to fully offset all
costs to the developer of its affordable housing
contribution; amending s. 125.022, F.S.; requiring
that a county review the application for completeness
and issue a certain letter within a specified period
after receiving an application for approval of a
development permit or development order; providing
procedures for addressing deficiencies in, and for
approving or denying, the application; conforming
provisions to changes made by the act; defining the
term "development order"; amending s. 163.3180, F.S.;
revising compliance requirements for a mobility fee-
based funding system; requiring a local government to
credit certain contributions, constructions,
expansions, or payments toward any other impact fee or
exaction imposed by local ordinance for public
educational facilities; providing requirements for the
basis of the credit; amending s. 163.31801, F.S.;
adding minimum conditions that certain impact fees
must satisfy; requiring a local government to credit
against the collection of an impact fee any
contribution related to public education facilities, subject to certain requirements; requiring the holder of certain impact fee credits to be entitled to a proportionate increase in the credit balance if a local government increases its impact fee rates; providing that the government, in certain actions, has the burden of proving by a preponderance of the evidence that the imposition or amount of certain required dollar-for-dollar credits for the payment of impact fees meets certain requirements; prohibiting the court from using a deferential standard for the benefit of the government; authorizing a county, municipality, or special district to provide an exception or waiver for an impact fee for the development or construction of housing that is affordable; providing that if a county, municipality, or special district provides such an exception or waiver, it is not required to use any revenues to offset the impact; amending s. 166.033, F.S.; requiring that a municipality review the application for completeness and issue a certain letter within a specified period after receiving an application for approval of a development permit or development order; providing procedures for addressing deficiencies in, and for approving or denying, the application; conforming provisions to changes made by the act; defining the term “development order”; amending s. 166.04151, F.S.; authorizing an inclusionary housing ordinance to require a developer to provide a
Be It Enacted by the Legislature of the State of Florida:

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 inclusionary housing ordinances.

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

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

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

(c) Granting other incentives.

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

125.022 Development permits and orders.—
(1) Within 30 days after receiving an application for
approval of a development permit or development order, a county
must review the application for completeness and issue a letter
indicating that all required information is submitted or
specifying with particularity any areas that are deficient. If
the application is deficient, the applicant has 30 days to
address the deficiencies by submitting the required additional
information. Within 120 days after the county has deemed the
application complete, the county must approve, approve with
conditions, or deny the application for a development permit or
development order. The time periods contained in this section
may be waived in writing by the applicant. An approval, approval
with conditions, or denial of the application for a development
permit or development order must include written findings
supporting the county’s decision.

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

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

(4) As used in this section, the terms “development permit” and “development order” have the same meaning as in s. 163.3164, but do not include building permits.

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

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

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

Section 3. Paragraph (i) of subsection (5) and paragraph
(h) of subsection (6) of section 163.3180, Florida Statutes, are
amended to read:

163.3180 Concurrency.—

(5)

(i) If a local government elects to repeal transportation
concurrency, it is encouraged to adopt an alternative mobility
funding system that uses one or more of the tools and techniques
identified in paragraph (f). Any alternative mobility funding
system adopted may not be used to deny, time, or phase an
application for site plan approval, plat approval, final
subdivision approval, building permits, or the functional
equivalent of such approvals provided that the developer agrees
to pay for the development’s identified transportation impacts
via the funding mechanism implemented by the local government.
The revenue from the funding mechanism used in the alternative
system must be used to implement the needs of the local
government’s plan which serves as the basis for the fee imposed.
A mobility fee-based funding system must comply with s.
163.31801 governing the dual rational nexus test applicable to
impact fees. An alternative system that is not mobility fee-
based shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).

(6)

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

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

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

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

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

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

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

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

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

Section 4. Section 163.31801, Florida Statutes, is amended
to read:

163.31801 Impact fees; short title; intent; minimum
requirements; audits; challenges definitions; ordinances levying
(1) This section may be cited as the “Florida Impact Fee Act.”

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

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

  (a) Require that the calculation of the impact fee be based on the most recent and localized data.

  (b) The local government must provide for accounting and reporting of impact fee collections and expenditures. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity shall account for the revenues and expenditures of such impact fee in a separate accounting fund.

  (c) Limit administrative charges for the collection of impact fees to actual costs.

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

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

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

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

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

(i) Revenues generated by the impact fee may not be used, in whole or in part, to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction.

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

(5) If a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, s. 380.06, or otherwise, which were in existence prior to the increase, is entitled to a proportionate increase in the credit balance.

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

(7) In any action challenging an impact fee or the government’s failure to provide required dollar-for-dollar credits for the payment of impact fees as provided in s. 163.3180(6)(h)2.b., the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee or credit meets the requirements of state legal precedent or this section. The court may not use a deferential standard for the benefit of the government.

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

Section 5. Section 166.033, Florida Statutes, is amended to read:
166.033 Development permits and orders.—

(1) Within 30 days after receiving an application for approval of a development permit or development order, a municipality must review the application for completeness and issue a letter indicating that all required information is submitted or specifying with particularity any areas that are deficient. If the application is deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information. Within 120 days after the municipality has deemed the application complete, the municipality must approve, approve with conditions, or deny the application for a development permit or development order. The time periods contained in this subsection may be waived in writing by the applicant. An approval, approval with conditions, or denial of the application for a development permit or development order must include written findings supporting the municipality’s decision.

(2) When reviewing an application for a development permit or development order that is certified by a professional listed in s. 403.0877, a municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve outstanding issues. Except as provided in subsection (5), if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the municipality, at the applicant’s request, shall proceed to process the application for approval or denial.
(3) When a municipality denies an application for a development permit or development order, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit or order.

(4) As used in this section, the terms "development permit" and "development order" have the same meaning as in s. 163.3164, but do not include building permits.

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

(6) Issuance of a development permit or development order by a municipality does not create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A municipality shall attach such a disclaimer to the issuance of development permits and shall include a permit condition that all other applicable state or federal permits be obtained before commencement of the development.
(7) This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 6. Section 166.04151, Florida Statutes, is amended to read:

166.04151 Affordable housing.—

(1) Notwithstanding any other provision of law, a municipality 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 inclusionary housing ordinances.

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

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

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

(c) Granting other incentives.

Section 7. Subsection (24) of section 494.001, Florida Statutes, is amended to read:

494.001 Definitions.—As used in this chapter, the term:
(24) “Mortgage loan” means any:

(a) Residential loan that primarily for personal, family, or household use which is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in s. 103(w) of the federal Truth in Lending Act, or for the purchase of residential real estate upon which a dwelling is to be constructed;

(b) Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or

(c) Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investor.

Section 8. This act shall take effect upon becoming a law.