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LEGISLATIVE ACTION

Senate

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House

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The Committee on Infrastructure and Security (Lee) recommended 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



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

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

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

26 (c) Granting other incentives.

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

29 125.022 Development permits and orders.-

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



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40 contained in this section may be waived in writing by the  
41 applicant. An approval, approval with conditions, or denial of  
42 the application for a development permit or development order  
43 must include written findings supporting the county's decision.

44 (2)~~(1)~~ When reviewing an application for a development  
45 permit or development order that is certified by a professional  
46 listed in s. 403.0877, a county may not request additional  
47 information from the applicant more than three times, unless the  
48 applicant waives the limitation in writing. Before a third  
49 request for additional information, the applicant must be  
50 offered a meeting to attempt to resolve outstanding issues.  
51 Except as provided in subsection (5)~~(4)~~, if the applicant  
52 believes the request for additional information is not  
53 authorized by ordinance, rule, statute, or other legal  
54 authority, the county, at the applicant's request, shall proceed  
55 to process the application for approval or denial.

56 (3)~~(2)~~ When a county denies an application for a  
57 development permit or development order, the county shall give  
58 written notice to the applicant. The notice must include a  
59 citation to the applicable portions of an ordinance, rule,  
60 statute, or other legal authority for the denial of the permit  
61 or order.

62 (4)~~(3)~~ As used in this section, the terms ~~term~~ "development  
63 permit" and "development order" have ~~has~~ the same meaning as in  
64 s. 163.3164, but do ~~does~~ not include building permits.

65 (5)~~(4)~~ For any development permit application filed with  
66 the county after July 1, 2012, a county may not require as a  
67 condition of processing or issuing a development permit or  
68 development order that an applicant obtain a permit or approval



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69 from any state or federal agency unless the agency has issued a  
70 final agency action that denies the federal or state permit  
71 before the county action on the local development permit.

72 ~~(6)~~~~(5)~~ Issuance of a development permit or development  
73 order by a county does not in any way create any rights on the  
74 part of the applicant to obtain a permit from a state or federal  
75 agency and does not create any liability on the part of the  
76 county for issuance of the permit if the applicant fails to  
77 obtain requisite approvals or fulfill the obligations imposed by  
78 a state or federal agency or undertakes actions that result in a  
79 violation of state or federal law. A county shall attach such a  
80 disclaimer to the issuance of a development permit and shall  
81 include a permit condition that all other applicable state or  
82 federal permits be obtained before commencement of the  
83 development.

84 ~~(7)~~~~(6)~~ This section does not prohibit a county from  
85 providing information to an applicant regarding what other state  
86 or federal permits may apply.

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

90 163.3180 Concurrency.—

91 (5)

92 (i) If a local government elects to repeal transportation  
93 concurrency, it is encouraged to adopt an alternative mobility  
94 funding system that uses one or more of the tools and techniques  
95 identified in paragraph (f). Any alternative mobility funding  
96 system adopted may not be used to deny, time, or phase an  
97 application for site plan approval, plat approval, final



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98 subdivision approval, building permits, or the functional  
99 equivalent of such approvals provided that the developer agrees  
100 to pay for the development's identified transportation impacts  
101 via the funding mechanism implemented by the local government.  
102 The revenue from the funding mechanism used in the alternative  
103 system must be used to implement the needs of the local  
104 government's plan which serves as the basis for the fee imposed.  
105 A mobility fee-based funding system must comply with s.  
106 163.31801 governing ~~the dual rational nexus test applicable to~~  
107 impact fees. An alternative system that is not mobility fee-  
108 based shall not be applied in a manner that imposes upon new  
109 development any responsibility for funding an existing  
110 transportation deficiency as defined in paragraph (h).

111 (6)

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

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

121 b. The local government's capital improvements element and  
122 the school board's educational facilities plan provide for  
123 school facilities adequate to serve the proposed development,  
124 and the local government or school board has not implemented  
125 that element or the project includes a plan that demonstrates  
126 that the capital facilities needed as a result of the project



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127 can be reasonably provided.

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

132 2. If a local government applies school concurrency, it may  
133 not deny an application for site plan, final subdivision  
134 approval, or the functional equivalent for a development or  
135 phase of a development authorizing residential development for  
136 failure to achieve and maintain the level-of-service standard  
137 for public school capacity in a local school concurrency  
138 management system where adequate school facilities will be in  
139 place or under actual construction within 3 years after the  
140 issuance of final subdivision or site plan approval, or the  
141 functional equivalent. School concurrency is satisfied if the  
142 developer executes a legally binding commitment to provide  
143 mitigation proportionate to the demand for public school  
144 facilities to be created by actual development of the property,  
145 including, but not limited to, the options described in sub-  
146 subparagraph a. Options for proportionate-share mitigation of  
147 impacts on public school facilities must be established in the  
148 comprehensive plan and the interlocal agreement pursuant to s.  
149 163.31777.

150 a. Appropriate mitigation options include the contribution  
151 of land; the construction, expansion, or payment for land  
152 acquisition or construction of a public school facility; the  
153 construction of a charter school that complies with the  
154 requirements of s. 1002.33(18); or the creation of mitigation  
155 banking based on the construction of a public school facility in



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156 exchange for the right to sell capacity credits. Such options  
157 must include execution by the applicant and the local government  
158 of a development agreement that constitutes a legally binding  
159 commitment to pay proportionate-share mitigation for the  
160 additional residential units approved by the local government in  
161 a development order and actually developed on the property,  
162 taking into account residential density allowed on the property  
163 prior to the plan amendment that increased the overall  
164 residential density. The district school board must be a party  
165 to such an agreement. As a condition of its entry into such a  
166 development agreement, the local government may require the  
167 landowner to agree to continuing renewal of the agreement upon  
168 its expiration.

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

182       c. Any proportionate-share mitigation must be directed by  
183 the school board toward a school capacity improvement identified  
184 in the 5-year school board educational facilities plan that



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185 satisfies the demands created by the development in accordance  
186 with a binding developer's agreement.

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

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

193 163.31801 Impact fees; short title; intent; minimum  
194 requirements; audits; challenges ~~definitions; ordinances levying~~  
195 ~~impact fees.~~-

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

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

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

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



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

220           **(c) Limit** Administrative charges for the collection of  
221 impact fees **must be limited** to actual costs.

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

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

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

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

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

242           **(i) Revenues generated by the impact fee may not be used,**



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243 in whole or in part, to pay existing debt or for previously  
244 approved projects unless the expenditure is reasonably connected  
245 to, or has a rational nexus with, the increased impact generated  
246 by the new residential or nonresidential construction.

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

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

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

266 ~~(7)~~~~(5)~~ In any action challenging an impact fee or the  
267 government's failure to provide required dollar-for-dollar  
268 credits for the payment of impact fees as provided in s.  
269 163.3180(6)(h)2.b, the government has the burden of proving by a  
270 preponderance of the evidence that the imposition or amount of  
271 the fee or credit meets the requirements of state legal



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

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

280 Section 5. Section 166.033, Florida Statutes, is amended to  
281 read:

282 166.033 Development permits and orders.-

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

298 (2)~~(1)~~ When reviewing an application for a development  
299 permit or development order that is certified by a professional  
300 listed in s. 403.0877, a municipality may not request additional



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301 information from the applicant more than three times, unless the  
302 applicant waives the limitation in writing. Before a third  
303 request for additional information, the applicant must be  
304 offered a meeting to attempt to resolve outstanding issues.  
305 Except as provided in subsection (5)~~(4)~~, if the applicant  
306 believes the request for additional information is not  
307 authorized by ordinance, rule, statute, or other legal  
308 authority, the municipality, at the applicant's request, shall  
309 proceed to process the application for approval or denial.

310 (3)~~(2)~~ When a municipality denies an application for a  
311 development permit or development order, the municipality shall  
312 give written notice to the applicant. The notice must include a  
313 citation to the applicable portions of an ordinance, rule,  
314 statute, or other legal authority for the denial of the permit  
315 or order.

316 (4)~~(3)~~ As used in this section, the terms ~~term~~ "development  
317 permit" and "development order" have ~~has~~ the same meaning as in  
318 s. 163.3164, but do ~~does~~ not include building permits.

319 (5)~~(4)~~ For any development permit application filed with  
320 the municipality after July 1, 2012, a municipality may not  
321 require as a condition of processing or issuing a development  
322 permit or development order that an applicant obtain a permit or  
323 approval from any state or federal agency unless the agency has  
324 issued a final agency action that denies the federal or state  
325 permit before the municipal action on the local development  
326 permit.

327 (6)~~(5)~~ Issuance of a development permit or development  
328 order by a municipality does not ~~in any way~~ create any right on  
329 the part of an applicant to obtain a permit from a state or



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330 federal agency and does not create any liability on the part of  
331 the municipality for issuance of the permit if the applicant  
332 fails to obtain requisite approvals or fulfill the obligations  
333 imposed by a state or federal agency or undertakes actions that  
334 result in a violation of state or federal law. A municipality  
335 shall attach such a disclaimer to the issuance of development  
336 permits and shall include a permit condition that all other  
337 applicable state or federal permits be obtained before  
338 commencement of the development.

339 (7)~~(6)~~ This section does not prohibit a municipality from  
340 providing information to an applicant regarding what other state  
341 or federal permits may apply.

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

344 166.04151 Affordable housing.—

345 (1) Notwithstanding any other provision of law, a  
346 municipality may adopt and maintain in effect any law,  
347 ordinance, rule, or other measure that is adopted for the  
348 purpose of increasing the supply of affordable housing using  
349 land use mechanisms such as inclusionary housing ordinances. An  
350 inclusionary housing ordinance may require a developer to  
351 provide a specified number or percentage of affordable housing  
352 units to be included in a development or allow a developer to  
353 contribute to a housing fund or other alternatives in lieu of  
354 building the affordable housing units. However, in exchange, a  
355 municipality must provide incentives to fully offset all costs  
356 to the developer of its affordable housing contribution. Such  
357 incentives may include, but are not limited to:

358 (a) Allowing the developer density or intensity bonus



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359 incentives or more floor space than allowed under the current or  
360 proposed future land use designation or zoning;

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

363 (c) Granting other incentives.

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

366 494.001 Definitions.—As used in this chapter, the term:

367 (24) "Mortgage loan" means any:

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

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

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

379 Section 8. This act shall take effect upon becoming law.  
380

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

382 And the title is amended as follows:

383 Delete everything before the enacting clause  
384 and insert:

385 A bill to be entitled

386 An act relating to community development and housing;  
387 amending s. 125.01055, F.S.; authorizing an



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388 inclusionary housing ordinance to require a developer  
389 to provide certain affordable housing units to be  
390 included in a development or allow a developer to  
391 contribute to a housing fund or other alternatives;  
392 requiring a county to provide certain incentives to  
393 fully offset all costs to the developer of its  
394 affordable housing contribution; amending s. 125.022,  
395 F.S.; requiring that a county review the application  
396 for completeness and issue a certain letter within a  
397 specified period after receiving an application for  
398 approval of a development permit or development order;  
399 providing procedures for addressing deficiencies in,  
400 and for approving or denying, the application;  
401 conforming provisions to changes made by the act;  
402 defining the term "development order"; amending s.  
403 163.3180, F.S.; requiring a local government to credit  
404 certain contributions, constructions, expansions, or  
405 payments toward any other impact fee or exaction  
406 imposed by local ordinance for public educational  
407 facilities; providing requirements for the basis of  
408 the credit; amending s. 163.31801, F.S.; adding  
409 minimum conditions that certain impact fees must  
410 satisfy; requiring that, under certain circumstances,  
411 a holder of certain impact fee or mobility fee credits  
412 receive the full value of the credits as of the date  
413 they were first established based on the impact fee or  
414 mobility fee rate that was in effect on such date;  
415 providing that the government, in certain actions, has  
416 the burden of proving by a preponderance of the



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417 evidence that the imposition or amount of impact fees  
418 or required dollar-for-dollar credits for the payment  
419 of impact fees meets certain requirements; prohibiting  
420 the court from using a deferential standard for the  
421 benefit of the government; providing applicability;  
422 authorizing a county, municipality, or special  
423 district to provide an exception or waiver for an  
424 impact fee for the development or construction of  
425 housing that is affordable; providing that if a  
426 county, municipality, or special district provides  
427 such an exception or waiver, it is not required to use  
428 any revenues to offset the impact; amending s.  
429 166.033, F.S.; requiring that a municipality review  
430 the application for completeness and issue a certain  
431 letter within a specified period after receiving an  
432 application for approval of a development permit or  
433 development order; providing procedures for addressing  
434 deficiencies in, and for approving or denying, the  
435 application; conforming provisions to changes made by  
436 the act; defining the term "development order";  
437 amending s. 166.04151, F.S.; authorizing an  
438 inclusionary housing ordinance to require a developer  
439 to provide certain affordable housing units to be  
440 included in a development or allow a developer to  
441 contribute to a housing fund or other alternatives;  
442 requiring a county to provide certain incentives to  
443 fully offset all costs to the developer of its  
444 affordable housing contribution; amending s. 494.001,  
445 F.S.; revising the definition of the term "mortgage



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loan"; providing an effective date.