

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 328

INTRODUCER: Community Affairs Committee and Senators Calatayud and Osgood

SUBJECT: Affordable Housing

DATE: January 29, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Hunter</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 328 amends various provisions of the Live Local Act (act), passed during the 2023 Regular Session, which made substantial changes and additions to affordable housing related programs and policies at both the state and local level.

As it pertains to the act’s preemption of certain local zoning and land use regulations to expedite development of affordable housing, the bill:

- Removes the directive for local governments to approve qualifying developments in *industrial* areas, leaving the provisions applicable only to areas zoned for commercial and mixed-use.
- Preempts a local government’s “floor area ratio” for qualifying developments.
- Limits the height preemption by entitling qualifying developments to the highest currently allowed height for a building within *one-quarter mile* (instead of one mile) and provides additional considerations if the height of all adjacent buildings are three stories or less.
- Prohibits qualifying developments within one-quarter mile of a military installation from utilizing the act’s administrative approval process and exempts certain airport impacted areas from the act’s provisions.
- Clarifies that a local government’s “currently allowed” density, height, and floor area ratio does not include any bonuses, variances, or other special exceptions provided in their regulations.
- Requires developments authorized under the act be treated as a conforming use even after expiration of the development’s affordability period and after the expiration of the applicable statutes.

- Modifies parking reduction requirements for qualifying developments located near certain transportation facilities.
- Requires local governments to publish on its website a policy containing procedures and expectations for the administrative approval of qualifying developments.
- Clarifies that only the affordable units in a qualifying development must be rental units.
- Requires a qualifying development within a transit-oriented development or area to be mixed-use residential.

As it pertains to the act's ad valorem tax exemption for newly constructed multifamily developments, the bill makes the following changes:

- Clarifies that "substantially renovated" units may qualify for the exemption, and provides a definition.
- Requires 10 units, rather than 70 units, to be set aside for income-limited persons and families in Florida Keys qualify for the exemption.
- Clarifies that the Florida Housing Finance Corporation's (FHFC) duties are ministerial in certifying eligibility for exemption, while local property appraisers maintain authority to grant tax exemptions.
- Outlines the method for property appraisers to determine values of tax exempt units.

Finally, the bill appropriates \$100 million in non-recurring funds from the General Revenue Fund to the FHFC to administer the Florida Hometown Hero Program and makes one programmatic change, and expands the authority for the FHFC to preclude developers from participating in its programs for certain violations.

The bill takes effect upon becoming a law.

II. Present Situation:

Affordable Housing

One major goal at all levels of government is to ensure that citizens have access to affordable housing. Housing is considered affordable when it costs less than 30 percent of a family's gross income. A family paying more than 30 percent of its income for housing is considered "cost burdened," while those paying more than 50 percent are considered "extremely cost burdened."

What makes housing "affordable" is a decrease in monthly rent so that income eligible households can pay less for the housing than it would otherwise cost at "market rate."¹ Lower monthly rent payment is a result of affordable housing financing that comes with an enforceable agreement from the developer to restrict the rent that can be charged based on the size of the household and the number of bedrooms in the unit.² The financing of affordable housing is made possible through government programs such as the federal Low-Income Housing Tax Credit Program and the Florida's State Apartment Incentive Loan program.³

¹ The Florida Housing Coalition, *Affordable Housing in Florida*, p. 3, available at: <https://flhousing.org/wp-content/uploads/2022/07/Affordable-Housing-in-Florida.pdf> (last visited Jan. 6, 2024).

² *Id.*

³ *Id.*

Resident eligibility for Florida's state and federally funded housing programs is typically governed by area median income (AMI) levels. These levels are published annually by the U.S. Department of Housing and Urban Development for every county and metropolitan area.⁴

Florida Statutes categorizes the levels of household income as follows:

- Extremely low income – households at or below 30% AMI;⁵
- Very low income – households at or below 50% AMI;⁶
- Low income – households at or below 80% AMI;⁷ and
- Moderate income – households at or below 120% AMI.⁸

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC) is a public-private entity created by the Legislature in 1997 to assist in providing a range of affordable housing opportunities for Floridians.⁹ The FHFC is a corporation held by the state and housed within the Department of Commerce (department). The FHFC is a separate budget entity and its operations are not subject to control, supervision, or direction by the department.¹⁰

The goal of the FHFC is to increase the supply of safe, affordable housing for individuals and families with very low to moderate incomes by stimulating investment of private capital and encouraging public and private sector housing partnerships. As a financial institution, the FHFC administers federal and state resources to finance the development and preservation of affordable rental housing and assist homebuyers with financing and down payment assistance.

The FHFC may preclude an applicant or an affiliate from participation in any of its programs under certain circumstances if the applicant or affiliate has:¹¹

- Made a material misrepresentation or engaged in fraudulent actions in connection with any corporation program.
- Been convicted or found guilty of, or entered a plea of guilty or no contest to, a crime in any jurisdiction which directly relates to the financing, construction, or management of affordable housing or the fraudulent procurement of state or federal funds.
- Been excluded from any federal funding program related to the provision of housing.
- Been excluded from any Florida procurement programs.
- Offered or given consideration, other than the consideration to provide affordable housing, with respect to a local contribution.

⁴ U.S. Department of Housing and Urban Development, *Income Limits, Access Individual Income Limits Areas – Click Here for FY 2023 IL Documentation*, available at <https://www.huduser.gov/portal/datasets/il.html#2021> (last visited Jan. 8, 2024).

⁵ Section 420.0004(9), F.S.

⁶ Section 420.0004(17), F.S.

⁷ Section 420.0004(11), F.S.

⁸ Section 420.0004(12), F.S.

⁹ Chapter 97-167, Laws of Fla. From 1980 through 1997, the former Florida Housing Finance Agency, placed within the former Department of Community Affairs, performed similar duties.

¹⁰ Section 420.504(1), F.S.

¹¹ Section 420.518(1)(a-f), F.S.

- Demonstrated a pattern of noncompliance and a failure to correct any such noncompliance after notice from the corporation in the construction, operation, or management of one or more developments funded through a corporation program.

Zoning and Land Use Preemption for Affordable Developments

The Growth Management Act requires every city and county to create and implement a comprehensive plan to guide future development.¹² All development, both public and private, and all development orders¹³ approved by local governments must be consistent with the local government's comprehensive plan unless otherwise provided by law.¹⁴ The Future Land Use Element in a comprehensive plan establishes a range of allowable uses and densities and intensities over large areas, and the specific use and intensities for specific parcels¹⁵ within that range are decided by a more detailed, implementing zoning map.¹⁶

The Live Local Act (act)¹⁷ preempts certain county and municipal zoning and land use decisions to encourage development of affordable multifamily rental housing in targeted land use areas. Specifically, the act requires counties and municipalities to allow a multifamily or mixed-use residential¹⁸ rental development in any area zoned for commercial, industrial, or mixed-use if the development meets certain affordability requirements.¹⁹ To qualify, the proposed development must reserve 40 percent of the units for residents with incomes up to 120% AMI, for a period of at least 30 years.

Additionally, the local government may not restrict the density²⁰ of qualifying developments below the highest allowed density on land within its jurisdiction where residential development is allowed, and may not restrict the height below the highest currently allowed height for a commercial or residential development in its jurisdiction within 1 mile of the proposed development or 3 stories, whichever is higher.

¹² Section 163.3167(2), F.S.

¹³ "Development order" means any order granting, denying, or granting with conditions an application for a development permit. See s. 163.3164(15), F.S. "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land. See s. 163.3164(16), F.S.

¹⁴ Section 163.3194(3), F.S.

¹⁵ When local governments make changes to their zoning regulations or comprehensive plans some structures may no longer be in compliance with the newly approved zoning and may be deemed a "nonconforming use." A nonconforming use or structure is one in which the use or structure was legally permitted prior to a change in the law, and the change in law would no longer permit the re-establishment of such structure or use.

¹⁶ Richard Grosso, A Guide to Development Order "Consistency" Challenges Under Florida Statutes Section 163.3215, 34 J. Envtl. L. & Litig. 129, 154 (2019) citing *Brevard Cty. v. Snyder*, 627 So. 2d 469, 475 (Fla. 1993).

¹⁷ The "Live Local Act", Ch. 2023-17, Laws of Fla., made various changes to affordable housing related programs and policies at the state and local levels, including zoning and land use preemptions favoring affordable housing, funding for state affordable housing programs, and tax provisions intended to incentivize affordable housing development.

¹⁸ For mixed-use residential, at least 65 percent of the total square footage must be used for residential purposes.

¹⁹ See ss. 125.01055(7) and 166.04151(7), F.S.

²⁰ "Density" means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre, see s. 163.3164(12), F.S. While the act expressly preempted density, it did not address intensity. Intensity is often measured in terms of floor area ratio (FAR). FAR is the measurement of a building's floor area in relation to the parcel or lot that the structure is built on. For a general overview of FAR, see: Metropolitan Council, Local Planning Handbook, *Calculating Floor Area Ratio*, available at: <https://metro council.org/Handbook/Files/Resources/Fact-Sheet/LAND-USE/How-to-Calculate-Floor-Area-Ratio.aspx> (last visited Jan. 5, 2024).

An application for a development must be administratively approved and no further action is required from the governing body of the local government if the development satisfies the local government's land development regulations for multifamily in areas zoned for such use and is otherwise consistent with the jurisdiction's comprehensive plan.

A local government must consider reducing parking requirements for these developments if they are located within one-half mile of a major transit stop, as such term is the local government's land development code, and the major transit stop is accessible from the development.

These provisions do not apply to recreational and commercial working waterfronts in industrial areas, and only mixed-use residential developments must be authorized under these provisions in areas where commercial or industrial capacity is exceptionally limited.

The act specifically requires that except as otherwise provided in the act, a qualifying development must comply with all applicable state and local laws and regulations.

These provisions are effective until October 1, 2033.

Ad Valorem Exemption for Newly Constructed Developments

The ad valorem tax²¹ or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts based on the taxable value of property as of January 1 of each year.²² The Florida Constitution allows the Legislature to exempt from ad valorem taxation portions of property that are used predominantly for educational, literary, scientific, religious or charitable purposes.²³ The Legislature has implemented these exemptions and set forth criteria to determine whether property is entitled to an exemption.²⁴

The Live Local Act established a new ad valorem tax exemption for owners of newly constructed multifamily rental developments who use a portion of the development to provide affordable housing.²⁵ Eligible property includes units in a newly constructed multifamily development containing more than 70 units dedicated to housing natural persons or families below certain income thresholds. However, units subject to an agreement with FHFC are not eligible for the exemption.

"Newly constructed" is defined as an improvement substantially completed within 5 years before the property owner's first application for this exemption. The units must be occupied by such individuals or families and rent limited so as to provide affordable housing at either the 80 or 120

²¹ For an in depth review of ad valorem taxation and the specific taxes discussed herein, *see* Florida Senate Committee on Appropriations, *Bill Analysis and Fiscal Impact Statement, CS/SB 102 (2023)* pages 30-34, Feb. 24, 2023, available at <https://flsenate.gov/Session/Bill/2023/102/Analyses/2023s00102.ap.PDF> (last visited Jan. 7, 2024).

²² Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

²³ FLA. CONST. art. VII, s. 3(a).

²⁴ Section 196.196, F.S.

²⁵ Section 196.1978(3), F.S.

percent AMI threshold. Rent for such units also may not exceed 90 percent of the fair market value rent as determined by a rental market study.

Qualified property used to provide affordable housing at the 80 to 120 percent AMI threshold receives an exemption of 75 percent of the assessed value of the affordable units, while such property providing affordable housing up to the 80 percent AMI threshold receives a complete ad valorem tax exemption for the affordable units.

To receive this exemption, a property owner must submit an application by March 1 to the property appraiser, accompanied by a certification notice from the FHFC. To receive a FHFC certification, a property owner must submit a request on a form including the most recent market study, which must have been conducted by an independent certified general appraiser in the preceding 3 years; a list of units for which the exemption is sought; the rent amount received for each unit, and a sworn statement restricting the property for a period of not less than 3 years to provide affordable housing.

The certification process is administered within the FHFC. Their responsibilities include publishing the deadline for submission, reviewing each request, sending certification notices to both the successful property owner and appropriate property appraiser, notifying unsuccessful property owners with reasons for denial.

This exemption first applied to the 2024 tax roll and will expire on December 31, 2059.

Florida Hometown Hero Program

The Live Local Act established in statute the Florida Hometown Hero Program,²⁶ a homeownership assistance program administered by the FHFC. Under the program, eligible first time homebuyers have access to zero-interest loans to reduce the amount of down payment and closing costs by a minimum of \$10,000 and up to 5 percent of the first mortgage loan, not exceeding \$35,000. Loans must be repaid when the property is sold, refinanced, rented, or transferred unless otherwise approved by the FHFC. Repayments for loans made under this program must be retained within the program to make additional loans.

Such loans are available to those first-time homebuyers²⁷ seeking first mortgages whose family incomes do not exceed 150 percent of the state or local AMI, whichever is greater, and is employed full-time by a Florida-based employer. The borrower must provide documentation of full-time employment, or full-time status for self-employed individuals, of 35 hours or more per week.

The Live Local Act appropriated \$100 million in non-recurring funds to the FHFC to implement the Florida Hometown Hero Program for the 2023-2034 fiscal year.²⁸ The FHFC obligated the

²⁶ Section 420.5096, F.S.

²⁷ The requirement to be a first-time homebuyer does not apply to those qualifying as servicemembers or veterans.

²⁸ Chapter 2013-17, s. 44, Laws of Fla.

full appropriation by August 22, 2023, assisting over 6,400 families and leveraging approximately \$2 billion in first mortgages.²⁹

III. Effect of Proposed Changes:

Live Local Zoning and Land Use Preemption

Sections 1 and 2 of the bill amend ss. 125.01055 and 166.04151, F.S., respectively, to modify certain provisions pertaining to the zoning and land use preemption for approving affordable multifamily rental developments.

First, the bill removes the directive for local governments to approve qualifying affordable multifamily developments in industrial areas, and clarifies that only the affordable units in a qualifying development must be rental units.

The bill additionally preempts counties and municipalities on “floor area ratio” for qualifying developments. As such, a local government may not restrict the floor area ratio of a proposed development below the highest currently allowed residential floor area ratio, pursuant to the locality’s land development regulations.

The bill limits the height entitlements for qualifying developments by reducing the distance from one mile to one-quarter mile. This change entitles a qualifying development to the highest currently allowed height for a commercial or residential building within one-quarter mile (instead of one mile) or three stories, whichever is higher. However, the bill provides that if the height of each building on property adjacent to the proposed development is three stories or less, the local government may restrict the height of the proposed development to 135 percent of the tallest adjacent building or 3 stories, whichever is higher.

The bill modifies the parking reduction requirements for qualifying developments by requiring local governments to:

- To consider reducing parking requirements for developments within one-quarter mile of any “transit stop” that is accessible from the development;
- Reduce parking requirements for developments within one-half mile of a “major transportation hub”³⁰ that is accessible from the development by safe pedestrian-friendly means; and
- Eliminate parking requirements for developments within a transportation oriented development or area, as recognized by the local government.

The bill clarifies that the currently allowed density, height, and floor area ratio does not include projects authorized under the act or any bonuses, variances, or other special exceptions provided in the local government’s land development regulations as incentives for development.

²⁹ See Florida Senate Committee on Community Affairs, *Presentation by the Florida Housing Finance Corporation on its implementation of the Live Local Act (SB 102 – 2023 Regular Session)*, Nov. 7, 2023, available at https://www.flsenate.gov/Committees/Show/CA/MeetingPacket/5940/10486_MeetingPacket_5940_2.pdf (last visited Jan. 8, 2024).

³⁰ The bill defines “major transportation hub” as any transit station, whether bus, train, or light rail, which is served by public transit with a mix of other transportation options.

The bill provides that qualifying developments must be treated as a conforming use after expiration of the development's affordability period of at least 30 years and after the sunset of ss. 125.01055(7) and 166.04151(7), F.S., on October 1, 2033. However, if at any point during the development's affordability period the development violates the affordability requirement, the development must be allowed a reasonable time to cure such violation. If the violation is not cured within a reasonable time, the development must be treated as a nonconforming use.

The bill requires a qualifying development within a transit-oriented development or area to be mixed-use residential and to otherwise comply with requirements of the local government's regulations applicable to the transit-oriented development except for use, height, density, and floor area ratio.

The bill precludes a proposed development located within one-quarter mile of a military installation identified in s. 163.3175(2), F.S., from being approved administratively, and requires counties and cities to publish on their website a policy containing procedures and expectations for the administrative approval of qualifying developments.

Section 5 of the bill amends s. 333.03, F.S., to identify certain airport-impact areas where the land use preemption provisions of the act do not apply. Specifically, ss. 125.01055(7) and 166.04151(7), F.S., do not apply to proposed developments:

- Within 10,000 feet of the nearest point of any existing airport runway or planned airport runway identified in the local government's airport master plan;
- Within any airport noise zone identified in the federal land use compatibility table; or
- That exceeds maximum height restrictions identified in the political subdivision's airport zoning regulation adopted pursuant to this section.

Live Local Ad Valorem Exemption for Newly Constructed Developments

Section 3 of the bill amends s. 196.1978, F.S., to make the following changes to the ad valorem tax exemption for newly constructed developments:

- Clarifies that units that have been substantially rehabilitated may also qualify for the exemption. "Substantial rehabilitation" means the repair or restoration of a unit which increases the market value of such unit by at least 40 percent.
- Requires fewer units in developments located in the Florida Keys³¹ to be set aside for income-limited persons and families (10 instead of 70). This acknowledges the stricter land development regulations for that area as compared to the rest of the state.
- Clarifies that FHFC duties are ministerial while property appraisers maintain the ultimate authority to grant exemptions.
- Outlines the method for property appraisers to determine values of exempted units in a manner that is similar to other exemptions in statute.

As provided in **section 4** of the bill, these changes are intended to be remedial and clarifying in nature and apply retroactively to January 1, 2024.

³¹ As provided in the bill, "...an area of critical state concern, as designated by s. 380.0552 or chapter 28-36, Florida Administrative Code..." refers to the City of Key West and the Florida Keys Area, which includes unincorporated Monroe County and the municipalities of Layton, Islamorada, Marathon and Key Colony Beach.

Florida Hometown Hero Program

Section 7 of the bill amends s. 420.5096, F.S., to remove the requirement that borrowers provide documentation to the FHFC that their full-time employment or self-employment status equates to 35 hours or more per week.

Section 9 of the bill appropriates \$100 million in nonrecurring funds from the General Revenue Fund to the FHFC to implement the Florida Hometown Hero Program.

Precluding Participation in FHFC Programs

Section 8 of the bill amends s. 420.518, F.S., to expand the authority for the FHFC to preclude developers and sponsors from participating in its programs for certain violations, which include:

- Being debarred from participation in federal housing programs by the U.S. Department of Housing and Urban Development; and
- Materially or repeatedly violating any condition imposed by the corporation in connection with the administration of the FHFC, including a land use restriction agreement, an extended use agreement, or any other financing or regulatory agreement with the FHFC.

Section 6 of the bill amends s. 420.507, F.S., to conform to the changes provided in section 8.

Effective Date

Section 10 provides that the bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. The mandate requirement does not apply to laws having an insignificant impact,³² which for Fiscal Year 2024-2025 is forecast at approximately \$2.3 million.³³

The Revenue Estimating Conference has not reviewed the portions of the bill related to the ad valorem tax exemption on newly constructed affordable housing developments. If the bill does qualify as a mandate, in order to be binding upon cities and counties the bill must be approved by a two-thirds vote of the membership of each house.

³² FLA. CONST. art. VII, s. 18(d).

³³ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See FLA. SENATE COMM. ON CMTY. AFFAIRS, *Interim Report 2012-115: Insignificant Impact* (Sept. 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf>.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

With the funding of the Florida Hometown Hero Program, Floridians who are first-time homebuyers will have access to zero-interest loans to help pay for their down payment and closing costs.

C. Government Sector Impact:

The provisions amending the ad valorem tax exemption on newly constructed affordable housing, which include substantially renovated improvements and a reduction in required units in areas of critical state concern, are stated by the bill to be clarifying in nature, and as such should not generate a fiscal impact. To the extent that this clarification attracts further development or alters administration of the exemption, local governments may see a negative impact.

The bill appropriates \$100 million in non-recurring funds from the General Revenue Fund to the Florida Housing Finance Corporation to implement the Florida Hometown Hero Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.01055, 166.04151, 196.1978, 333.03, 420.507, 420.5096, and 420.518

This bill creates undesignated section of Florida law.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on January 9, 2024:

The CS makes the following changes to the bill:

- Changes a percentage relating to height entitlements from 125% to 135%.
- Clarifies that the non-restricted units in qualifying developments may be offered for sale or for rent, but maintains that the affordable units must be rental units.
- Requires a qualifying development within a transit-oriented development or area to be mixed-use residential.
- Requires counties and cities to publish on its website a policy containing procedures and expectations for the administrative approval of qualifying developments.
- Modifies parking reduction requirements for certain qualifying developments.
- Expands the authority for the FHFC to preclude developers from participating in its programs for certain violations.
- Changes the title of the bill to Affordable Housing.

- B. **Amendments:**

None.