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 Rules

BILL:	CS/CS/SB 1730
INTRODUCER:	Rules Committee, Community Affairs Committee and Senator Calatayud
SUBJECT:	Affordable Housing
DATE:	April 9, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Fleming	CA	**Fav/CS**
2.	Hackett	Yeatman	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1730 amends various provisions of the Live Local Act, passed during the 2023 Regular Session, related to the preemption of certain zoning and land use regulations to authorize affordable housing developments. Specifically, the bill:

- Clarifies the application of the zoning preemption by defining "commercial," "industrial," and "mixed-use zoning," and providing that the preemption applies in areas such as planned unit developments with different zoning mechanics;
- Prohibits local governments from requiring amendments to developments of regional impact before allowing development;
- Prohibits local governments from requiring a certain amount of residential usage in mixed-use developments;
- Clarifies the nature of administrative approval of affordable housing developments;
- Requires local governments to reduce parking requirements, as opposed to considering such reduction;
- Provides for priority docketing and prevailing party attorneys' fees in lawsuits brought under the Live Local Act; and
- Prohibits local governments from enforcing building moratoria that would have the effect of delaying the permitting or construction of affordable housing developments, except in certain circumstances.

Outside of the Live Local Act, the bill also:

- Amends the evacuation time for the Florida Keys area of critical state concern;
- Enacts a state policy related to public sector and hospital employer-sponsored housing; and

- Clarifies that the Fair Housing Act prohibits local governments from discriminating in land use decisions based on the nature of a development as affordable housing.

The bill takes effect July 1, 2025.

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]

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]

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.[9] All development, both public and private, and

[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 Mar. 26, 2025).
[2] *Id.*
[3] *Id.*
[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 Mar.26, 2025).
[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] Section 163.3167(2), F.S.

all development orders[10] approved by local governments must be consistent with the local government's comprehensive plan unless otherwise provided by law.[11] 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 parcels[12] within that range are decided by a more detailed, implementing zoning map.[13]

The Live Local Act (act)[14] 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 residential[15] rental development in any area zoned for commercial, industrial, or mixed-use if the development meets certain affordability requirements.[16] 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 density or floor area ratio of qualifying developments below the highest allowed density, or below 150 percent of the highest allowed floor area ratio, 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. Further height restrictions apply where a proposed development is adjacent to single family residential development.

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. Additionally, a local government must reduce parking requirements by at least 20 percent if the development is located within one-half mile of a major transportation hub that is accessible from the proposed development and has available parking within 600 feet of the proposed

[10] "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.
[11] Section 163.3194(3), F.S
[12] 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.
[13] 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).
[14] 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.
[15] For mixed-use residential, at least 65 percent of the total square footage must be used for residential purposes.
[16] *See* ss. 125.01055(7) and 166.04151(7), F.S., this analysis section.

development (i.e., on-street parking, parking lots, or parking garages). Finally, as it relates to parking, a local government must eliminate parking requirements for a proposed mixed-use residential development within an area recognized by the local government as a transit-oriented development or area.
These zoning and land use 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.

Priority Docketing

The Florida Rules of Judicial Administration govern the ways a judge controls a case in terms of timing and docketing. Some cases that come before a court are deemed priority cases, either directly in statute, in rule of procedure, or case law. Every judge has a duty to expedite priority cases to the extent reasonably possible.[17] For these cases judges are tasked with implementing docket control policies necessary to advance the case and ensure prompt resolution. [18] Docket control policies include setting deadlines for phases of the case, giving priority to hearings required to advance the case, and advancing the trial setting. A party in a priority status case may file a notice of priority status, and has recourse if they believe the case has not been appropriately advanced on the docket or received priority in scheduling.[19]

Florida Keys Area of Critical State Concern

In 1975, the Florida Keys were designated as an area of critical state concern. The designation includes the municipalities of Islamorada, Marathon, Layton and Key Colony Beach, and unincorporated Monroe County.[20] State, regional, and local governments in the Florida Keys Area of Critical State Concern are required to coordinate development plans and conduct programs and activities consistent with principles for guiding development. Principles include protecting the environmental resources, historical heritage, and water quality of the Florida Keys.[21]

A land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but such actions must be approved by the Florida Department of Commerce ("Commerce").[22] Amendments to local comprehensive plans must also be reviewed for compliance with several requirements:

[17] Fla. R. Jud. Admin. 2.215(g).
[18] Fla. R. Jud. Admin. 2.545(b).
[19] Fla. R. Jud. Admin. 2.545(c).
[20] The City of Key West functions as a separate area of critical state concern, called the City of Key West Area of Critical State Concern, with similar restrictions. Section 380.0552, F.S.; *2020 Florida Keys Area of Critical State Concern Annual Report* available at https://floridajobs.org/docs/default-source/2015-community-development/community-planning/2015-cmty-plan-acsc/2020keysacscannualreport.pdf?sfvrsn=51c94eb0_2 (last visited Mar. 26, 2025).
[21] For a full list of required considerations, *see* s. 380.0552(7), F.S.
[22] Section 380.0552(9)(a), F.S.

construction schedules, financing plans and compliance with construction standards for wastewater treatment and disposal facilities, and protection of public safety with maintenance of hurricane evacuation clearance time with standards developed by a hurricane evacuation study conducted under professionally accepted methodology.

Hurricane Evacuation Clearance Standards in the Florida Keys

The Florida Keys Area Protection Act[23] provides, in part, that comprehensive plan amendments within the covered area, which includes the majority of Monroe County, must comply with "goals, objectives and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours." The hurricane evacuation clearance time must be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by Commerce.[24]

Affordable Housing Financing and Employer-Sponsored Housing Policy

Housing credits are a financial instrument, tax credits, issued through the Low Income Housing Tax Credit program.[25] After being allocated a certain amount of tax credits by the federal government based on population and need, the Florida Housing Finance Corporation allocates the funding to affordable housing developers. There are two types of credits:

- 9 percent credits, which are more valuable and limited. These are competitively bid for and can typically fund two-thirds of a development's total cost; and
- 4 percent credits, which are not limited and considered "non-competitive." These typically fund one third of a development's total cost.

The Federal Internal Revenue Service provides requirements for developments that can qualify as low-income housing for the purpose of administering certain financing such as these tax credits.[26] One requirement is that, in general, a project be available for general public use. Exceptions to this requirement permit occupancy restrictions or preferences that favor tenants:[27]

- With special needs;
- Who are members of a specified group under a federal or state program or policy that supports housing for such group; or
- Who are involved in artistic or literary activities.

Fair Housing

The Florida Fair Housing Act[28] prohibits discrimination in housing-related activities, including the sale, rental, and financing of housing. The law protects individuals from discrimination based on race, color, national origin, sex, disability, familial status, or religion. The law also specifically prohibits local governments from discriminatory practices in land use decisions and

[23] Section 380.0552, F.S.
[24] Section 380.0552(9)(a)2., F.S.
[25] Florida Housing Finance Corporation, *Housing Credits*, available at https://www.floridahousing.org/programs/developers-multifamily-programs/low-income-housing-tax-credits (last visited Mar. 26, 2025).
[26] I.R.C. 42(g).
[27] I.R.C. 42(g)(9).
[28] Sections 760.20-760.37, F.S.

development permitting, including discrimination based on the source of financing of a development, except as otherwise provided by law.[29] The Act is enforced by the Florida Commission on Human Relations, which investigates complaints and can seek legal remedies for violations.

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 125.01055 and 166.04151, F.S., related to the administrative approval of certain affordable housing developments under the Live Local Act. The amendments are organized below.

Application, Definitions, and Clarity

The bill amends several areas to more clearly define what areas are subject to the provisions of each statute's subsection 7, requiring the authorization of certain affordable housing developments. In an attempt to clarify applicability where traditional zoning is not utilized on a local level, the bill provides that the provisions apply in portions of any flexibly zoned areas such as a planned unit development permitted for commercial, industrial, or mixed use.

The bill further provides definitions for "commercial use," "industrial use," and "mixed use." Each definition is intended to function only for the purposes of the section and meant to apply regardless of the local regulation's categorization.

- "Commercial use" is defined as activities associated with the sale, rental, or distribution of products or the performance of services related thereto. The bill provides examples, and provides that accessory, ancillary, incidental, or temporary commercial uses are not enough to make a parcel zoned for commercial use for the purposes of the section. The term does not include home based businesses, vacation rentals, or cottage food operations undertaken on residential property. Additionally, recreational use, such as golf courses and tennis courts, within residential areas are not considered commercial use.
- "Industrial use" is defined as activities associated with the manufacture, assembly, processing, or storage of products or the performance of services related thereto. The bill provides examples and contains the same caveats as under commercial use, including the exclusion of recreational areas.
- "Mixed use" is defined as any use that combines multiple types of approved land uses from at least two of the residential, commercial, and industrial categories. The bill contains the same caveats as above, including the exclusion of recreational areas.

Amendments to Preemptive Provisions

The bill also amends certain functions of the required administrative approval process and parameters for the scope of the preemption. The bill clarifies on administrative approval that the action must occur without further action by the governing body of the local government or any quasi-judicial or administrative board or reviewing body.

The bill further provides that, pursuant to administrative approval, a local government may not require a proposed multifamily development to obtain a transfer of density or development units,

[29] Section 760.26, F.S.

or an amendment to a development or regional impact. Additionally, a local government may not require that more than 10 percent of the total square footage of a proposed mixed-use residential project be used for nonresidential purposes.

The preemption is amended to say that a county may not restrict the height, density, or floor area ratio of a proposed development below the highest currently allowed, or allowed on July 1, 2023, for a commercial or residential building located in its jurisdiction (for height, within 1 mile as currently provided). The provision of law restricting approved development height for proposed development adjacent to single-family residential use is similarly amended to be allow the highest allowed on July 1, 2023, but tempered not to exceed 10 stories.

For a proposed development within a municipality within an area of critical state concern, the bill provides that the term "story" includes only the habitable space above the base flood elevation as designated in the most current Flood Insurance Rate Map, and that a story may not exceed 10 feet in height between finished floors. The highest story in such a development may not exceed 10 feet from finished floor to the top plate.

The bill clarifies the density provision by defining "allowable density" to mean the density prescribed for the property without additional requirements to procure and transfer density units or development units from other properties.

The parking preemption is amended to require a local government, upon request by the applicant, to reduce parking requirements for a proposed development by 20 percent if the proposed development meets any of the criteria considered for parking reduction currently provided by law. Current law requires the local government to *consider* reducing parking requirements.

Exempt areas, which currently include only airport-impacted areas and commercial working waterfronts, are expanded to include the Wekiva Study Area[30] and the Everglades Protection Area.[31]

Counties are further permitted, but not required, to allow an adjacent parcel of land to be included within a proposed multifamily development authorized under the Live Local Act preemption, notwithstanding any other law or local ordinance or regulation to the contrary.

Civil Actions Under the Act

The bill contains several provisions related to litigation arising from this subsection of law. The bill provides that a court shall give any civil action filed against a local government for a violation priority over other pending cases and render a preliminary or final decision as expeditiously as possible. Further, the bill provides that the court must assess and award reasonable attorney fees and costs, not exceeding $200,000, to a prevailing party in such an action. Attorney fees incurred to determine an award of fees and costs are not recoverable.

[30] *See* s. 369.316, F.S. The Wekiva Study Area includes portions of Lake, Orange, and Seminole Counties.
[31] *See* s. 373.4592(2), F.S.

Moratoria

The bill creates a new subsection of ss. 125.01055 and 166.04151, F.S., to preempt local governments from enforcing building moratoria that have the effect of delaying the permitting or construction of a development under subsection (7).

As an exception, a local government may impose or enforce such a moratorium by ordinance for no more than 90 days in any 3-year period after preparing, publishing, and presenting an assessment of the locality's need for affordable housing.

The bill provides that, in a civil action filed against a local government under the subsection on moratoria, the court must assess and award reasonable attorney fees and costs, not exceeding $200,000, to a prevailing party in such an action. Attorney fees incurred to determine an award of fees and costs are not recoverable.

The prohibition on moratoria does not apply to a moratorium imposed due to unavailability of public facilities or services, or imposed to address storm- or flood-water management, provided such moratorium applies equally to all types of multifamily or mixed use residential development.

Section 3 provides that an applicant for a proposed development authorized under ss. 125.01055(7) or 166.04151(7), F.S., who submitted documentation before July 1, 2025, may proceed under the provisions of law as they existed at the time of submission, or notify the local government of their intent to revise their submission to account for the changes made by the bill.

Section 4 amends s. 380.0552, F.S., to amend the hurricane evacuation clearance time which subject local governments must base comprehensive planning around from twenty-four to twenty-six hours. **Section 5** provides that the intent of the Legislature in this amendment is to accommodate the building of additional developments to ameliorate the acute affordable housing and building permit allocation shortage. The Legislature thereby intends that local governments manage growth authorized by the amendment with a focus on long-term stability and affordable housing for the local workforce.

Section 6 creates s. 420.5098, F.S., to institute a state housing policy on public sector and hospital employer-sponsored housing. The bill provides that it is the policy of the state to support housing for employees of hospitals, health care facilities, and governmental entities and to allow developers using low-income housing tax credits and other sources of funding to create a preference for housing for such employees. However, such preference must conform with the requirements provided under federal law.

Section 7 amends s. 760.26, F.S., to provide that it is unlawful to discriminate in land use decisions or in the permitting of development based on the nature of a development or proposed development as affordable housing, except as otherwise provided by law.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

None.

C. Government Sector Impact:

None.

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, 380.0552, and 760.26.

The bill creates an undesignated section of Florida law.

This bill creates the following section of the Florida Statutes: 420.5098.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on April 8, 2025:

The committee substitute:

- Defines "story," as it pertains to the application of the height entitlement in the Florida Keys, to include only the habitable space above the base flood elevation, and limits the height of each story to 10 feet;
- Clarifies that "allowable density" means the density prescribed for the property without additional requirements to procure and transfer density units or development units from other properties;
- Clarifies that "commercial use," in terms of the land use preemption, includes hotels and excludes vacation rentals; and
- Changes terminology from "enact" to "enforce" on the prohibition on Live Local moratoria.

CS by Community Affairs on March 31, 2025:

The committee substitute revises sections of the bill related to the preemption of certain zoning and land use regulations under the Live Local Act, specifically:

- Removes a prohibition on requiring amendments to development agreements and restrictive covenants;
- Provides that the authorized height for a proposed development may use the density or floor area ratio allowed on July 1, 2023;
- Provides a cap of 10 stories for developments adjacent to residential development;
- Clarifies parking reduction requirements;
- Provides exceptions for the Wekiva Study Area and the Everglades Protection Area;
- Revises attorney fee provisions to favor the prevailing party, rather than plaintiff; removes reference to damages;
- Increases maximum attorney fee award from $100,000 to $200,000
- Clarifies zoning definitions; and
- Provides that a local government may, but is not required to, permit development on adjacent properties to proposed developments authorized under the Live Local Act.

B. Amendments:

None.