

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 Community Affairs

BILL: SB 1548

INTRODUCER: Senator Calatayud

SUBJECT: Affordable Housing

DATE: February 2, 2026

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Hackett</u>	<u>Fleming</u>	<u>CA</u>	Favorable
2. _____	_____	<u>FP</u>	_____
3. _____	_____	<u>RC</u>	_____

I. Summary:

SB 1548 makes a variety of changes regarding the Live Local Act, passed during the 2023 Regular Session to require the authorization of certain affordable housing developments by local governments under certain conditions. The bill:

- Provides that the preemptions of the Live Local Act permitting the development of affordable housing apply on any property owned by a county, municipality, or school district;
- Provides that a local government may not utilize other dimensional means such as setbacks to constructively restrict the height of a project authorized by the Live Local Act;
- Provides that farming and farm operations, including the packaging and sale of those products raised on the premises, are excluded from the definitions of commercial, industrial, or mixed-use zoning which would require the local government to approve affordable housing developments;
- Permits the utilization of the Live Local Act in the vicinity of airports when approved by the airport's governing body; and
- Clarifies language around the prohibition against discriminating against affordable housing development in land use decisions by a local government, and waives sovereign immunity in cases based on such discrimination.

The bill takes effect July 1, 2026.

II. Present Situation:

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.¹ All development, both public and private, and

¹ Section 163.3167(2), F.S.

all development orders² approved by local governments must be consistent with the local government's comprehensive plan unless otherwise provided by law.³ 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 parcels⁴ within that range are decided by a more detailed, implementing zoning map.⁵

The Live Local Act (act)⁶ 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 residential⁷ rental development in any area zoned for commercial, industrial, or mixed-use if the development meets certain affordability requirements.⁸ 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.

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.

² "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.

³ Section 163.3194(3), F.S.

⁴ 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.

⁵ 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).

⁶ 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.

⁷ For mixed-use residential, at least 65 percent of the total square footage must be used for residential purposes.

⁸ See ss. 125.01055(7) and 166.04151(7), F.S., this analysis section.

Commercial, Industrial, and Mixed Use⁹

For the purposes of the Live Local Act, “commercial use” means activities associated with the sale, rental, or distribution of products or the performance of services related thereto. It includes, but is not limited to:

- Retail sales; wholesale sales; rentals of equipment, goods, or products;
- Offices; restaurants;
- Food service vendors; sports arenas; theaters; and tourist attractions; and
- Other for-profit business activities

A parcel that is zoned to permit these uses by right (without a variance or waiver) is considered commercial use for this statute, regardless of its local land development category or title.

Excluded from commercial use are:

- Home-based businesses and cottage food operations on residential property;
- Certain public lodging establishments;
- Accessory, ancillary, incidental, or temporary uses; and
- Recreational uses (e.g., golf courses, tennis courts, swimming pools, clubhouses) when located within an area designated for residential use.

For the purposes of the Live Local Act, “industrial use” means activities associated with the manufacture, assembly, processing, or storage of products or the performance of related services. It includes, but is not limited to:

- Automobile manufacturing or repair; boat manufacturing or repair;
- Junk yards; meat packing facilities; citrus or produce processing and packing;
- Electrical generating plants; water treatment plants; sewage treatment plants; and
- Solid waste disposal sites.

A parcel zoned to permit these uses by right is considered industrial use for the statute. The term does not include accessory, ancillary, incidental, or temporary uses, or the same set of recreational uses as above.

For the purposes of the Live Local Act, “mixed use” refers to any use that combines multiple types of approved land uses from at least two of the residential use, commercial use, and industrial use categories.¹⁰ The commercial and industrial exclusions for accessory, ancillary, incidental, temporary, and recreational uses apply to mixed use as well.

Fair Housing

The Florida Fair Housing Act¹¹ 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 development permitting, including discrimination based on the source of financing of a

⁹ See s. 125.01055(7)(n), F.S.

¹⁰ Section 125.01055(n)3., F.S.

¹¹ Sections 760.20-760.37, F.S.

development, except as otherwise provided by law.¹² The Act is enforced by the Florida Commission on Human Relations, which investigates complaints and can seek legal remedies for violations.

Sovereign Immunity

Sovereign immunity is “[a] government’s immunity from being sued in its own courts without its consent.”¹³ The doctrine had its origin with the judge-made law of England. The basis of the existence of the doctrine of sovereign immunity in the United States was explained as follows: A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.¹⁴

Article X, s. 13 of the Florida Constitution authorizes the Legislature to enact laws that permit suits against the State and its subdivisions, thereby waiving sovereign immunity. Currently, Florida law allows tort lawsuits against the State and its subdivisions¹⁵ for damages that result from the negligence of government employees acting in the scope of their employment, but limits payment of judgments to \$200,000 per person and \$300,000 per incident.¹⁶ This liability exists only where a private person would be liable for the same conduct.¹⁷ Harmed persons who seek to recover amounts in excess of these limits may request that the Legislature enact a claim bill to appropriate the remainder of their court-awarded judgment.¹⁸ Article VII, s. 1(c) of the Florida Constitution prohibits funds from being drawn from the State Treasury except in pursuance of an appropriation made by law. However, local governments and municipalities are not subject to this provision, and therefore may appropriate their local funds according to their processes.

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.

¹² Section 760.26, F.S.

¹³ BLACK’S LAW DICTIONARY (11th ed. 2019).

¹⁴ *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981) (quoting *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907)).

¹⁵ Section 768.28(2), F.S., defines “state agencies or subdivisions” to include “executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority.”

¹⁶ Section 768.28, F.S.

¹⁷ Section 768.28(1), F.S.

¹⁸ Section 768.28(5)(a), F.S. *See also*, s. 11.066, F.S., which states that state agencies are not required to pay monetary damages under a court’s judgment except pursuant to an appropriation made by law.

Land Owned by a County, City, or School District

The bill provides that the preemptions requiring approval of certain affordable housing developments applies to any property owned by a county, municipality, or school district. This provision enables local governments, working in conjunction with affordable housing developers, to bypass processes otherwise required for developing affordable housing.

Setbacks and Stepbacks

The bill provides that a local government may not restrict height of a proposed development utilizing the Live Local Act constructively through other dimensional means, such as height determined by setbacks¹⁹ or stepbacks,²⁰ or require setbacks or stepbacks that are more restrictive than the minimums of the underlying zoning applicable to the proposed development.

Commercial, Industrial, and Mixed-Use Definitions

The bill provides that for the purposes of the Live Local Act farms or farm operations, or uses associated therewith, to include the packaging and sale of those products raised on the premises, are excluded from the definitions of commercial, industrial, or mixed use.

The bill refers to s. 823.14(3), F.S., which provides that:

- “Farm” means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products; and
- “Farm operation” means all conditions or activities by the owner, lessee, agent, independent contractor, or supplier which occur on a farm in connection with the production of farm, honeybee, or apiculture products or in connection with complementary agritourism activities.

The referenced statute includes examples such as roadside stands, agritourism, and the use of certain farm-related machinery.

With this change, counties and municipalities are not required to authorize multifamily and mixed-use residential uses for an area if the area is also a farm or farm operation, or utilized for uses associated therewith.

Section 3 provides that 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, 2026, 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.

Proposed Developments Near Airports

The preemptions of the Live Local Act do not apply to a proposed development near a runway, within an airport noise zone, or exceeding maximum height restrictions identified in an airport

¹⁹ The distance a building must be from the street as required by zoning laws.

²⁰ A zoning or design requirement that requires upper floors of a building to be recessed farther from property lines than lower floors.

zoning regulation.²¹ **Section 5** amends s. 333.03, F.S., to provide that the Live Local Act may apply if the development application is approved by the governing body of the relevant airport.

Discrimination in Regulatory Decisions

Section 6 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's financing as affordable housing.

Section 7 amends s. 760.35, F.S., to waive sovereign immunity for a cause of action based on a violation of the Florida Fair Housing Act.

The bill takes effect July 1, 2026.

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.

²¹ Section 333.03(5), F.S.

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, 333.03, 760.22, 760.26, and 760.35.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.