

# Florida 'Live Local Act' Provides Incentives to Build Affordable and Workforce Housing

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On March 29, 2023, Governor Ron DeSantis signed Senate Bill 102, otherwise known as the Live Local Act, into law, representing the largest investment for housing efforts in Florida history. For your convenience we have summarized below the major sections of the bill that provide incentives to developers constructing affordable and workforce housing in Florida. Unless otherwise expressly provided below the law shall take effect July 1, 2023. As this is simply a summary of certain terms, please refer to Senate Bill 102 for specific language and requirements.

## The Live Local Act Summary

A. County approval for affordable housing (Section 3 of the bill):

- Amends Section 125.01055

*Current Law and Amendments:*

- Current law allows a county to circumvent its comprehensive plan and zoning regulations when approving the development of affordable housing on any parcel zoned for residential, commercial, or industrial use, subject to certain conditions.
- Specifically, current law provides that a county may approve a residential project on any parcel zoned as residential, commercial or industrial without the need to follow local rules and regulations (for example, without the need to rezone the parcel) as long as: (i) at least 10% of the units included in the project were used for affordable housing; and (ii) the developer did

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not apply for or receive SAIL funding.

- The amendment removes a county's ability to approve affordable housing developments pursuant to the statutory process on parcels zoned in residential areas, but also removes the restriction on developers who have applied for/or received SAIL funding for parcels zoned in commercial or industrial use areas.
- The amendment also provides that a county **must** authorize proposed multifamily and mixed-use residential projects as an allowable use in **any area zoned for commercial, industrial, or mixed use** if the project will provide the following:
  1. At least 40% of the residential units are affordable;
  2. Affordable means: that the monthly rents, including taxes, insurance, and utilities do not exceed 30% of the AMI for extremely-low-income persons (i.e., 30% AMI) ("ELI"), very-low-income persons (i.e., 50% AMI) ("VLI"), low-income persons (i.e., 80% AMI) ("LI"), and moderate-income persons (120% AMI) ("MI");
  3. Period of at least 30 years; and
  4. For a mixed-use project at least 65% of the total square footage of the improvement on the parcel must be used for residential purposes.
- For proposed multifamily developments meeting the above requirements and that are to be located in areas zoned for commercial, industrial, or mixed use, a county may no longer require the owner to obtain a zoning or land use change, special exemption, conditional use approval, variance, or comprehensive plan amendment for building height and densities. With respect to density and building height, a county may not:
  - Density – restrict density below the highest allowed density on any unincorporated land in the county where residential development is allowed;
  - Height – restrict the height of the proposed development below the highest allowed height for a commercial or residential development located in its jurisdiction within one mile of the proposed development, or three stories, whichever is higher.
- It should be noted that a proposed development authorized under this section must still satisfy the county's land development regulations (i.e., setback, parking, etc.) and be administratively approved, with the exception of provisions establishing allowable densities, height, and land use. Further, there is no requirement to blend the AMI limits. All of the units could be 120% AMI.
- A county also must consider a reduced parking requirement for projects containing at least 40% affordable units if the parcel is located within a half-mile of a major transit stop.

#### *Sunset:*

- Amendment will expire on Oct. 1, 2033

**What this means:** A county must administratively authorize a proposed residential or mixed-use project on any parcel zoned as commercial, industrial, or mixed-use, without any comprehensive plan amendments, rezoning or other special approvals needed, provided that: (i) the project contains at least 40% affordable units at (ii) a density that does not exceed the highest density allowed on any parcel where residential use is allowed with (iii) a building height that does not exceed the highest allowable building height for residential or commercial structures within one mile of the parcel and (iv) the project satisfies all other applicable land development regulations. If any other applicable land development regulations cannot be satisfied, then further action by the county may be required to obtain the necessary relief, but in no event shall a county require a comprehensive plan amendment or rezoning (or other special approval) to allow the use, building height, or density.

#### B. County Property for Affordable Housing (Section 4 of the bill):

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- Amends Section 125.379
  - Current law provides that each county is required to prepare an inventory list of all real property within its jurisdiction which is owned by the county and deemed appropriate for affordable housing.
  - The amendment now also requires any property deemed appropriate for affordable housing that is owned by any dependent special district to be included in the inventory list and for the county to publish this list on its website to encourage potential development.
  - The amendment also adds that any property on the inventory list may be used for affordable housing through a long-term ground lease that requires the development and maintenance of affordable housing.
  - The amendment also adds best practices that should be followed by counties in regard to their surplus land programs. The best practices provide that the counties should:
    1. Establish eligibility criteria for the receipt or purchase of surplus land by developers;
    2. Make the process for requesting surplus lands publicly available; and
    3. Ensure long-term affordability through ground leases by retaining ROFR to purchase property that would be sold or offered at market rate and by requiring reversion of property not used for affordable housing within a timeframe.

**What this means:** A Developer will now be able to view the county's property that is deemed appropriate for affordable housing without having to contact the county and enter into a long-term ground lease (rather than acquiring fee title to the property) for purposes of developing affordable housing.

#### C. Municipal Approval for Affordable Housing (Section 5 of the bill):

- Identical to Section 3 of the bill, but applies to municipalities, except that for municipalities which are predominately residential (that is, less than 20% of the total land area is designated as either commercial or industrial), the municipality must approve pursuant to this subsection only if the proposed development is a mixed-use project.
- See Paragraph B above for implications.

#### D. Municipal Property for Affordable Housing (Section 7 of the bill):

- Identical to Section 4 of the bill but applies to municipalities.
- See Paragraph C above for implications.

#### E. Property Tax Discounts/Exemptions (Section 8)

##### 1. The Nonprofit Ad Valorem Exemption (Leased Land)

- The bill adds an exemption for Nonprofit's land that meet the following;
- Land is 100% owned by a nonprofit;
- Nonprofit leases the property for a minimum of 99 years;
- Land is predominately used for providing housing to ELI, VLI, LI, or MI persons.
  - This bullet three is meet if more than 50% of the improvements on the land are used for providing housing to the ELI, VLI, LI, or MI persons.
- First applies to the 2024 tax roll and is repealed Dec. 31, 2059
- **What this means:** A nonprofit can now receive an ad valorem exemption on its Land when a nonprofit enters into a 99-year ground lease with an affordable housing developer. If you are interested in pursuing this exemption, please contact us for more information. We can assist with drafting a ground lease in accordance with the

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proposed rule, or in putting you in touch with nonprofits currently holding land.

## 2. The Missing Middle:

- The bill adds an ad-valorem property tax exemption for portions of property in a multifamily project up to:
  - 75% of the assessed value if the project provides housing to natural persons or families whose annual household income is greater than 80% but no more than 120% AMI; or
  - 100% of the assessed value if the project provides housing to natural persons or families whose annual household income does not exceed 80%AMI.
- Requirements:
  - Project must be newly constructed meaning that the improvements were substantially completed within five years before the earlier of (i) the date of an applicant's first submission of a request of certification; or (ii) an application for an ad-valorem exemption
    - Note, the definition of newly constructed may include substantial rehabilitation.
  - Project must contain more than 70 units dedicated to persons or households whose household incomes do not exceed 120% AMI.
  - Units must be rented for the lesser of (i) an amount that does not exceed the amounts specified by the most recent multifamily rental program income and rental limit chart posted by FHFC (derived from HUD); or (ii) 10% below the market rate.
  - Units must not be subject to an agreement with Florida Housing.
  - Cannot be used with the exemption provided in Paragraph G below.
- Compliance:
  - To receive an exemption the property owner must submit to the property appraiser an application along with a certification notice from Florida Housing by March 1st. Please contact us for more information on the application and the certification.
- Applicability:
  - First applies to the 2024 tax roll and sunsets on Dec. 31, 2059
- **What this means:** All developers can now receive a property tax exemption on the portions of their properties used for affordable housing if their properties qualify, including market rate developers.

## F. Affordable Housing Property Tax Exemption (Section 9 of the bill):

- Creates Section 196.1979
- Allows counties and municipalities to adopt an ordinance to exempt portions of property used to provide affordable housing.
- To be eligible, the portions of the property must meet the following:
  1. Used to house persons or families whose annual income is no greater than 60%AMI;
  2. Must contain more than 50 residential units of which at least 20% will be used to provide affordable housing;
  3. Units must be rented for the lesser of (i) an amount that does not exceed the amounts specified by the most recent multifamily rental program income and rental limit chart posted by FHFC (derived from HUD); or (ii) 10% below the market rate; and
  4. The property must not have been cited for three code violations in the preceding 24 months and must not have outstanding code violations or related fines before final determination on a property's qualification.

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- Amount of exemption:
    1. If all units in the development are used for affordable housing, then the local government can exempt up to 100% of the assessed value of each residential unit used to provide affordable housing;
    2. If less than 100% of the units are used for affordable housing, then the local government can exempt up to 75% of the assessed value of each residential unit used to provide affordable housing.
  - Compliance:
    1. To receive an exemption the property owner must submit to the property appraiser an application along with a certification of qualified property by March 1st. Please contact us for more information on the application and the certification.
  - Applicability:
    1. First applies to the 2024 tax roll.

**What this means:** This will allow a local government to adopt a property tax exemption for affordable housing developments. Note, this exemption has to be adopted by the local jurisdiction before its use.

#### G. Building Materials Sales Tax Refund (Section 12 of the bill):

- An owner may receive a refund for sales taxes paid for building materials used to construct property subject to a recorded agreement with Florida Housing, that has newly constructed units restricted by a land use restriction agreement to provide affordable housing to natural persons or families meeting the ELI, VLI, or LI limits.
- Note, the definition of “newly constructed” under this section specifically carves out rehabilitation, renovation, restoration, modification, alteration, or expansion of buildings from the definition.
- *Terms:*
  - Exemption applies to sales of building materials that occur on or after July 1, 2023.
  - Only applies to tangible personal property that becomes a component of a newly constructed units within the development which are restricted under the LURA ("Eligible Units").
    - Includes appliances
    - Does not include plants, landscaping, fencing, and hardscaping.
    - Does not apply to renovation, restoration, rehabilitation of buildings already located on the parcel on which the Eligible Units are built.
  - Inures to the owner at the time an eligible residential unit can be used for its intended purpose.
  - Applies through a refund of previously paid taxes.
  - To receive the refund, the owner must file an application with the Department of Revenue .
  - Owner must submit this application for refund to the Department of Revenue either (a) within six months after the Eligible Unit is deemed to be substantially completed by the local building code inspector; or (b) by Nov. 1 after the improved property is first subject to assessment.
- *Amount of refund:*
  - Must be over \$500.
  - Amount to be refunded may not exceed the lesser of (i) \$5,000 per Eligible unit; or (ii) 97.5% of the Florida sales or use tax paid on the cost of building materials used on an Eligible Unit.
- Caveat, Carve-out when CDBG, SHIP or a similar grant or loan program funds are used to

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purchase materials.

- The exemption may also inure to a municipality, county, other governmental unit or agency, or nonprofit community-based organization through a refund of previously paid taxes when CDBG, SHIP or a similar grant or loan program funds are used to purchase materials.
- Note, this section requires that an affordable housing development be subject to a recorded agreement with Florida Housing and that the eligible units be restricted by a land use restriction agreement. The land use restriction agreement must be submitted in the owner's application. Timing should be considered for strict 9% credit deals without Florida Housing financing, as there may be a delay in Florida Housing's issuance of the extended low-income housing agreement. Moreover, the statute is unclear whether an owner will qualify under this provision if the owner enters into (i) solely an extended low-income housing agreement with Florida Housing; and (ii) whether the sections use of "land use restriction agreement" includes an extended low-income housing agreement.

**What this means:** An affordable housing developer can now seek a refund for sales taxes paid for building materials used for an eligible unit. This refund can be substantial as it allows for a refund of \$5,000 per eligible unit.

#### H. Corporation Tax Donation Credit or the "Live Local Credit" (Sections 21 and 34 of the bill):

- Allows for a corporation to receive a 100% Credit for an eligible contribution made to Florida Housing to be used under the SAIL program (Section 420.50872).
- Any monetary contribution by the taxpayer is eligible.
- Taxpayer making the contribution may not designate a specific project, property, or geographic area of this state as the beneficiary of the eligible contribution.
- An eligible contribution must be made on or before the date the taxpayer is required to file its state tax return.
- There are special rules relating to a taxpayer filing a Florida Consolidated return.
- Credits are subject to a cap amount of \$100 million in each state fiscal year.
- Credit can be used against any State tax liability due for a taxable year after application of any other allowable credits by the taxpayer.
- Rule allows for transferability of credits (e.g., to certain members of an affiliated group) and carryforwards of the unused credits to subsequent years. These are outside of the scope of this summary. If you would like to know more, please reach out to us to discuss.

**What this means:** This allows for a corporation to receive a tax credit for money's contributed to Florida Housing for its SAIL program. This credit is highly complex and could be very beneficial to companies that have substantial revenue, which may have maximized their yearly 10% charitable deduction limit, and would also like to invest in affordable housing.

#### I. State-owned lands for Affordable Housing (Section 24 of the bill):

- Requires the state to assess whether non-conservation state lands are suitable for use as affordable housing and consider opportunities to transfer such lands to local governments for affordable housing.

#### J. Job Growth Grant Fund (Section 25 of the bill):

- Expands Job Growth Grant Fund eligibility to specifically authorize public infrastructure

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projects that support affordable housing.

- Sunsets on July 1, 2033.

K. Amendments to the section 420.503's definition of Qualified Contract-Technical change (Section 27 of the bill):

- The definition of Qualified Contract was amended by changing the timing of when Florida Housing will deem a bona fide contract to be a qualified contract.
- The amendment provides that Florida Housing will deem a bona fide contract to be a qualified contract at the time the bona fide contract is presented to the owner and the initial deposit is made into escrow.

L. Florida Housing Board of Directors (Section 28 of the bill):

- Allows for the President of the Senate and the Speaker of the House to each appoint a member to Florida Housing's board.

M. Prohibition of Rent Control (Sections 2 and 6 of the bill):

- Removes provisions from current law (i.e., Section 125.0103) that allow counties, municipalities, or other local governments to impose rent controls.

**What this means:** This amendment will prevent a scenario that recently occurred in Orlando where a rent control ordinance appeared on the general election ballot. The amendment removes the statutory language which allows under certain circumstances a county or local government to pass an ordinance to impose rent controls.

The above provides a general summary to the major rules and amendments found in the Live Local Act. It should be noted that there are many nuances to the Live Local Act that are outside the scope of this summary. Whether you are interested in pursuing a certain provision of the Live Local Act or simply want to know more about what options may be available to your current or future development, we are here every step of the way to assist. Please feel free to contact us at your convenience.

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