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From Local Initiatives to State Legislation: Assessing the Influence of the Enhancement Bill on Florida's Live Local Act

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On Feb. 7, 2024, the Florida Senate passed the widely anticipated Senate Bill 328, known as the "Live Local Act of 2024" ("Enhancement Bill"), which amended the Chapter 2023-017, *Laws of Florida*, previously known as Senate Bill 102 ("Live Local Act," or simply the "Act") to alleviate concerns from local governments as well as clarify various provisions of the Act that have caused dispute or uncertainty over the past year. On Feb.27, 2024, the Florida House of Representatives also adopted the Enhancement Bill, which is now in the final version that will be presented to Governor DeSantis for final approval. The Enhancement Bill is anticipated to become the Florida Law. The most notable provisions of the Act's Enhancement Bill address issues such as unit occupancy, development intensity preemption, building height and community character, approval processes, motor vehicle parking, transit-oriented developments, conforming status, and controlling law for development applications that have already been submitted to a local government. These provisions are identified and discussed below.

A. Clarifies the inclusion of "for sale" units.

- Amends Florida statutes sections 125.01055(7)(a) and 166.04151(7)(a) to clarify that only the 40% affordable component of a multi-family or mixed-use multi-family project authorized under the Act must be "rental."
- What this means: The types of developments permitted under the Act, as amended by the Enhancement Bill, may include owner-occupied housing, such as condominiums, but the 40% affordable component must be rented to the occupant(s).

B. Preemption of Development Intensity (Density and Floor Area Ratio)

- Clarifies the minimum density available under the Act.
    - Amends Florida statutes sections 125.01055(7)(b) and 166.04151(7)(b) to state that a county or municipality may not restrict the density of development authorized under the Act below the “highest currently allowed density” that applies to any land within the county or municipality on which residential development is allowed pursuant to the local government’s “land development regulations.”
    - What this means: The Act now refers to “land development regulations” for purposes of determining the minimum density that is available for development authorized under the Act. Notably, the term “land development regulations” is defined in Florida’s Community Planning Act as the “ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land.” §163.3164, Fla. Stat. (2023). The Community Planning Act mandates that all local governments adopt “land development regulations” and in doing so, encourages the adoption of “innovative land development regulations which include provisions such as transfer of development rights, incentive and inclusionary zoning, planned-unit development, impact fees, and performance zoning.” §163.3202(1)-(3), Fla. Stat. The Community Planning Act even states that “[a] general zoning code shall not be required if a local government’s adopted land development regulations meet the requirements of this section.” Id. Thus, any local government ordinance that “substantially affects land use,” Galaxy Fireworks, Inc. v. City of Orlando, 842 So.2d 160, 165 (Fla. 5th DCA 2003), including those described in the Community Planning Act, should be considered for purposes of identifying the “highest currently allowed density.”
- Defines the phrase “highest currently allowed density.”
    - A definition of “highest currently allowed density” is added to Florida statutes sections 125.01055(7)(b) and 166.04151(7)(b).
    - What this means: For purposes of determining the number of units that may be included in development authorized under the Act, the proposed development may not rely on either: (1) the density of other developments authorized under the Act; or (2) the density of existing development to the extent that such densities were achieved through density bonuses or special approvals that were granted by the local government as “incentives” pursuant to the local government’s land development regulations. Moreover, by including the term “currently,” the Enhancement Bill clarifies that the density of development authorized under the Act may not be based on the density of existing development that does not conform with the applicable density provisions of the local government’s land development regulations; that is, non-conforming density.
- Clarifies that local governments are preempted with respect to floor area ratio ("FAR").
    - Amends Florida statutes sections 125.01055(7)(c) and 166.04151(7)(c) to state that a county or municipality may not restrict the FAR of a proposed development below 150% of the “highest currently allowed FAR” that applies to any land within the county or municipality on which “development” is allowed under the local government’s “land development regulations.”
    - What this means: Local governments may not restrict the floor area of development authorized under the Act by applying the FAR that typically applies to the property being developed, unless the underlying FAR happens to be the highest FAR that is allowed under the local government’s land development regulations (and in that case,

the development may be built to 150% of that FAR).

- Defines the phrase “highest currently allowed floor area ratio.”
    - A definition of “highest currently allowed floor area ratio” is added to Florida statutes sections 125.01055(7)(c) and 166.04151(7)(c).
    - What this means: For purposes of determining the minimum floor area of development authorized under the Act, the proposed development may not rely on (1) the FAR of other developments authorized under the Act or (2) the FAR of existing development to the extent that such densities were achieved through FAR bonuses or special approvals that were granted by the local government as “incentives.” Moreover, by including the term “currently,” the Enhancement Bill clarifies that the FAR of development authorized under the Act may not be based on the FAR of existing development that does not conform with the applicable FAR provisions of the local government’s land development regulations; that is, non-conforming FAR.

C. Building Height and Community Character

- Defines “highest currently allowed height.”
    - A definition of “highest currently allowed height” is added to Florida statutes sections 125.01055(7)(d)1. and 166.04151(7)(d)1.
    - What this means: For purposes of determining the minimum height of buildings authorized under the Act, the proposed development may not rely on either: (1) the height of other buildings authorized under the Act; or (2) the height of existing building to the extent that such height was achieved through height bonuses or special approvals that were granted by the local government as “incentives.” Moreover, by including the term “currently,” the Enhancement Bill clarifies that the height of buildings authorized under the Act may not be based on the height of existing buildings that do not conform with the applicable height provisions of the local government’s land development regulations; that is, non-conforming height.
- Limits the maximum building height for development that is adjacent to existing single-family residences.
    - Adds Florida statutes sections 125.01055(7)(d)2. and 166.04151(7)(d)2. to state that if development authorized under the Act is adjacent to parcels that are zoned for single-family residential on at least two (2) “sides,” then the height of the proposed development is limited to the greater of either: (1) 150% of the tallest building on any property adjacent to the proposed development; (2) the highest currently allowed height that applies to the property being developed under the local government’s land development regulations; or three (3) stories.
    - What this means: Development authorized under the Act that is “adjacent to” single-family residences on at least two sides will be determined by the existing allowable heights on the property itself or on the adjacent single-family properties, rather than properties within one (1) mile of the property being developed.
- Defines “adjacent to” for purposes of the building height limitations.
    - A definition of “adjacent to” is added to Florida statutes sections 125.01055(7)(d)2. and 166.04151(7)(d)2.
    - What this means: Properties that are separated by a public road are not considered as being “adjacent to” one another.
- Excludes application of the Act to “airport-impacted areas.”
    - Adds Florida statutes sections 125.01055(7)(k) and 166.04151(7)(k) to excludes “airport-impacted areas as provided in s. 333.03.”
    - What this means: Development cannot be authorized pursuant to the Act if the

development is: (1) proposed within one-quarter of a mile, measured laterally, from the edge of a runway at any existing or planned airport (that is identified in the local government's airport master plan), and within an area that is one-quarter of a mile wide which extends at right angles for a distance of 10,000 feet from the end of the existing or planned airport runway; (2) within any airport noise zone that is identified in the federal land use compatibility table, or in a land-use zoning or airport noise regulation adopted by the local government; or (3) the proposed development exceeds maximum height restrictions identified in the political subdivision's airport zoning regulations.

D. Administrative Approval

- No administrative approval for development that is located near certain military installations.
    - Amends Florida statutes sections 125.01055(7)(e) and 166.04151(7)(e) to prohibit administrative approval of developments authorized under the Act if the development is located within one-quarter mile of certain military installations.
    - What this means: A public hearing process is required to authorize development that is proposed under the Act if the development is located within one-quarter mile of the following military installations:
        - Avon Park Air Force Range
        - Camp Blanding
        - Eglin Air Force Base and Hurlburt Field
        - Homestead Air Reserve Base
        - Jacksonville Training Range Complex
        - MacDill Air Force Base
        - Naval Air Station Jacksonville, Marine Corps Support Facility-Blount Island, and outlying landing field Whitehouse
        - Naval Air Station Key West
        - Naval Support Activity Orlando, including Bugg Spring and Naval Ordnance Test Unit
        - Naval Support Activity Panama City
        - Naval Air Station Pensacola
        - Naval Air Station Whiting Field and its outlying landing fields
        - Naval Station Mayport
        - Patrick Space Force Base and Cape Canaveral Space Force Station
        - Tyndall Air Force Base
        - United States Southern Command
- Local governments must publish administrative processes for development authorized under the Act.
    - Amends Florida statutes sections 125.01055(7)(e) and 166.04151(7)(e) to affirmatively require that local governments establish and publicize their administrative process.
    - What this means: The administrative process for developments authorized under the Act are not required to be the same process in every county and municipality, but the process for each county and municipality must be established and communicated to the public on its website.

E. Motor Vehicle Parking

- Redefines the geographic scope of areas in which local governments must consider parking

reductions.
    - Amends Florida statutes sections 125.01055(7)(f)1. and 166.04151(7)(f)1. to reduce the distance from a “transit stop” – from one-half mile to one-quarter mile – within which local governments must “consider” parking reductions for developments authorized under the Act.
    - What this means: Nothing given that local governments are only required to “consider” and not necessarily “authorize” or “approve” the parking reduction. However, even though the radius has been reduced from one-half mile to one-quarter mile, the areas in which local governments must give such consideration has been expanded in most instances because the radius is now measured from any “transit stop” rather than only a “major transit stop.”
- Requires a parking reduction for developments located in transit supportive areas.
    - Adds Florida statutes sections 125.01055(7)(f)2. and 166.04151(7)(f)2. to mandate a 20% reduction in parking requirements for developments authorized under the Act that are: (1) located within one-half mile of a “major transportation hub” that is accessible by “safe, pedestrian friendly means;” and (2) located within 600 feet of parking that is “available” for use by residents of the development that is authorized by the Act. The Enhancement Bill also adds subsection (7)(f)4. to define “major transportation hub.”
    - What this means: Any development located within one-half mile of “any transit station, whether bus, train, or light rail, which is served by public transit,” will be entitled to an automatic 20% parking reduction provided there is some other parking “available” off-site and within 600 feet. The off-site parking may be in the form of on-street spaces, or spaces located in a parking lot or parking garage (public or privately owned so long as the spaces are “available” for use). Notably, the number of off-site spaces that are available does not have to equal the 20% reduction.
- Mandates mixed-use in a “transit-oriented development” (“TOD”) but eliminates parking requirements.
    - Adds Florida statutes sections 125.01055(7)(f)3. and 166.04151(7)(f)3. to eliminate parking requirements for mixed use developments located within a TOD or TOD area. Also adds Florida statutes section 125.01055(7)(h) and 166.04151(7)(h) to require that developments authorized under the Act must be “mixed use” if located within a TOD or TOD area and must adhere to the local government regulations applicable to the TOD or TOD area, except for those that are preempted by the Act (i.e., use, height, density, FAR, and parking), or as otherwise agreed with the local government and property owner.
    - What this means: The term “Transit Oriented Development” is defined in Florida’s Community Planning Act as “a project or projects, in areas identified in a local government comprehensive plan, that is or will be served by existing or planned transit service. These designated areas shall be compact, moderate to high density developments, of mixed-use character, interconnected with other land uses, bicycle and pedestrian friendly, and designed to support frequent transit service operating through, collectively or separately, rail, fixed guideway, streetcar, or bus systems on dedicated facilities or available roadway connections.” Any development located in these areas must be mixed-use if authorization is sought pursuant to the Act, but the property owner may unilaterally determine how much parking to provide because the local government may not require any specific minimum amount of parking. Moreover, the property owner and local government may also agree to a higher density, building height, or FAR without establishing a new “highest currently allowed” because the Enhancement Bill defines those terms as not including the density, FAR, or height of other development that has been authorized under the Act.

F. Clarifies that local governments may allow greater density, height, and FAR than what is otherwise provided as minimums under the Act.

- Adds Florida statutes sections 125.01055(7)(j)1 and 2. and 166.04151(7)(j)1 and 2. to state that local governments are not “precluded” from approving a bonuses or special approval for additional density, height and FAR to developments authorized under the Act. The new subsection 2 further adds that if development authorized under the Act also satisfies conditions required in the local government’s land development regulations for a density, height, or FAR bonus, then such bonuses must be administratively approved.
- What this means: The Act never precluded local governments from allowing greater density and height than the minimums established by the Act; however, by virtue of the fact that the Enhancement Bill states it is explicitly in conjunction with the new definitions of “highest currently allowed” density, height or FAR, local governments may now grant such increases without establishing new baseline minimums that would apply to other developments authorized under the Act.

G. Preserves the conforming status of developments authorized under the Act.

- Adds Florida statutes sections 125.01055(8) and 166.04151(8) to state that development authorized under the Act must be considered as conforming so long as the development satisfies the 30-year affordability requirement.
- What this means: Developments authorized under the Act will never become “non-conforming” and will maintain conforming status even the Act expires in 2033, and even after the 30-year affordability period has passed. As such, the development will never be subject to the provisions of a local government’s land development regulations that restrict, limit, and eventually terminate the continuation of legal non-conformities. However, if the development ever fails to maintain the affordability requirement during the 30-year affordability period, then the Act, as amended by the Enhancement Bill, allows for a “reasonable” time to cure the violation. The development will be considered “non-conforming” only if the violation is not cured within the “reasonable” time.

H. Provides the option for a property owner to proceed under the Act as initially adopted, or as amended by the Enhancement Bill.

- Section 3 of the Enhancement Bill provides a property owner with the option for its application to be governed by either the Act or the amended Act if the property owner has already submitted a development application or notice of intent to utilize the Act prior to the effective date of the Enhancement Bill.
- What this means: A property owner may choose which version of the Act best suits the proposed development. If the development application was submitted before Jul. 1, 2024, and the property owner wishes to proceed under the terms of the Act as initially adopted, then the property owner must notify the local government prior to July 1, 2024. Otherwise, the local government must allow the property owner with the opportunity to revise the application based on the amendments adopted by the Enhancement Bill.

I. Tax Exemptions

- Adds that when determining the value of a unit for purposes of applying an exemption pursuant to this paragraph, the property appraiser must include in such valuation the proportionate share of the residential common areas, including the land, fairly attributable to

such unit.
- What this means: Residential common areas and land will be included in the determination of the tax exemption thereby resulting in larger exemptions.

J. Florida Keys & Key West

- “Newly constructed” projects in the Florida Keys and Key West can qualify for the Missing Middle Property Exemption with 10 or more units dedicated to housing natural persons/families whose incomes do not exceed 120% AMI.
- What this means: Except for projects located in the Florida Keys and Key West, the missing middle tax exemption remains available if 71 units (or more) are dedicated to housing natural persons/families whose incomes do not exceed 120% AMI. The threshold for the tax exemption is only 10 units in the Florida Keys and Key West.

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