Summary of Senate Bill 328/House Bill 1239

Proposed Amendments to the Live Local Act as of 1/9/24

Contact: Kody Glazer, Chief Legal and Policy Officer, glazer@flhousing.org

On January 4, 2024, Senator Alexis Calatayud filed "SB 328: Development" and Representative Vicki Lopez filed "HB 1239: Affordable Housing." These two bills are identical and contain several amendments to the Live Local Act – specifically to the Live Local Act's land use preemption and the "Missing Middle" Property Tax Exemption. If passed, these two bills would become effective upon being signed into law by the Governor. A brief summary of SB 328/HB 1239 is provided below. Updates will be made as needed to reflect amendments to these bills.

Proposed Amendments to the Live Local Act's Land Use Preemption

SB 328/HB 1239 proposes several amendments to s. 125.01055(7) and s. 166.04151(7) of the Florida Statutes which govern the Live Local Act's land use preemption. This land use preemption was designed to facilitate eligible affordable housing developments on parcels zoned for commercial, industrial, and mixed-use by providing favorable use, density, height, and administrative approval standards. The line citations reference the Senate version of the bill.

Eligible Zoning & Applicability

- Removes applicability to areas zoned for "industrial" use. If passed, the land use preemption for affordable housing at s. 125.01055(7) and s. 166.04151(7) would only apply to parcels zoned for commercial and mixed-use.
- Amends the phrase "if at least 40 percent of the residential units in a proposed multifamily **rental** development are, for a period of at least 30 years, affordable as defined in s. 420.0004" to "if at least 40 percent of the residential units in a proposed multifamily development are **rental units that**, for a period of at least 30 years, affordable as defined in s. 420.0004." This amended phrase could open the possibility for a split multifamily ownership and rental development as long as least 40% of the total units are rental *and* affordable. (updated 1/9/24)
- Provides that proposed multifamily developments that are located in a transit-oriented development or area, as defined by the local government, must be mixed-use residential to receive approval with the tool and "otherwise complies with requirements of the county's regulations applicable to the transit-oriented development or area except for use, height, density, and floor area ratio as provided in this section or as otherwise agreed to by the county and the applicant for the development." (updated 1/9/24)

Height and Density Allowances

- Newly provides that local governments cannot limit the floor area ratio of a proposed development below the "highest currently allowed density **or floor area ratio"** on any land where residential development is allowed in the jurisdiction under the jurisdiction's land development regulations.
- Clarifies that the maximum density and height allowances do not include any "bonuses, variances, or other special exceptions" provided in the jurisdiction's land development regulations as incentives for development.

- Reduces the buffer to determine maximum allowable height from 1 mile to ¼ mile from the proposed development.
- Allows local governments to limit the maximum height allowance if the building on a property adjacent to a proposed development is 3 stories or less to 135 percent of the tallest building on property adjacent to a proposed development or 3 stories, whichever is higher. (updated 1/9/24)

Additional Provisions

- Provides that each local government must maintain a policy on its website containing the expectations for administrative approval under the tool. (updated 1/9/24)
- Reduces the buffer for local governments to "consider" reducing parking requirements from ½ mile of a "major transit stop" to ¼ mile of a "transit stop." This will establish a lower buffer and encourage reducing parking requirements for projects near any transit stop, not just a "major" transit stop. (updated 1/9/24)
- Requires local government to reduce parking requirements for proposed developments within ½ mile of a "major transportation hub" and eliminates parking requirements for a proposed mixed-use residential development within an area recognized as a transit-oriented development or area. (updated 1/9/24)
- Provides that proposed developments located within ¼ mile of a military installation may not be administratively approved.
- Provides that the land use preemption does not apply to "airport-impact areas as provided in s. 333.03" and removes the exception for recreational and commercial working waterfront.
- Creates clear criteria for when the preemption does not apply in close proximity to an airport.
- Clarifies that developments authorized with the preemption are treated as a conforming use even after the sunset of the preemption statute (2033) and the development's affordability period unless the development violates the affordability term. If a development violates the affordability term, the development will be treated as a nonconforming use.

Proposed Amendments to the "Missing Middle" Property Tax Exemption

SB 328/HB 1239 proposes a few amendments to the Missing Middle Property Tax Exemption enacted at s. 196.1978(3) of the Florida Statutes. This exemption was designed to provide tiered ad valorem property tax exemptions to developments with more than 70 affordable units to households at or below 120% AMI. The main proposed change in SB 328/HB 1239 is to allow developments that have been substantially rehabilitated to be eligible for the missing middle property tax exemption.

Adding Substantial Rehabilitation to definition of "Newly constructed"

- Provides that developments that have been substantially rehabilitated are considered "newly constructed" for the purposes of eligibility.
- Defines "substantial rehabilitation" as "the repair or restoration of a unit which increases the market value of a such unit by at least 40 percent."
- Provides guidelines for a market value analysis that must be completed to show a development meets the definition of "substantial rehabilitation."

Other Provisions

- Extends exemption eligibility to developments with more than 10 affordable units if the development is located in an area of critical state concern.
- Clarifies that "newly constructed" means an improvement or substantial rehabilitation was completed within 5 years before the first request for a certification notice.
- Clarifies the exemption only applies to the affordable units within an eligible development.
- Provides how a property appraiser shall determine the value of an affordable unit eligible for the exemption.
- Authorizes the county property appraiser to "request and review additional information necessary" to determine eligibility for the exemption.

Florida Hometown Hero Program

SB 328/HB 1239 proposes funding the Hometown Hero Program at $100 million using federal Coronavirus State Fiscal Recovery Fund dollars.