

Live Local Act changes could affect affordable housing in Tampa Bay

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Affordable housing under construction in Pinellas County in August 2023. The Live Local Act removed many local zoning, building height and density restrictions and aims to streamline the process for the development of affordable housing.

Proposed changes to Florida's Live Local Act could send shockwaves through Tampa Bay's development community.

Sen. Alexis Calatayud (R, Miami-Dade) and Rep. Vicki Lopez (R, Miami-Dade) last week each filed a bill containing several proposed amendments to Live Local that, if passed and signed into law, would impact the density of affordable housing projects and where they could be built.

Gov. Ron DeSantis' Live Local Act went into effect July 1, 2023, and provided \$711 million to fund affordable housing initiatives. The law removed many local zoning, building height and density restrictions and aims to streamline the process for the development of affordable housing.

St. Petersburg was one of the first Florida cities to begin creating a pathway for developers to utilize the law. The local authority is preempted on standards regarding density, height and use.

The cost of premature change

Jake Cremer, a partner at Stearns Weaver Miller in Tampa, said he is working on more than a dozen projects using the Live Local Act to get property entitlements — many of which are in Tampa Bay.

Live Local was the “most aggressive affordable housing policy bill” in any state in the country, Cremer said. In his view, the legislature is considering making “really fundamental changes” without enough time passing to see if the initial policy worked.

“I have clients that are spending hundreds of thousands of dollars trying to work with local governments on Live Local Act approvals, and now they’re saying, ‘This might completely change my project,’ or ‘This might not even allow my project,’” Cremer said. “I have seen one instance where these changes would be positive, but overall, these changes are negative from the developers’ perspectives both because they’re creating uncertainty and they’re more limiting than what the legislature approved last year.”

Cremer said that from a legal perspective, once an application has been filed, the government has to evaluate it based on the law that existed when the developer applied. However, not all cities allowed applications to flood in.

Many governments required engineering plans to be submitted first to determine if the project would qualify. A developer could easily spend \$250,000 on that work, Cremer said, and it could take six months to a year to complete. He said the sweeping changes are being examined before the developers have had time to submit an application.

“A lot of developers that are looking at the changes are asking, ‘Is it even worth continuing if we can’t get the application in the door?’” Cremer said.

Density and height restrictions on the table

Some proposed amendments aim to tackle the issue of density and height limits for projects.

Under the current law, local governments cannot restrict below the “highest currently allowed density.” The proposed amendment says the local government cannot restrict below the “highest currently allowed density or floor area ratio.”

Mack Feldman, board member of the pro-development YIMBY St. Pete, told the Tampa Bay Business Journal the impact of the change will depend on how each municipality enables the legislation.

“St. Pete had been planning to limit Live Local projects using a density system (units per acre) that would have needlessly restricted the amount of new workforce housing getting built,” Feldman said. “Clarifying that the city needs to accept the higher unit count from the allowed floor area ratio or density will get more homes built. Tampa did not take this approach and was already going to allow the highest floor area ratio or units per acre.”

The amendments also propose limiting the maximum height of a building to the tallest existing building within a quarter mile. The law currently allows for the maximum height to match any building within a mile of the proposed project. There are also amendments to restrict building height based on the buildings directly adjacent to the proposed project.

“This is disappointing because it will shrink the number of new homes that get built,” Feldman said. “Some projects that had been in planning stages will die because of this change.”

Bowen Arnold of DDA Development said it’s not unexpected for the legislature to “tweak the rules” of new laws, especially given the abundance of feedback from local governments. However, the modification to restrict based on developments within a quarter of a mile, he said, is problematic and a “significant limitation.”

“The whole goal is to create more affordable housing, and the way you do that is to create density,” Arnold said. “It just seems like these things are trying to trim the sails a little.”

Cremer said the swift and broad nature of the proposed amendments appears to stem from local governments reaching out and asking for changes.

“I think it’s local governments that are resistant to change,” Cremer said. “That sort of demonstrates why we need this bill, or why we needed the original Live Local Act. Local governments haven’t been able to approve housing quickly enough. It’s kind of ironic to me that we have local governments that have put barriers in the way of producing housing, and now they’re the ones complaining about it instead of just rolling up their sleeves and saying, ‘Hey, we’ve got a new law, we don’t agree with all of it, but it’s certainly very innovative, so let’s try it out and see whether it works.’”

Industrial land no longer eligible for shortcuts

The most impactful proposed change would render industrial properties ineligible for the shortcuts the Live Local Act affords residential developers. If this amendment is passed, the law will only apply to properties zoned for commercial or mixed use.

Some communities, including Pasco County, have been fighting to preserve industrial land from residential development. Industrial land, business and civic leaders say, is critical for job creation initiatives. St. Pete elected officials have expressed hesitancy to approve residential projects on industrial sites for the same reason.

Industrial-zoned properties were something Arnold believed were “always a little bit subject to misuse.” He said projects in areas like Mirror Lake have received pushback because the neighborhoods have lower density. But removing the option entirely, Arnold said, will lead to significantly fewer projects being built.

Cremer has several active projects that are proposing building housing on industrial land. While he said he understands the worry of local governments, the reaction from the legislature seems “severe.”

“The concerns could have been dealt with with tweaks to the Live Local Act and not just completely throwing the baby out with the bathwater,” Cremer said. “The height issue also could be tweaked without such a bold step of cutting it down to a quarter mile and the properties next door.”