

Alert | Public Finance & Infrastructure



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Florida’s Live Local Act Provides New Support for Multifamily Affordable Housing

Go-To Guide:

- “Live Local Act” supports affordable housing policies in Florida and takes effect July 1, 2023
- Creates and/or enhances tax incentives for affordable housing, restricts local government opposition
- Provides additional, funded appropriation totaling \$1.5 billion over next 10 years

On March 29, 2023, the governor of Florida signed into law **SB 102**, the “Live Local Act,” a comprehensive set of laws, both new and amended, including appropriations totaling \$711 million for the current or upcoming fiscal year and \$1.5 billion over the next 10 years, to help support affordable housing policies in the state.

Most provisions of the Act take effect July 1, 2023. The passage of the Act may have a direct positive impact on the financing and construction of multifamily affordable housing developments across Florida.

Summary of the Act's Main Provisions

Funding (for 2023-24 unless otherwise indicated)

- \$150 million in recurring funds for the State Apartment Incentive Loan (SAIL) program, which provides low-interest loans on a competitive basis to affordable housing developers, funded by a change in application of state excise tax revenue pursuant to the Act – this recurring appropriation will last for 10 years and has specific requirements, e.g., such SAIL loans must be used for projects focused on infill, maximizing existing infrastructure, projects near military installations, etc.
- \$252 million in non-recurring funds for the State Housing Initiatives Partnership (SHIP) program, which was established for the purpose of providing funds to local governments for creation of partnerships to produce and preserve affordable housing, and which funds are distributed pursuant to each local government's adopted Local Housing Assistance Plan.
- \$109 million in non-recurring funds for the SAIL program.
- \$100 million in nonrecurring funds to implement the Florida Hometown Hero Housing Program, which provides home mortgage support for eligible frontline workers, such as educators, police officers, health care providers and childcare workers.
- For the 2022-23 fiscal year, \$100 million in nonrecurring funds appropriated to the Florida Housing Finance Corporation (FHFC) to implement a competitive assistance loan program for new affordable housing construction projects in the development pipeline that have not commenced construction and are experiencing verifiable cost increases due to market inflation.

Zoning, land use, role of local governments

- Requires local government to authorize multifamily and mixed-use residential developments as allowable uses in any area zoned for commercial or mixed-use if at least 40% of the units are affordable for at least 30 years and serve incomes up to 120% adjusted median income (AMI).
- Prohibits local government from requiring a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, or comprehensive plan amendment for building height, zoning, and densities.
- Prohibits local government from restricting the density of a proposed affordable housing development below the highest allowed density on any unincorporated land in the county where residential development is allowed, in the case of a county, and on any land in the municipality where residential development is allowed, in the case of a municipality.
- Permits local government to approve the development of housing that is affordable including, but not limited to, a mixed-use residential development, on any parcel zoned for commercial or industrial use, so long as at least 10% of the units included in the project are to be used for affordable housing; prior law gave local governments this power with respect to projects in residentially zoned areas if the developer did not apply for or receive SAIL funding.
- Prohibits local governments from enacting rent control.
- Requires each local government to make its inventory list of lands owned or controlled by the local government appropriate for affordable housing publicly available on its website.
- Requires each local government to have a policy containing procedures and expectations for expedited processing of affordable housing building permits.

Tax credits

- Increases Community Contribution Tax Credit, a program that provides tax credits for donations toward community development and affordable housing projects, from \$14.5 million to \$25 million.
- Creates a new tax credit to allow taxpayers to direct their payments to FHFC for use as SAIL funds, up to \$100 million in total; \$25 million of eligible contributions may provide loans for the construction of large-scale projects of significant regional impact.

Tax exemptions

- Creates a new property tax exemption for newly constructed (within last five years) non-FHFC multifamily developments of over 70 units that set aside a portion of units for tenants in the “workforce” AMI ranges, at 80% of AMI and 120% of AMI thresholds.
- Authorizes local governments to create a property tax exemption for projects setting aside affordable housing units at 50% AMI or below; eligible developments must have at least 50 units and must dedicate at least 20% of them to such tenants.
- Provides property tax exemption for land owned by a nonprofit entity that is leased for a minimum of 99 years for the purpose of providing affordable housing.

Florida Housing Finance Corporation

- Adds two members to the board of the FHFC, one appointed by the President of the Senate and one by the Speaker of the House.
- Makes a technical change to the definition of qualified contract, for purposes of determining whether the extended low-income use period for Low Income Housing Tax Credits can be preserved through transfer to a new low-income housing provider in the face of foreclosure of the property.
- Requires reporting on the amount of state funds necessary to use all federal housing funds anticipated to be received by, or allocated to, the state in the fiscal year in order to maximize the production of new, affordable multifamily housing units in the state.

State housing strategy, administrative changes

- Substantially changes the wording of the state’s official housing strategy.
- Directs reporting by Office of Program Policy Analysis and Government Accountability and the Shimberg Center for Housing Studies at University of Florida.
- Codifies the Florida Hometown Heroes down payment assistance program.

Elements of the Act that May Directly Impact Multifamily Affordable Housing in the State of Florida

Financing affordable housing projects can be challenging. Affordable housing projects generally cannot support conventional debt or a full tax-exempt financing beyond the construction period. In Florida, various state-level sources, such as SAIL funding, supplement federal tax subsidies, and generally supply a substantial portion of construction funding, although 50% or more of aggregate basis of building and land must be financed by tax-exempt volume cap bonds in order for certain type of low-income housing tax credits (LIHTCs) to become available for equity investors in the project (the so-called Fifty Percent

Test). These sources also provide a substantial portion of permanent funding, along with other federal subsidy sources.

The additional SAIL monies the Act provides are expected to be applied to federal tax-subsidized deals, including tax-exempt bond-financed deals, which should result in additional multifamily affordable housing projects being financed.

The fact that such incremental SAIL monies – an additional \$150 million a year – must be tied to projects that have specific uses or locations¹, may not in the balance negatively impact the overall increase in financed projects. There is high demand for affordable housing projects even with such geographic or programmatic limitations.

The new allocations may also help alleviate a source of negative pressure on successful financings of multifamily affordable housing projects: spiraling construction costs. To address this issue the FHFC already currently maintains a program called the Construction Housing Inflation Response Program (CHIRP), which sets aside funding for projects that were previously awarded SAIL funding but risk failure due to acutely rising construction costs, which jeopardize the Fifty Percent Test and therefore availability of LIHTCs for a particular project.

The \$100 million allocated to the competitive assistance loan program for projects facing cost overruns, in addition to existing CHIRP monies, may result in additional multifamily affordable housing projects being successfully financed.

Other elements of the Act that may have a direct positive impact on the successful financing of multifamily affordable housing projects include the preemption of local zoning change requirements and comprehensive zoning plan amendments, broadening of property tax exemptions for affordable housing and other features of the Act described above.

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¹ Projects focused on infill, maximizing existing infrastructure, projects near military installations, housing for elderly persons, housing for young adults aging out of foster care, and projects in rural areas.

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