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3 Key Changes to Florida's Live Local Act Tax Exemption

By Marvin A. Kirsner
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Since its enactment in 2023, Florida's Live Local Act has become one of the state's most significant affordable housing initiatives, offering zoning flexibility and property tax incentives designed to encourage workforce and affordable housing development. However, as developers, lenders and local governments have worked through implementation of the law, questions have emerged regarding project eligibility, the scope of local government authority and the long-term reliability of the tax exemption.

An affordable housing bill (CS/CS/HB 1389) recently signed into law by Gov. Ron DeSantis contains three modifications to the Live Local Act's property tax exemption for middle-income affordable housing projects. Two of these modifications may be welcomed by developers hoping to benefit from the tax exemption, while the other change could render some projects ineligible for the exemption.

Key Exemption Requirements

Before examining HB 1389's amendments, it is helpful to understand the basic requirements of the Live Local Act's affordable housing property tax exemption. In general, qualifying multifamily projects must satisfy several statutory conditions related to their age, the number of affordable units, tenant income levels, and ongoing compliance requirements.



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- The multifamily project must be newly built (no older than five years at the time the exemption is first applied for).
- 71 or more units must be dedicated to affordable housing, so that the maximum rent charged is no greater than the lesser of: (i) the amount set out in the chart published by

Florida Housing Finance Corporation; or (ii) 90% of the fair market value rent for the unit.

- The 71 or more units must be rented at these discounted rates for a minimum of three years to households earning no more than 120% of the county's median income. In addition, the owner must comply with a complex two-part exemption process every year, consisting of a certification with the Florida Housing Finance Corporation followed by an exemption application with the county property appraiser.

If the exemption is granted by the county property appraiser, units occupied by tenants earning between 80% and 120% of area median income are eligible for an exemption equal to 75% of the unit's value, and units occupied by tenants earning less than 80% of area median income are eligible for a 100% exemption.

Defining 'Multifamily Project'

HB 1389 adds a definition of the term "multifamily project." This is critical because for a project to be eligible for the Live Local Act exemption, it must be a multifamily development. The original Live Local Act did not define this term, and the term is not defined anywhere else in the Florida statutes. The new law provides a definition for the term as follows:

"Multifamily project" shall include a development authorized under this subsection that is held under common ownership or control, approved and developed in compliance with the same site plan approval or development agreement or order, but shall exclude individual detached single-family residences, as well as parcels separated by more than 200 feet of land."

Prior to this definition, there was uncertainty as to whether some projects with multiple buildings separated by a public road would be eligible for the exemption. For example, to qualify for the exemption, at least 71 units in a multifamily project must be dedicated to affordable housing. This raised questions about whether a project had to satisfy the 71 affordable-unit requirement on a building-by-building basis or in the aggregate.

Consider a project consisting of two buildings separated by a public right-of-way. If the development were treated as two multifamily projects because of the public road separating them, neither building would qualify for the Live Local Act exemption if it could not independently satisfy the 71-unit minimum.

Under this new definition, both buildings may be classified as a single multifamily project, so long as they are not separated by more than 200 feet of land. As a practical matter, this should allow two buildings separated by a typical public road to qualify as a single multifamily project, since most roads are not wider than 200 feet. However, single-family, "build-to-rent" developments would not be classified as multifamily projects, because the definition of a multifamily project expressly excludes individual detached single-family residences.

Addressing Opt-Out Risk

A 2024 amendment to the Live Local Act exemption allows local taxing jurisdictions, including cities, counties, and/or school districts, to each opt-out of the exemption (deny the exemption) if there is an adequate supply of affordable housing in the county in which the property is located.

Prior to this 2024 amendment, there was significant enthusiasm among developers for multifamily projects that could take advantage

of the exemption. However, after the amendment, that enthusiasm was dampened in counties deemed to have an adequate supply of affordable housing. Developers became concerned that by the time construction was completed, at least one local taxing jurisdiction might opt out of the exemption, in which case the exemption would not be applicable to the new project.

There is a grandfather rule that allows a project to continue to be eligible for the exemption even if the local taxing jurisdictions have opted out of the exemption – but that rule would not help a project that had yet to receive the exemption when the opt-out vote occurred.

The new law provides a safe harbor for unbuilt projects. If a project is issued a building permit on or after July 1, 2026, it will be protected during a four-year safe-harbor period. During that period, if a local taxing jurisdiction elects to opt out of the exemption, the project will be grandfathered in. As a result, the local jurisdiction will not be able to deny the exemption for the project's share of property taxes.

Three Years of Surplus Required

When the election for local taxing jurisdictions to opt out and deny the Live Local Act property tax exemption was enacted in 2024, the local jurisdiction could elect to opt out if there was a surplus of affordable housing in the county, according to the most recent annual report of the Shimberg Center for Housing Studies.

This raised a risk for developers seeking to begin a new project at a time when there may have been a deficit of affordable housing in the county (so that a local jurisdiction would not be able to opt out of the exemption), only to have that deficit turn into a surplus before the project is completed. The new law now requires a local jurisdiction to make a finding that there has been a surplus of affordable housing for the prior three-year period before it can opt out of the property tax exemption.

Takeaways

HB 1389 generally should be welcomed by affordable housing developers because it gives them some additional protections against local jurisdictions opting out of the exemption before they become eligible to apply for their initial exemption. At the same time, the law's new definition of "multifamily project" makes build-to-rent detached single family home projects ineligible for the exemption.

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