

New Florida Zoning Law Is A 'Big Deal,' But Questions Remain

By [Emma Kennedy](#) · 2023-06-29 15:58:39 -0400 · [Listen to article](#)

Florida's Live Local Act is set to go into effect July 1, opening affordable housing funding and enacting sweeping local zoning preemptions that real estate attorneys say will likely be transformational in some areas of the state.



The Florida Capitol rotunda in Tallahassee is abuzz with people during a special session Feb. 8. The state's Live Local Act, which preempts local zoning restrictions effective July 1, will require additional guidelines from lawmakers or officials on conflicts with local laws, experts tell Law360. (AP Photo/Phil Sears)

The bill, which sailed through the Legislature with bipartisan support before being signed into law in March, removes multiple barriers that affordable housing developers often cite as the reason more construction isn't happening: slow approval processes, scarce land and local building restrictions.

Now, as long as a project is within local comprehensive plan guidelines and delivers a certain percentage of affordable units, developers can build residential properties to the highest

density and height allowed anywhere that zoning authorizes commercial, industrial or mixed uses — and local governments must permit the projects administratively, meaning without public rezoning hearings.

"This is a big deal for Florida," Steve Wernick, a land-use and zoning attorney at [Wernick & Co. PLLC](#), told Law360, also noting that despite obvious urban centers like Tampa and Miami, Florida is a state largely made up of homeowners associations, planned communities and low-scale suburban development patterns.

"It's really different from Florida's history — it's always been about implementing more growth management policies and giving local governments the freedom to be as restrictive as they want, and I think [the bill comes] partly because people are finally seeing the results of that provision on heavily constraining housing production."

Attorneys say the pot of money the bill allocates — more than \$700 million — will likely run out very quickly, and isn't the main point of interest for developers so much as the policy and land-use freedoms.

But with such sweeping language, attorneys expect guidance to follow in the coming months, as projects start moving and specific circumstantial questions linger.

"There will be some cases where those policies are in conflict, so that's where land-use attorneys and architects will be spending a lot of their time right now," Wernick said.

"A lot of it is about comparative analysis, looking at specific properties to determine what the development rights are today, and what they would be if the project qualified under Live Local, and once the cities are processing applications, I suspect that through the process, new questions will start coming up that were never anticipated in the legislation," he added.

Some of those questions include whether the height and density restrictions of an overlay or historic district would apply despite the act, and whether the 65% minimum for residential in a mixed-use project includes parking spaces.

"I don't think the Legislature would really want to kill the historic vibe of Miami Beach by allowing buildings to go up and removing the historic character, so I think until we have guidance on some points like — what's the interplay with historic designation, regulatory ability versus this Live Local Act — I think these issues are going to be open for

interpretation," Ryan Bailine, a Miami-based land development and real estate shareholder at [Greenberg Traurig LLP](#), told Law360.

Bailine said it's unclear exactly where the clarification would come from — it could be the legislative subcommittee or the [Florida Housing Finance Corp.](#), depending on the changes — but he expects updates as soon as July.

Former state Sen. Jeff Brandes — the founder of the Florida Policy Center, a think tank that in early June released a housing affordability report to align with the Live Local Act's implementation — said he is already in talks with lawmakers about a 2.0 version likely to come to the Legislature in 2024.

"None of this is going to happen overnight; there's a substantial delay between the time this bill is implemented and when you'll see projects coming out of the ground, but [the legislative] session starts in January, so essentially they're already working on the next version of this legislation," Brandes told Law360.

In his own talks with lawmakers on behalf of the center, he's advocating for the state to include policy that restricts local governments' ability to access state resources unless they show they're implementing measures that will boost affordable housing.

"You could put half a billion dollars every year toward affordable housing, and once you divide that by 67 counties, you're talking about very few projects, very few units being built," he said. "It's just one of those things where you have to work with the private-market developers in order to solve the problem, and you have to have legislation that focuses on ensuring cities and counties have the incentive to solve it at the local level."

Cities and counties seem to be largely cooperative with the framework, attorneys say, but they predict that some jurisdictions could turn to more restrictive measures to continue controlling development, especially as the removal of public hearings in the law stirs NIMBYism.

An example Wernick points to is the affluent city of Weston in South Florida that last week voted in favor of an ordinance requiring a public hearing for multifamily buildings before going to the administration for cross-reference with zoning and comprehensive plan criteria.

Though under the law, the city couldn't reject an affordable housing application based on the results of a public hearing, Wernick said measures like that may delay the timeline of a project

enough that it deters development.

Weston's city council will have its second and final vote on that ordinance July 5.

"There are some cities that are looking at ways to make these projects more transparent or add additional scrutiny because they're uncomfortable with the preemptions in the Live Local Act," Wernick said.

"But surprisingly, a lot of cities are not pushing back, and I would say the majority of cities that we work with are looking at how to facilitate this and how to accept these types of applications," he continued.

There hasn't yet been a legal challenge to the state law, and attorneys say it's written in a way that provides enough benefit to local governments and developers that it's not likely, but attorneys are watching for lawsuits that could be filed in the coming weeks.

"Yes, there's for-profit companies and money to be made, but given how I think this will help the construction industry and how it'll continue what has been a tremendous real estate cycle in south Florida for many, many years, even through COVID, I'd like to think cooler heads would prevail and that the litigation would be the exception here and by far not the rule," Bailine said.



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