By Senator Perry

A bill to be entitled An act relating to building design; amending s. 163.3202, F.S.; providing that certain regulations relating to building design elements may not be applied to certain structures; providing exceptions; defining the term “building design elements”; providing applicability; amending s. 553.73, F.S.; providing that an affected party may submit certain local government regulations to the Florida Building Commission for review; providing for enforcement of such regulations; making technical changes; amending ss. 125.01 and 125.56, F.S.; conforming cross-references; making technical changes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsection (5) of section 163.3202, Florida Statutes, is redesignated as subsection (6), and a new subsection (5) is added to that section, to read:

163.3202 Land development regulations.—
(5)(a) Zoning and development regulations relating to building design elements may not be applied to a structure that is subject to local government regulations for one- or two-family dwellings unless:

1. The structure is listed in the National Register of Historic Places, as defined in s. 267.021; or is a contributing property to a National Register Historic District; or is designated as a historic property or a contributing property to...
a historic district, under the terms of a local preservation ordinance.

2. The regulations are adopted in order to implement the National Flood Insurance Program.

   (b) For purposes of this subsection, the term “building design elements” means the external building color; type or style of exterior cladding material; style or material of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows or doors, including garage doors; number and type of rooms; and interior layout of rooms. The term does not include the height, bulk, orientation, or location of a structure on a zoning lot; or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

   (c) This subsection does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements between property owners.

Section 2. Subsection (4) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(4)(a) All entities authorized to enforce the Florida Building Code under pursuant to s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject
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to the limitations in of this subsection paragraph. Local amendments must shall be more stringent than the minimum standards described in this subsection herein and must shall be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection paragraph for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in of this subsection and not more than once every 6 months section, adopt amendments to the technical provisions of the Florida Building Code that which apply solely within the jurisdiction of such government and that which provide for more stringent requirements than those specified in the Florida Building Code, not more than once every 6 months. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local
amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements do not introduce a new subject not addressed in the Florida Building Code.

(c) The enforcing agency shall make readily available, in a usable format, all amendments adopted under pursuant to this subsection.

(d) Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the adopting local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments shall not become effective until 30 days after the amendment has been received and published by the commission.

(e) An amendment to the Florida Building Code adopted by a local government under pursuant to this subsection is paragraph shall be effective only until the adoption by the commission of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under pursuant to the provisions of this subsection paragraph.
(f) Each county and municipality desiring to make local technical amendments to the Florida Building Code shall by interlocal agreement establish a countywide compliance review board to review any amendment to the Florida Building Code that is adopted by a local government within the county under this subsection and paragraph, that is challenged by any substantially affected party for purposes of determining the amendment's compliance with this subsection paragraph. If challenged, the local technical amendments are not effective until the time for filing an appeal under paragraph (g) pursuant to subparagraph 8. has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g) If the compliance review board determines such amendment is not in compliance with this subsection paragraph, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is to be in compliance with this subsection paragraph, any substantially affected party may appeal such determination to the commission. Any such appeal must be filed with the commission within 14 days after the board’s written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division’s website for the assignment of an...
administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered thereafter. The provisions of Chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection paragraph in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under pursuant to s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) An amendment adopted under this subsection paragraph shall include a fiscal impact statement which documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and the impact to property and building owners and, as well as to industry, relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i) In addition to paragraphs (f) and (g) subparagraphs 7. and 9., the commission may review any amendments adopted under pursuant to this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) Any amendment adopted by a local enforcing agency
under pursuant to this subsection may shall not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under pursuant to s. 553.77(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k)(d) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under pursuant to this subsection is not rendered void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code under pursuant to this subsection paragraph is subject to review or modification as provided in this part.

(l) Any substantially affected party may submit to the commission for review any local government regulation, including, but not limited to, a law, an ordinance, a policy, an amendment, or a land use or zoning provision, that such party believes is a technical amendment to the Florida Building Code. If the commission determines that the local government regulation is a technical amendment to the Florida Building Code, the regulation is not effective or enforceable until it is adopted in accordance with this subsection.

Section 3. Paragraph (bb) of subsection (1) of section 125.01, Florida Statutes, is amended to read:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall
have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(bb) Enforce the Florida Building Code as provided in s. 553.80 and adopt and enforce local technical amendments to the Florida Building Code as provided in s. 553.73(4), pursuant to s. 553.73(4)(b) and (c).

Section 4. Subsection (1) of section 125.56, Florida Statutes, is amended to read:

125.56 Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.—

(1) The board of county commissioners of each of the several counties of the state may enforce the Florida Building Code and the Florida Fire Prevention Code as provided in ss. 553.80, 633.206, and 633.208 and, at its discretion, adopt local technical amendments to the Florida Building Code as provided in s. 553.73(4), pursuant to s. 553.73(4)(b) and (c) and local technical amendments to the Florida Fire Prevention Code as provided in s. 633.202, to provide for the safe construction, erection, alteration, repair, securing, and demolition of any building within its territory outside the corporate limits of any municipality. Upon a determination to consider amending the Florida Building Code or the Florida Fire Prevention Code by a majority of the members of the board of county commissioners of such county, the board shall call a public hearing and comply with the public notice requirements of s. 125.66(2). The board shall hear all interested parties at the public hearing and may then amend the building code or the fire
code consistent with the terms and purposes of this act. Upon adoption, an amendment to the code shall be in full force and effect throughout the unincorporated area of such county until otherwise notified by the Florida Building Commission pursuant to s. 553.73 or the State Fire Marshal pursuant to s. 633.202. This subsection does not Nothing herein contained shall be construed to prevent the board of county commissioners from repealing such amendment to the building code or the fire code at any regular meeting of such board.

Section 5. This act shall take effect July 1, 2020.