

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 459 Building Design
SPONSOR(S): Business & Professions Subcommittee, Overdorf
TIED BILLS: **IDEN./SIM. BILLS:** SB 954

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Brackett	Anstead
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Property development in Florida is governed in part by both the Community Planning Act and the Florida Building Code. The Community Planning Act governs how local governments create and adopt local comprehensive plans, implement land development regulations, and issue development orders and permits. Some local governments have implemented regulations that require new single- and two- family dwellings in the community to have specific building design elements such as exterior paint color, exterior building material, architectural style of windows and doors, and location of windows and doors.

The Florida Building Commission (Commission), located within the Department of Business and Professional Regulation, implements and adopts the Florida Building Code. The Building Code is the statewide building code for all construction in the state. Every local government must enforce the Building Code and issue building permits. Local governments may adopt amendments to the Building Code provided they follow the requirements in current law. Local amendments to the Building Code expire when the newest edition of the Building Code takes effect.

The bill:

- Prohibits local governments from applying land development regulations that require specific building design elements to single- and two- family dwellings, unless certain conditions are met.
- Provides that local governments may apply land development regulations requiring certain building design elements to single- and two- family dwellings when:
 - The dwelling is a historic property or a contributing property to a historic district;
 - The regulations are adopted in order to implement the National Flood Insurance Program; or
 - The regulations are adopted in accordance with and in compliance with the procedures for adopting local amendments to the Florida Building Code.
- Defines the term “building design elements” to mean exterior color, type or style of exterior cladding, style or material of roof structures or porches, exterior nonstructural architectural ornamentation, location or architectural styling of windows or doors, and number, type, and layout of rooms.
- Provides that the term “building design elements” does not include a dwelling’s height, bulk, orientation, location 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.

The bill also allows a substantially affected person to submit a petition to the Commission for a non-binding advisory opinion on whether a local government regulation is an amendment to the Building Code, and establishes a process for such.

The bill has an indeterminate fiscal impact on state and local governments.

The bill provides for an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Community Planning Act

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.¹ The Community Planning Act governs how local governments create and adopt their local comprehensive plans.

It is the intent of Act is that local governments manage growth through comprehensive land use plans that preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare.²

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future land development of the area and reflect community commitments to implement the plan. Plans also are required to identify procedures for monitoring, evaluating, and appraising implementation of the plan.³ Plans may include optional elements,⁴ but must include the following nine elements:⁵

- Capital improvements;
- Future land use plan;
- Intergovernmental coordination;
- Conservation;
- Transportation;
- Sanitary sewer, solid waste, drainage, potable water, and aquifer recharge;
- Recreation and open space;
- Housing; and
- Coastal management (for coastal local governments).

The comprehensive plan is implemented via land development regulations. Land development regulations are ordinances that regulate any aspect of development including any local government zoning, rezoning, subdivision, building construction, sign regulations, or any regulation that controls the development of land.⁶

Each county and municipality must adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.⁷ All local government land development regulations must be consistent with the local government's comprehensive plan.⁸

¹ Ch. 11-139, Laws of Fla.

² S. 163.3161(4), F.S.

³ S. 163.3177(1), F.S.

⁴ *Id.*

⁵ Ss. 163.3177(3) & (6), F.S.

⁶ Ss. 163.3164(26) & 163.3202(1), F.S.

⁷ S. 163.3202(1), F.S.

⁸ S. 163.3194(1)(b), F.S.

Some local governments in Florida have adopted land development regulations that place restrictions on the design of new single- and two- family buildings such as the:

- External paint color;⁹
- Architectural style of:¹⁰
 - Windows;
 - Doors, including garage doors;
 - Front porches; and
 - Roofs.
- Exterior building material;¹¹ and
- Location of windows and garage doors.¹²

Some local governments may be adopting ordinances related to building design elements because the local government is adopting the principles of “new urbanism.” New urbanism is a land development policy that attempts to solve issues created by urban sprawl, such as traffic jams, ugliness, and lifeless downtowns, by establishing compact, mixed-use, and pedestrian friendly communities. The principles of new urbanism can be achieved through creating mixed-use areas with residential areas located within walking distance of commercial areas located in a town center, creating parks and civic spaces located near the town center, and building narrow streets with sidewalks and trees to promote walking.¹³

New urbanism also includes creating communities and neighborhoods that have a certain style of architecture and design and, thus, are more pleasant to live in and walk through. Local governments can accomplish this by requiring buildings, including single- and two- family buildings, within their jurisdictions too have specific building design elements.¹⁴

Opponents of the adoption of the building design element ordinances argue that these types of building design elements increase housing costs.¹⁵ Local governments also argue that the building design element ordinances prevent poorly designed buildings from lowering the value of surrounding properties. Prohibiting such ordinances, they say, will prevent them from developing a plan for their own community.¹⁶

States That Prohibit Local Government Regulations For Building Design Elements

⁹ Osceola County Land Development Code, § Ch. 3, Article 3.2.2.; Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517; Orange County Code, § Chapter 38, Article VIII, Division 8.

¹⁰ Osceola County Land Development Code, § Ch. 3, Article 3.2.2.; Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517; City of Winter Park Code of Ordinances, § Ch. 58, Art. 3, Section 58-67; Orange County Code, § Chapter 38, Article VIII, Division 8.

¹¹ Orange County Code, § Chapter 38, Article VIII, Division 8; City of Winter Park Code of Ordinances, § Ch. 58, Art. 3, Section 58-67

¹² Code of the City of Orlando, § Ch. 58, Part 3, Section 58.517.

¹³ Doris S. Goldstein, *New Urbanism: Recreating Florida by Rewriting the Rules*, Florida Bar Journal, April 2006, at 63; Michigan Land Institute, 10 Principles of New Urbanism, http://www.mlui.org/mlui/news-views/articles-from-1995-to-2012.html?archive_id=678#.Xhd62ehKiUk (last visited Jan. 9, 2020); Congress for the New Urbanism, *What is New Urbanism?*,

<https://www.cnu.org/resources/what-new-urbanism> (last visited Jan. 9, 2020).

¹⁴ *Id.*

¹⁵ Michael Bezruki, *Governor Signs Arkansas Housing Affordability Bill Into Law*, National Home Association of Home Builders, March 15, 2019, <http://nahbnow.com/2019/03/governor-signs-arkansas-housing-affordability-bill-into-law/> (last visited Jan. 7, 2020); Doug Thompson, *Restrictions on home building barred in Arkansas*, Northwest Arkansas Democrat Gazette, March 17, 2019, <https://www.nwaonline.com/news/2019/mar/17/restrictions-on-home-building-barred-in/> (last visited Jan. 7, 2020).

¹⁶ Daniel Herriges, *Building Design Requirements Are Sometimes Bad for Cities. But Abolishing Them All Is Worse*, Strong Towns, April 11, 2019 <https://www.strongtowns.org/journal/2019/4/11/design-standards-are-an-important-tool-for-cities-dont-do-away-with-them> (last visited Jan. 7, 2020); Elaina Sauber, *Housing design bill worries Franklin officials*, Tennessean, April 18, 2017 <https://www.tennessean.com/story/news/local/williamson/2017/04/18/housing-design-bill-worries-franklin-officials/100561994/> (last visited Jan. 8, 2020).

North Carolina and Arkansas prohibit local governments from adopting regulations that require specific building design elements for single- and two- family dwellings unless certain conditions exist.¹⁷ Tennessee and Georgia considered bills to enact laws similar to North Carolina and Arkansas; however, the bills did not pass.¹⁸

Passed in 2015, North Carolina's law prohibits cities and counties from adopting regulations that require "building design elements" for single- and two- family dwellings. The North Carolina law also prohibits such regulations from being applied to any zoning district, special use district, conditional use district, or conditional district unless voluntarily consented to by the owners of the all the properties subject to the proposed regulation.¹⁹

The North Carolina law defines "building design elements" to include the:²⁰

- Exterior building color;
- Type or style of exterior cladding²¹ material;
- Style or materials of roof structures or porches;
- Exterior nonstructural architectural ornamentation;
- Location or architectural styling of windows and doors, including garage doors;
- Number and types of rooms; and
- Interior layout of rooms.

The phrase does not include:²²

- A single- and two- family dwelling's:
 - Height;
 - Bulk;
 - Orientation; and
 - Location of a structure on a zoning lot.
- The use of buffering or screening to minimize visual impacts or impact of light and noise; and
- Regulations governing permitted uses of land.

The North Carolina law allows cities and counties to adopt and enforce regulations that require "building design elements" for single- and two- family dwellings if:²³

- The dwelling is located in an area designated as a local historic district;
- The dwelling is located in area designated as a historic district on the National Register of Historic Places;²⁴
- The dwelling is individually designated as a local, state, or national historic landmark;
- The regulations are directly and substantially related to the requirements of North Carolina's Building Code;
- The regulations are applied to manufactured housing in a manner consistent with state and federal law; and

¹⁷ N.C. Gen. Stat. § 160A-381; Ark. Code Ann. § 14-17-212 & 14-56-204.

¹⁸ Georgia General Assembly, 2019-2020 Regular Session - HB 302, <http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/302> (last visited Jan. 8, 2020); Tennessee General Assembly, 2017-2018 Session – HB 476 <http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB0476&ga=110> (last visited Jan. 8, 2020).

¹⁹ N.C. Gen. Stat. § 160A-381; R. Erika Churchill, Staff Attorney for the North Carolina General Assembly, Analysis of S.L. 2015-86, [https://dashboard.ncleg.net/api/Services/BillSummary/2015/S25-SMST-147\(sl\)](https://dashboard.ncleg.net/api/Services/BillSummary/2015/S25-SMST-147(sl)) (last visited Jan. 3, 2020); General Assembly of North Carolina, Session Law 2015-86 Senate Bill 25, June 9, 2015 <https://www.ncleg.gov/Sessions/2015/Bills/Senate/PDF/S25v3.pdf> (last visited Jan. 3, 2020).

²⁰ N.C. Gen. Stat. § 160A-381.

²¹ The Florida Building Code and the North Carolina Building Code both define "cladding" as the material that covers the exterior surface of a building, and is directly affected by wind load. S. 202 of the Florida Building Code (Residential), Seventh Edition; S. 202 of the 2018 North Carolina Building Code (Residential).

²² *Id.*

²³ *Id.*

²⁴ The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. National Park Service, *What is the National Register of Historic Places*, <https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm> (last visited Jan. 5, 2020).

- The regulations are adopted as a condition for participation in the National Flood Insurance Program.²⁵

The prohibition of local regulations that relate to building design elements does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements between property owners.²⁶

In 2019, Arkansas passed a similar law that also prohibited cities and counties from adopting regulations that require “building design elements” for single-family dwellings. The law defines “building design elements” the same as North Carolina except Arkansas also includes minimum square footage in its definition.²⁷

In addition to the exceptions provided in the North Carolina law, Arkansas also allows cities and counties to adopt and enforce building design elements regulations if:

- The dwelling is in a central business district, which can be created by a city to revitalize its urban center;
- The dwelling existed and was subject to the local regulation prior to the prohibition being enacted; or
- The regulations are directly related to an immediate public health or safety hazard and the regulation is derived from the local government’s police power.²⁸

Arkansas also provides that the prohibition of local regulations that relate to building design elements does not affect the validity or enforceability of covenants or contracts between a property owner and a city or county.²⁹

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida’s minimum standards were met. Local governments could choose from four separate model codes. The state’s role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.³⁰

In 1992, Hurricane Andrew demonstrated that Florida’s system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. A study commission was appointed to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission’s recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.³¹ The Building Code is updated triannually. The current edition of the Building Code is the sixth edition, which is referred to as the 2017 Florida Building Code.³²

Part IV of ch. 553, F.S., is known as the “Florida Building Codes Act” (Act), provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code

²⁵ The National Flood Insurance Program is administered by FEMA. The goal of the program is to reduce the impact of flooding on private and public structures by providing affordable insurance to property owners, and encouraging communities to adopt and enforce floodplain management regulations. FEMA, *The National Flood Insurance Program*, <https://www.fema.gov/national-flood-insurance-program> (last visited Jan. 6, 2020).

²⁶ *Id.*

²⁷ Ark. Code Ann. § 14-17-212 & 14-56-204; H.R. 170, 92nd Leg. Reg. Sess. (AR 2019).

²⁸ *Id.*

²⁹ *Id.*

³⁰ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Nov. 11, 2019).

³¹ *Id.*

³² S. 553.73(7), F.S.; Florida Building Commission Homepage <https://floridabuilding.org/c/default.aspx> (last visited Nov. 11, 2019).

that must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.³³ The Building Code is adopted, updated, and interpreted by the Florida Building Commission, and is enforced by local governments.³⁴

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.³⁵

The Florida Building Commission

The Florida Building Commission (Commission) implements the Building Code. The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.³⁶

The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.³⁷ The Commission is responsible for the development, maintenance, and interpretation of the Building Code. Members are appointed by the Governor and confirmed by the Senate.³⁸

The Commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.³⁹ TACs are made up of commission members and other parties who advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.⁴⁰

Local Enforcement of the Florida Building Code

The Legislature has provided local governments with the power to inspect all buildings, structures, and facilities within their jurisdiction to protect the public's health, safety, and welfare.⁴¹

Every local government must enforce the Building Code and issue building permits.⁴² It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁴³

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.⁴⁴ A building official is a local government employee or a person contracted by a local government who supervises Building Code activities, including plan review, enforcement, and inspection to ensure work complies with the Building Code.⁴⁵

Amendments to the Building Code

³³ See s. 553.72(1), F.S.

³⁴ Ss. 553.72, & 553.73, F.S.

³⁵ Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Jan. 9, 2020).

³⁶ S. 553.73, F.S.

³⁷ S. 553.74, F.S.

³⁸ Ss. 553.73, & 553.74, F.S.

³⁹ DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited Dec. 27, 2019).

⁴⁰ S. 553.73(3), F.S.; Rule 61G20-2.001, F.A.C.

⁴¹ S. 553.72, F.S.

⁴² Ss. 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.

⁴³ See Ss. 125.56(4)(a) & 553.79(1), F.S.

⁴⁴ S. 202 of the Building Code (Building), Sixth Edition.

⁴⁵ S. 468.603(2), F.S.

The Commission and local governments may adopt technical and administrative amendments to the Building Code. A technical amendment to the Building Code is an alteration to the prescriptive requirements or reference standards for construction. An administrative amendment is an addition or alteration of the code enforcement requirements of the Building Code.⁴⁶

Local governments may adopt amendments to the Building Code that are more stringent than the Building Code that are limited to the local government's jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the Building Code, and, thus, the local government would need to go through the amendment process every three years in order to maintain a local amendment to the Building Code.⁴⁷

Current law allows local governments to adopt technical amendments to the Building Code every six months if:⁴⁸

- The local government's governing body holds a public hearing to discuss the amendment, which has been advertised in a newspaper of general circulation at least 10 days before the meeting;
- Following the hearing, the governing body determines that an amendment is needed to address a local need that is not addressed by the Building Code;
- The amendment is no more stringent than necessary to address the local need;
- The local amendment is not discriminatory against materials, products, or construction techniques of demonstrated capabilities;
- The local amendment does not introduce a new subject that is not addressed by the Building Code;
- The local amendment includes a fiscal impact statement, which documents the costs and benefits of the amendment including the impact to local government, property and building owners, industry, and the cost of compliance; and
- The local government sends the amendment to the Commission.

A technical amendment adopted by a local government takes effect 30 days after the Commission receives the amendment and publishes the amendment on its website.⁴⁹

The Commission may review local amendments and issue nonbinding recommendations to local governments about whether the local government complied with the requirements to adopt an amendment. If the Commission decides to review a local amendment it must send the amendment to the applicable TAC for review.⁵⁰

The TAC must make a recommendation to the Commission about whether the local amendment complies with the requirements of current law. The Commission must provide the nonbinding recommendation to the local government within 30 days of adopting the recommendation.⁵¹ Each county and municipality that adopts technical amendments to the Building Code must establish a countywide compliance review board by interlocal agreement. The compliance review board reviews any amendment adopted by a local government in its county that is challenged by a substantially affected party in order to determine if the amendment has been adopted in accordance with the requirements of current law.⁵²

A local government or the substantially affected party may appeal the compliance review board's decision to the Commission within 14 days of the board's decision. The Commission must refer the appeal to the Division of Administrative Hearings for a hearing by an administrative law judge. The

⁴⁶ S. 553.73, F.S.; Rule 61G20-2.002, F.A.C.

⁴⁷ S. 553.73(4), F.S.

⁴⁸ *Id.*

⁴⁹ 553.73(4), F.S.; Rule-61G20-2.003, F.A.C.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² S. 553.73(4), F.S.

administrative law judge must hold a hearing within 30 days of being assigned the appeal, and must enter a recommended order within 30 days of the conclusion of the hearing.⁵³

The Commission must enter a final order within 30 days after the administrative law judge issues a recommended order. In proceedings before a compliance review board or the Commission, the local government has the burden to prove an amendment has been adopted in accordance with the requirements of current law.⁵⁴

Interpretations of the Building Code

The Commission may issue declaratory statements regarding interpretations of the Florida Building Code, review local building officials' interpretation of the Building Code, and give binding interpretations of the Building Code.⁵⁵

A substantially affected person, state agency, or a local government may petition the Commission in writing for a declaratory statement relating to interpretations of the Building Code, or the enforcement or administration of the Building Code by local governments. The Commission must issue a declaratory statement or deny a petition within 90 days of receiving the petition. Declaratory statements are binding upon all jurisdictions and are subject to judicial review by a district court of appeal.⁵⁶

A substantially affected person may also petition the Commission to review a local building official's interpretation of the Building Code. A substantially affected person includes an owner or builder subject to a decision of the local building official or an association of owners or builders having members who are subject to a decision of the local building official.⁵⁷

A substantially affected person may petition the Commission to review a local building official's interpretation of the Building Code if:⁵⁸

- The substantially affected person has appealed the building official's interpretation to the local board of appeals, if such board exists;
- The substantially affected person files a written petition to the Commission on a form adopted by the Commission which contains:
 - The name and address of the local government and the local building official;
 - The name, address, and phone number of the substantially affected person, and explanation of how they are substantially affected by the building official's interpretation;
 - A statement of the provisions of the Building Code that are being interpreted, the building official's interpretation of those sections, and the substantially affected person's interpretation of those sections; and
 - The local building official's response.
- The substantially affected person has given the petition to the local building official and at least five days for the building official to respond.

Upon receiving a written petition to review a local building official's interpretation of the Building Code, the Commission must provide copies to a panel, and publish the petition and the local building official's response on the Commission's website and allow for comments to be posted by interested parties. The panel must have seven members made up of five building officials, an architect, and an engineer. The

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ S. 553.775, F.S.

⁵⁶ Ss. 553.775(3), 120.565, &120.68, F.S.

⁵⁷ S. 553.775(3), F.S.

⁵⁸ *Id.*

Commission must coordinate with the Building Officials Association of Florida⁵⁹ to designate the panel.⁶⁰

The panel must conduct proceedings necessary to issue a determination, and consider the written petition, the local building official's response, and any comments posted on the Commission's website. The panel must issue a determination within 21 days of the petition being filed with the Commission. The determination is binding upon all parties and all jurisdictions in Florida.⁶¹ The determination must be published on the Commission's website and the Florida Administrative Register.⁶²

A party may appeal the panel's determination by filing an appeal with the Commission within 30 days of the panel's determination. The Commission must conduct a hearing in accordance with the Administrative Procedure Act. The burden of proof in the hearing is on the party appealing the panel's determination. The Commission's ruling is subject to judicial review by a district court of appeal.⁶³

Effect of the Bill

Community Planning Act — Effect of the Bill

The bill prohibits local governments from applying land development regulations that relate to building design elements to single- or two- family dwellings.

The bill defines the term "building design elements" to mean:

- Exterior 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:

- A single- and two- family dwelling's:
 - Height;
 - Bulk;
 - Orientation;
 - Location 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.

The bill allows local governments to apply regulations that require "building design elements" to single- and two- family dwellings if:

- The dwelling is listed in the National Register of Historic Places;
- The dwelling is a contributing property to a historic district in the National Register of Historic Places;
- The dwelling is listed as a historic property or a contributing property to a historic district by a local preservation ordinance;

⁵⁹ The Building Officials Association of Florida is the largest community of building officials, building inspectors, plans examiners, and building code compliance professionals in the state. Its goal is to ensure the health, safety, and welfare of the public through safe building practices by equipping building professions through education, advocacy, leadership, and code development. Building Officials Association of Florida, *About BOAF*, <https://boaf.net/page/About> (last visited Jan. 8, 2020).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*; The Florida Administrative Register is a daily publication which gives the public current information about the status of proposed rules, notice of agency public meetings, workshops and hearings, and anything else required by law. Florida Administrative Code & Florida Administrative Register, *FL Rules FAQ*, <https://www.flrules.org/Help/newHelp.asp#FAW> (last visited Jan. 15, 2020).

⁶³ Ss. 553.775(3), & 120.68, F.S.

- The regulations are adopted in order to implement the National Flood Insurance Program; or
- The regulations are adopted in accordance and compliance with adopting local amendments to the Florida Building Code.

The bill also provides that the prohibition of zoning and development regulations that relate to building design elements does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements.

Florida Building Commission — Effect of the Bill

The bill provides that a substantially affected person may petition the Commission for a non-binding advisory opinion for any local government regulation, law, ordinance, policy, amendment, or land use or zoning provision (regulation) that the person believes is a technical amendment to the Building Code and was not adopted in accordance with the process for adopting local amendments to the Building Code.

A “local government” means a county, municipality, special district, or political subdivision of the state.

A “substantially affected person” includes an owner or builder subject to the local government’s regulation or an association of owners or builders who have members who are subject to the regulation.

The Commission must issue a non-binding advisory opinion stating whether a local government regulation is a technical amendment to the Building Code **if**:

- A substantially affected person files a petition with the Commission, in accordance with the Commission’s directions for filing the petition, and on a form adopted by the Commission which contains at a minimum:
 - The name of the local government that enacted the regulation;
 - The name and address of the local government’s general counsel;
 - The name, address, and phone number of the substantially affected person;
 - An explanation of how the person is substantially affected by the local government’s regulation; and
 - A statement of why the regulation is a technical amendment to the Building Code, and which provisions of the Building Code are amended by the regulation, if any.
- The substantially affected person has given the petition to the local government’s general counsel or administrator by certified mail, return receipt requested. The local government may respond within 14 days by certified mail, return receipt requested.

Upon receiving a petition to review a local government’s regulation, the Commission must publish the petition and the local government’s response on the Commission’s website and allow for comments to be posted by interested parties. The Commission may provide the petition, the local government’s response, and any comments posted by interest parties to a TAC for review and a recommendation.

The Commission must consider the petition, the local government's response, any comments posted on the Commission's website, and any recommendation provided by a TAC. The Commission must issue a non-binding advisory opinion stating whether the local government's regulation is a technical amendment to the Building Code within 30 days of receiving the petition. The Commission must also publish the non-binding advisory opinion on its website and the Florida Administrative Register.

B. SECTION DIRECTORY:

- Section 1. Amending s. 163.3202, F.S., prohibiting local governments from enacting certain regulations for certain residential buildings.
- Section 2. Amending s. 553.73, F.S., allowing the Florida Building Commission to review local government regulations and issue advisory opinions in certain situations.
- Section 3. Amending s. 125.01, F.S., amending cross-references.
- Section 4. Amending s. 125.56, F.S., amending cross-references.
- Section 5. Providing an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.
- 2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
Indeterminate. Local governments may have additional expenditures because of an increase in legal challenges to zoning and other regulations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. However, prohibiting certain building design elements ordinances and other regulations may lead to a decrease in the cost of construction.

D. FISCAL COMMENTS:

Indeterminate. It is unknown if the Commission will see an increased workload and need additional resources or if the Commission can handle any additional workload with existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Commission to adopt the form for the petition to request a non-binding advisory opinion, and the directions for filing the form. It appears that sufficient rulemaking authority exists in s. 553.76(4), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies the exception that allows local governments to apply building design element regulations to single- and two-family residences when the regulations are adopted in accordance with and in compliance with the process for adopting local amendments to the Florida Building Code.
- Removes the provision that grants the Florida Building Commission the ability to void a local government regulation if the Commission determines the regulation is an amendment to the Building Code.
- Provides that a substantially affected person may submit a request to the Florida Building Commission for a non-binding advisory opinion on whether a local regulation is an amendment to the Building Code, and establishes a process for such.
- Defines “substantially affected person.”