

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 55 Building Design
SPONSOR(S): Regulatory Reform Subcommittee, Overdorf
TIED BILLS: **IDEN./SIM. BILLS:** SB 284

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	12 Y, 5 N, As CS	Brackett	Anstead
2) Local Administration & Veterans Affairs Subcommittee	12 Y, 6 N	Darden	Miller
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 residential 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 bill:

- Prohibits local governments from adopting land development regulations that require specific building design elements for single- and two- family dwellings, unless certain conditions are met.
- Provides that local governments may adopt land development regulations requiring certain building design elements to single- and two-family dwellings when:
 - The dwelling is a historic property or located in a historic district;
 - The regulations are adopted in order to implement the National Flood Insurance Program;
 - The regulations are adopted in accordance and compliance with the procedures for adopting local amendments to the Florida Building Code; or
 - The dwelling is located in a community redevelopment area.
- 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, location and orientation of the garage, and number, type, and layout of rooms.
- Provides that the term “building design elements” does not include setback including the 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 has an indeterminate fiscal impact on local governments.

The bill provides for an effective date of July 1, 2021.

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 (Act).¹ The Act governs how local governments create and adopt their local comprehensive plans. The legislative intent is for local governments to 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 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 regulating 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

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:

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.

- 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 and prevent homeowners from choosing their own preferences or styles.¹⁵ Local governments argue that the building design element ordinances ensure that poorly designed buildings do not lower the value of surrounding properties. Prohibiting such ordinances, they say, will prevent them from developing a plan for their own community.¹⁶

The Florida Building Code

The Florida Building Code (Building Code) is the statewide building code for all construction in the state. 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

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. 29, 2021); Congress for the New Urbanism, *What is New Urbanism?*, <https://www.cnu.org/resources/what-new-urbanism> (last visited Jan. 29, 2021).

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. 29, 2021); 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. 29, 2021).

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. 29, 2021); 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. 29, 2021).

defects.¹⁷ The Florida Building Commission (Commission), housed within the Department of Business and Professional Regulation, implements the Building Code. The Commission reviews the International Code Council's I-Codes and the National Electric Code every three years and determines if the Building Code needs updating.¹⁸

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.¹⁹

Every local government must enforce the Building Code and issue building permits.²⁰ A person, firm, or corporation may not 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 be directed, by resolution or regulation, to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.²¹

Local governments may adopt amendments to the Building Code every six months that are more stringent than the Building Code requirements but those amendments are limited to the local government's jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the Building Code, requiring the local government to repeat the amendment process every three years in order to maintain a local amendment to the Building Code.²²

States That Prohibit Local Government Regulations For Building Design Elements

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.²³ Tennessee and Georgia have considered bills to enact laws similar to North Carolina and Arkansas; however, the bills did not pass.²⁴

Adopted 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 or conditional district unless voluntarily consented to by the owners of all the properties subject to the proposed regulation.²⁵

The North Carolina law defines "building design elements" to include the:²⁶

- Exterior building color;
- Type or style of exterior cladding²⁷ material;
- Style or materials of roof structures or porches;

¹⁷ 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 Feb. 9, 2021).

¹⁸ S. 553.73(7), F.S.

¹⁹ S. 553.72, F.S.

²⁰ Ss. 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.

²¹ See Ss. 125.56(4)(a) & 553.79(1), F.S.

²² S. 553.73(4), F.S.

²³ N.C. Gen. Stat. § 160D-702; Ark. Code Ann. § 14-17-212 & 14-56-204.

²⁴ Georgia General Assembly, 2019-2020 Regular Session - HB 302, <http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/302> (last visited Feb. 1, 2021); Tennessee General Assembly, 2017-2018 Session – HB 476 <http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB0476&ga=110> (last visited Feb. 1, 2021).

²⁵ N.C. Gen. Stat. § 160D-702; 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 Feb. 1, 2021); 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 Feb. 1, 2021).

²⁶ N.C. Gen. Stat. § 160D-702.

²⁷ 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).

- 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 law defines the phrase as not including:²⁸

- 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:²⁹

- 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;³⁰
- 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; or
- The regulations are adopted as a condition for participation in the National Flood Insurance Program.³¹

The prohibition against local regulations relating 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.³²

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” in the same manner as the North Carolina law, except Arkansas also includes minimum square footage in its definition and the location and design of a dwelling’s garage.³³

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;

²⁸ N.C. Gen. Stat. § 160D-702.

²⁹ *Id.*

³⁰ 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 Feb. 1, 2021).

³¹ 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 Feb. 1, 2021).

³² *Id.*

³³ Ark. Code Ann. § 14-17-212 & 14-56-204; SB 170, 92nd Leg. Reg. Sess. (AR 2019).

- As an overlay district regulation, if a majority of owners in the district approve the regulation and the district determines the regulation does not violate Arkansas' Private Property Protection Act; 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.³⁴

Arkansas also provides that the prohibition against local regulations relating to building design elements does not affect the validity or enforceability of covenants or contracts between a property owner and a city or county.³⁵

Effect of the Bill

The bill prohibits local governments from adopting land development regulations that relate to building design elements for 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;
- Location or orientation of the garage;
- Number and type of rooms; and
- Interior layout of rooms.

The term "building design elements" does not include:

- A single- or two-family dwelling's:
 - Height;
 - Bulk;
 - Orientation; and
 - 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 adopt and enforce regulations that require "building design elements" for residential dwellings if:

- The dwelling is listed in the National Register of Historic Places;
- The dwelling is located in a historic district in the National Register of Historic Places;
- The dwelling is listed as a historic property or located in a historic district by a local preservation ordinance;
- The regulations are adopted in order to implement the National Flood Insurance Program;
- The regulations are adopted in accordance and compliance with adopting local amendments to the Florida Building Code; or
- The dwelling is located in a community redevelopment area.³⁶

The bill also provides that the prohibition of land 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.

B. SECTION DIRECTORY:

³⁴ *Id.*

³⁵ *Id.*

³⁶ Community redevelopment areas are neighborhoods determined by local governments to be slums, blighted areas, areas in which there is a shortage of affordable housing, or coastal and tourist areas that are deteriorating and economically distressed, which are subject to redevelopment in accordance with a community redevelopment plan. *See* Part III, ch. 163, F.S.

Section 1. Amends s. 163.3202, F.S., prohibiting local governments from enacting certain regulations for certain residential buildings.

Section 2. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 10, 2020, the Regulatory Reform Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that residential dwellings are limited to single- and two- family dwellings.

- Adds additional types of dwellings to which local governments may apply building design restrictions, including:
 - Single- and two- family dwellings located in historic districts instead of only dwellings that contribute to historic districts;
 - Single- and two- family dwellings located in community redevelopment areas; and
 - When the regulations are adopted in accordance with and in compliance with the process for adopting local amendments to the Florida Building Code.
- Clarifies that building design restrictions include the location and orientation of a garage.