

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1346

INTRODUCER: Environment and Natural Resources Committee; Community Affairs Committee; and Senator Avila

SUBJECT: Local Regulation of Nonconforming or Unsafe Structures

DATE: April 18, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Hunter</u> | <u>Ryon</u> | <u>CA</u> | <u>Fav/CS</u> |
| 2. | <u>Barriero</u> | <u>Rogers</u> | <u>EN</u> | <u>Fav/CS</u> |
| 3. | <u>Hunter</u> | <u>Twogood</u> | <u>RC</u> | <u>Pre-meeting</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1346 creates the Resiliency and Safe Structures Act (Act), providing that a local government may not prohibit, restrict, or prevent the demolition of the following structures for any reason other than public safety:

- Nonconforming structures located within one-half mile of the coastline and within zones V, VE, AO, or AE, as identified in the Flood Insurance Rate Map issued by the Federal Emergency Management Agency;
- Any structure determined to be unsafe by a local building official; and
- Any structure ordered to be demolished by a local government that has proper jurisdiction.

The bill provides that a local government must authorize replacement structures to be developed to the maximum height and overall building size authorized by local development regulations. The bill prohibits a local government from imposing certain restrictions and limitations on a replacement structure to be built on the property where a structure was demolished. The bill provides that a local government may review an application for a demolition permit only administratively for compliance with applicable building and safety codes.

The provisions of the bill do not apply to single-family homes or structures individually listed in the National Register of Historic Places.

II. Present Situation:

The Florida Building Code

In 1974, Florida passed legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met.¹ 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 saw fit.²

In 1992, Hurricane Andrew destroyed many structures that were built according to code, demonstrating that Florida's system of local codes was flawed.³ The Governor appointed a study commission to review the system of local codes and make recommendations for its modernization. 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 Building Code, and that first edition replaced all local codes on March 1, 2002.⁴

The Building Code is updated every three years.⁵ The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code. The next edition of the Building Code will take effect on December 31, 2023.⁶ Among other things, the Building Code sets limitations on building height and size.⁷ Height restrictions are determined based on the type of construction, occupancy classification, and whether there is an automatic sprinkler system installed throughout the building.⁸

The Florida Building Commission (commission) was statutorily created to implement the Building Code.⁹ The commission, which is housed within the Department of Business and Professional Regulation, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.¹⁰ The commission reviews International Codes published by the International Code Council,¹¹ the

¹ Dep't of Community Affairs, *The Florida Building Commission Report to the 2006 Legislature*, 4 (2006), available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Mar. 29, 2023).

² *Id.*

³ *Id.*

⁴ *Id.*; Dep't of Business and Professional Regulation, *Building Code Information System*, <https://floridabuilding.org/c/default.aspx> (last visited Mar. 29, 2023).

⁵ See Fla. Bldg. Commission, *Florida Building Codes and Effective Dates*, available at https://www.floridabuilding.org/fbc/Publications/2023_Effective_Dates.pdf.

⁶ *Id.*

⁷ Int'l Code Council, *2020 Florida Building Code, Building: 7th Edition*, s. 503, available at https://codes.iccsafe.org/content/FLBC2020P1/chapter-5-general-building-heights-and-areas#FLBC2020P1_Ch05_Sec502.

⁸ *Id.* at s. 504.1.

⁹ See section 553.74(1), F.S.

¹⁰ *Id.*

¹¹ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to construct safe, sustainable, affordable and resilient structures. ICC, *About the ICC*, <https://www.iccsafe.org/about/who-we-are/> (last visited Mar. 29, 2023).

National Electric Code, and other nationally adopted model codes during its triennial update of the Building Code.¹²

Local governments may adopt amendments to the technical provisions of the Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Building Code.¹³ A local government must determine there is a need to strengthen the requirements of the Building Code based on a review of local conditions.¹⁴ Such amendments may not introduce a new subject not addressed in the Building Code.¹⁵ Most technical amendments sunset upon adoption of the newest edition of the Building Code, unless adopted into the Building Code.¹⁶

Local Enforcement of the Florida Building Code

Local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.¹⁷ Every local government must enforce the Building Code and issue building permits.¹⁸ 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.¹⁹ Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code, including certain building, electrical, plumbing, mechanical, and gas inspections.²⁰ Construction work may not be done beyond a certain point until it passes an inspection.²¹

Demolition Permits

Under state law, a permit is required to demolish a building.²² The enforcing agency may revoke any such permit if the demolition is in violation of, or not in conformity with, the provisions of the Florida Building Code.²³ However, an application for a demolition permit may only be reviewed administratively for compliance with the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code (or local amendments thereto), and any regulations applicable to a similarly situated parcel.²⁴ A local government may not subject applications to any additional local land development regulations or public hearings or penalize a private property owner for a demolition that is in compliance with the demolition permit.²⁵

¹² Section 553.73(3), F.S.

¹³ Section 553.73(4)(b), F.S.

¹⁴ Section 553.73(4)(b)1., F.S.

¹⁵ Section 553.73(4)(b)3., F.S.

¹⁶ Section 553.73(4)(e), F.S.

¹⁷ Section 553.72(2), F.S.

¹⁸ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

¹⁹ Sections 125.56(4)(a) and 553.79(1), F.S.

²⁰ Int'l Code Council, *2020 Florida Building Code: 7th Edition*, section 110, available at https://codes.iccsafe.org/content/FLBC2020P1/chapter-1-scope-and-administration#FLBC2020P1_Ch01_SubCh02.

²¹ *Id.*

²² Section 553.79(1)(a), F.S.

²³ *Id.*

²⁴ Section 553.79(25)(b), F.S.

²⁵ *Id.*

However, a local law, ordinance, or regulation may restrict demolition permits for certain designated historic structures:²⁶

- Structure designated on the National Register of Historic Places;²⁷
- Privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or
- Privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.

National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by the passage of the National Flood Insurance Act of 1968.²⁸ The NFIP is administered by the Federal Emergency Management Agency (FEMA) and provides homeowners, business owners, and renters in flood-prone areas the ability to purchase flood insurance protection from the federal government.²⁹ The general purpose of the NFIP is both to offer primary flood insurance to properties with significant flood risk and to reduce flood risk through the adoption of floodplain management standards. Participation in the NFIP is voluntary.³⁰ Within participating communities, the federal government makes flood insurance available throughout the community.³¹ To join, a community must:

- Complete an application;
- Adopt a resolution of intent to participate and cooperate with FEMA; and
- Adopt and submit a floodplain management ordinance that meets or exceeds the minimum NFIP criteria.³²

In coordination with participating communities, FEMA develops flood maps called Flood Insurance Rate Maps (FIRMs) that depict the community's flood risk and floodplain.³³ While FEMA is largely responsible for the creation of the FIRM, the community itself must pass the map into its local regulations in order for the map to be effective.³⁴ An area of specific focus on the FIRM is the Special Flood Hazard Area (SFHA).³⁵ The SFHA is intended to distinguish the flood risk zones that have a chance of flooding during a 1-in-100 year flood or greater frequency.

²⁶ Section 553.79(25)(d), F.S.

²⁷ 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. In order to be listed on the register the owner of the property must not object. 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 Mar. 29, 2023).

²⁸ FEMA, *50 Years of the NFIP*, available at https://www.fema.gov/sites/default/files/2020-05/NFIP_50th_Final_8.5x11_Regional_Printable.pdf.

²⁹ Benefits.gov, National Flood Insurance Program (NFIP), available at <https://www.benefits.gov/benefit/435> (last visited Mar. 29, 2023).

³⁰ FEMA, *Participation in the NFIP*, <https://www.fema.gov/glossary/participation-nfip#:~:text=Participation%20in%20the%20National%20Flood%20Insurance%20Program%20%28NFIP%29,of%20intent%20to%20participate%20and%20cooperate%20with%20FEMA%3B> (last visited Mar. 29, 2023).

³¹ *Id.*

³² *Id.*

³³ See Congressional Research Service, *Introduction to the National Flood Insurance Program*, 3 (2023), available at <https://crsreports.congress.gov/product/pdf/R/R44593>.

³⁴ *Id.*

³⁵ *Id.*

This means that properties in the SFHA have a risk of 1 percent or greater risk of flooding every year³⁶ (and at least a 26 percent chance of flooding over the course of a 30-year mortgage).³⁷ Flood maps along the coasts show areas at high risk of flooding within the coastal SFHA.³⁸ The coastal SFHA includes several flood hazard zones:

- Zone V are those areas closest to the shoreline and subject to wave action, high-velocity flow, and erosion during the 100-year flood;³⁹
- Zone VE, also known as the coastal high hazard area, is where wave action and fast-moving water can cause extensive damage during a base flood event;⁴⁰
- Zone AE indicates areas that have at least a 1 percent-annual-chance of being flooded, but where wave heights are less than 3 feet;⁴¹
- Zone AO is used to map areas at risk of shallow flooding during a base (1 percent-annual-chance) flood, where water with average depths of one to three feet flows over sloping ground. On flood maps in coastal communities, Zone AO usually marks areas at risk of flooding from wave overtopping, where waves are expected to wash over the crest of a dune or bluff and flow into the area beyond.⁴²

In a community that participates in the NFIP, owners of properties in the mapped SFHA are required to purchase flood insurance as a condition of receiving a federally backed mortgage.⁴³

Key conditions of the NFIP minimum floodplain management standards include, among things, that communities:

- Require permits for development in the SFHA;
- Require elevation of the lowest floor of all new residential buildings in the SFHA to or above the base flood elevation;
- Restrict development in floodways to prevent increasing the risk of flooding; and
- Require certain construction materials and methods that minimize future flood damage.⁴⁴

New Construction Requirements in Coastal Flood Hazard Zones

For communities participating in the NFIP, FEMA places requirements on any new construction built in flood hazard areas.⁴⁵ Generally, new construction in flood-prone areas must be:⁴⁶

³⁶ *Id.*

³⁷ FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, available at https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

³⁸ FEMA, *Features of Flood Insurance Rate Maps in Coastal Areas*, <https://www.fema.gov/flood-maps/coastal/insurance-rate-maps> (last visited Apr. 4, 2023).

³⁹ FEMA, *Using a Flood Insurance Rate Map (FIRM)*, 1, available at https://www.flash.org/resources/files/HGCC_Fact03.pdf.

⁴⁰ FEMA, *Features of Flood Insurance Rate Maps in Coastal Areas*.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Congressional Research Service, *Introduction to the National Flood Insurance Program* at 10. Such lenders include federal agency lenders, such as the Department of Veterans Affairs, government-sponsored enterprises Fannie Mae, Freddie Mac, and federally regulated lending institutions, such as banks covered by the Federal Deposit Insurance Corporation (FDIC) or the Office of the Comptroller of the Currency. *Id.*

⁴⁴ Congressional Research Service, *Introduction to the National Flood Insurance Program*, 6 (2023), available at <https://crsreports.congress.gov/product/pdf/R/R44593>.

⁴⁵ See 44 C.F.R. § 60.3.

⁴⁶ 44 C.F.R. § 60.3(a)(3).

- Designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- Constructed with materials resistant to flood damage;
- Constructed by methods and practices that minimize flood damages; and
- Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding.⁴⁷

Specific conditions for new construction in coastal flood hazard zones include requiring all new construction to:⁴⁸

- Be located landward of the reach of mean high tide;
- Be elevated on pilings and columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level;
- Be elevated on pilings and columns so that the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and Have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. Such space may be used only for parking of vehicles, building access, or storage.⁴⁹

III. Effect of Proposed Changes:

The bill contains several whereas clauses providing the following:

- It is of paramount importance to replace older, unsafe, or nonconforming structures that are a threat to life and safety with new, resilient buildings built to contemporary building codes and standards;
- Nonconforming structures within coastal high-hazard areas and structures ordered to be demolished or deemed unsafe by local building officials pose an increased risk of collapse, may affect the integrity or stability of neighboring buildings or structures, and may cause injury to persons or property;
- Local governmental laws, procedures, and policies that prohibit or limit the demolition of nonconforming or unsafe structures or limit the construction of new resilient structures pose a threat to life and public safety;
- On properties where there is a nonconforming structure within a coastal high-hazard area, whether the structure is deemed unsafe by a local building official or is subject to a demolition order, such structure must be demolished and any replacement structure authorized, which will allow owners or developers to enjoy all land use and development rights that would apply to the property without regard to any local restrictions that may

⁴⁷ *Id.*

⁴⁸ 44 C.F.R. § 60.3(e)(3)-(5).

⁴⁹ *Id.*

restrict future development at the subject property as a result of the local building official's order or demolition; and

- To make the application and enforcement of this act uniform throughout this state, the Legislature intends to preempt the regulation of the demolition of certain structures and buildings to the state.

Section 1 creates s. 553.8991, F.S., which establishes the Resiliency and Safe Structures Act. The bill applies to all of the following structures, unless the structure is individually listed in the National Register of Historic Places or is a single-family home:

- “Nonconforming structures” located within one-half mile of the coastline and within zones V, VE, AO, or AE, as identified in the Flood Insurance Rate Map issued by the Federal Emergency Management Agency.
- Any structure determined to be unsafe by a local building official.
- Any structure ordered to be demolished by a local government that has proper jurisdiction.

The bill defines “nonconforming structure” as a structure that does not conform to the requirements for new construction issued by the National Flood Insurance Program.

The bill provides that a “local government”—defined to include any municipality, county, special district, or any other political subdivision of the state—may not prohibit, restrict, or prevent the demolition of any structure identified in this section for any reason other than public safety. A local government may review an application for a demolition permit only administratively for compliance with the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code, or local amendments thereto, and any regulation applicable to a similarly situated parcel. The local government may not subject an application to additional local land development regulations or public hearings.

In addition, the bill provides that local governments must authorize “replacement structures” to be developed to the maximum height and overall building size authorized by local development regulations. The bill defines “replacement structure” as a new structure built on a property where a structure was demolished or will be demolished in accordance with this section. A local government may not:

- Limit, for any reason, the development potential of replacement structures below the maximum allowed by local development regulations.
- Require replication of a demolished structure.
- Limit the size or height of a replacement structure.
- Require maintenance of any element of a demolished structure.
- Impose additional regulatory or building requirements on a replacement structure which would not otherwise be applicable to a similarly situated vacant parcel.

The bill applies prospectively and retroactively to any “law”—defined to include any statute, ordinance, rule, regulation, policy, resolution, code enforcement order, agreement, or other governmental act—that is contrary to the bill or its intent; however, the bill does not apply to s. 553.79(25), F.S., regarding the demolition of single-family residential structures located in certain high-hazard areas and flood zones. The bill must be liberally construed to effectuate its intent.

The bill also includes a preemption provision that prohibits a local government from adopting or enforcing a law that in any way limits the demolition of a qualifying structure or that limits the development of a replacement structure. A local government may not penalize an owner or developer of a replacement structure or otherwise enact laws that defeat the intent of the bill. Any local government law contrary to this section is void.

Section 2 provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may allow more structures to be demolished and replaced with new structures, which would increase construction and development.

C. Government Sector Impact:

Local governments may have to expend funds to process a possible increase in demolition permits. However, local governments may collect fees to cover the cost of their expenses to enforce the Building Code, which includes reviewing building permit applications.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill, in s. 553.8991(5)(c), F.S., provides that a local government may not limit the size or height of a replacement structure. It is not clear that generally applicable local restrictions would apply. The stated intent may be better effectuated by language such as: A local government may not impose additional size or height requirements on a replacement structure that would not otherwise be applicable to a similarly situated vacant parcel.

VIII. Statutes Affected:

This bill creates section 553.8991 of the Florida Statutes.
This bill substantially amends section 553.79 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Environment and Natural Resources on April 4, 2023:**

The amendment:

- Clarifies that a local government may not limit the development potential of replacement structures;
- Provides that a local government may review an application for a demolition permit only administratively for compliance with applicable building and safety codes;
- Amends the types of qualifying nonconforming structures to include those that are located within one-half mile of the coastline and within zones V, VE, AO, or AE, as identified in Flood Insurance Rate Map; and
- Clarifies that the bill does not apply to s. 553.79(25), F.S., regarding the demolition of single-family residential structures located in certain high-hazard areas and flood zones.

CS by Community Affairs on March 22, 2023:

The CS removes section 1 of the underlying bill, which amends current law pertaining to demolition permits for single-family homes to include nonconforming structures in certain flood areas. The CS also specifically excludes single-family homes and structures individually listed in the National Register of Historic Places from the Resiliency and Safe Structures Act.

B. Amendments:

None.