

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1647 Local Regulation of Nonconforming and Unsafe Structures  
**SPONSOR(S):** Commerce Committee, Regulatory Reform & Economic Development Subcommittee, Roach  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1526

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N, As CS	Wright	Anstead
2) State Affairs Committee	15 Y, 5 N	Mwakyanjala	Williamson
3) Commerce Committee	17 Y, 1 N, As CS	Wright	Hamon

### SUMMARY ANALYSIS

A building permit must be obtained from the local government to demolish any building. Some local governments in Florida have placed additional requirements or restrictions on obtaining such permits for buildings deemed historic.

The bill creates the "Resiliency and Safe Structures Act," which allows demolition of certain buildings under certain conditions, and provides that:

- The provisions do not apply to any structure that is:
  - A single-family home,
  - Individually listed on the National Register of Historic Places,
  - A contributing structure or building within a historic district which was listed in the National Register of Historic Places before January 1, 2000, or
  - On a barrier island in a municipality with a population of less than 10,000 with at least six city blocks not located in zones V, VE, AO, or AE, as identified in the Flood Insurance Rate Map.
- A local government may not prohibit, restrict, or prevent, for any reason other than public safety, the demolition of any structure seaward of the coastal construction control line and is also a:
  - Nonconforming structure, which is a structure that does not conform to the base flood elevation requirements for new construction issued by the National Flood Insurance Program for the applicable flood zone;
  - Structure determined to be unsafe by the local building official; or
  - Structure ordered to be demolished by the local government.
- A local government may only administratively review an application for a demolition permit for such a structure for compliance with the Building Code, the Fire Prevention Code, and any regulation applicable to a similarly situated parcel, and may not impose additional local land development regulations or public hearings on an applicant for such a demolition permit.
- A local government must authorize replacement structures to be developed to the maximum height and overall building size authorized by local development regulations.
- A local government may not do any of the following:
  - Limit the development potential of replacement structures below the maximum development potential allowed by local development regulations.
  - Require replication or preservation of elements of a demolished structure.
  - Impose additional regulatory or building requirements on replacement structures or development applications not otherwise applicable to a similarly situated parcel in the same zoning district.
- A local government may not adopt or enforce a law that in any way limits application of the bill's provisions.
- The provisions may be applied retroactively.

The bill has an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on state government. See Fiscal Comments.

The bill provides an effective date of upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### **Florida Building Code**

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code. In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work and a study was commissioned to make recommendations. In 1998, the Legislature adopted the 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.<sup>1</sup> The current edition of the Building Code is the eighth edition, which is referred to as the 2023 Florida Building Code.<sup>2</sup>

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (FBCA). The FBCA provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>3</sup>

A local enforcement agency is an agency of local government with jurisdiction to make inspections of buildings and to enforce the Building Code.<sup>4</sup>

Building code administrators are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within Department of Business and Professional Regulation (DBPR).<sup>5</sup> A building code administrator, also known as a building official, is a local government employee or a person contracted by a local government who supervises Building Code activities, including plans review, enforcement, and inspection.<sup>6</sup>

##### **Demolition Permits**

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government 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.<sup>7</sup>

Section 553.79(26), F.S., provides that a local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish his or her single-family residential structure provided that:<sup>8</sup>

- Such structure is located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency (FEMA) for the purpose of participating in the National Flood Insurance Program.

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<sup>1</sup> The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, 4, [https://www.floridabuilding.org/fbc/commission/FAC\\_Report\\_0206r3.pdf](https://www.floridabuilding.org/fbc/commission/FAC_Report_0206r3.pdf) (last visited Jan. 27, 2024).

<sup>2</sup> Florida Building Commission, Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Jan. 27, 2024).

<sup>3</sup> See s. 553.72(1), F.S.

<sup>4</sup> S. 553.71(5), F.S.

<sup>5</sup> See Ss. 120.569, 120.57(1)-(2), 468.605, 468.606, and 468.621, F.S.

<sup>6</sup> S. 468.603(2), F.S.

<sup>7</sup> S. 553.79(1), F.S.

<sup>8</sup> S. 553.79(26)(a), F.S.

- The lowest finished floor elevation of such structure is at or below base flood elevation as established by the Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher.
- Such permit complies with all applicable Building Code, Fire Prevention Code, and local amendments to such codes.

An application for such a demolition permit may only be reviewed administratively for compliance with the 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. Applications may not be subject to any additional local land development regulations or public hearings. A local government may not penalize a private property owner for a demolition that is in compliance with the demolition permit.<sup>9</sup>

If a single-family residential structure is demolished pursuant to a demolition permit, a local government may not impose additional regulatory or building requirements on the new, replacement single-family residential structure on the site of the demolished structure that would not otherwise be applicable to a similarly situated vacant parcel.<sup>10</sup> However, a local law, ordinance, or regulation may restrict demolition permits for a:<sup>11</sup>

- Structure designated on the National Register of Historic Places;
- 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.

### Permits for Property with a Historic Designation

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.<sup>12</sup> The Department of the Interior issues advisory guidelines for a building that must undergo preservation, rehabilitation, restoration, or reconstruction and still retain historic status.<sup>13</sup>

Additionally, some local governments in Florida have adopted land development regulations that designate certain older buildings to be historic. These local governments have placed restrictions on property owners from obtaining permits for the demolition of older buildings that the local government has deemed historic. Below are examples of such regulations:

- Requiring a special demolition permit process.<sup>14</sup>
- Requiring new construction on the site of the demolished structure to be subject to certain architectural regulations, related to:<sup>15</sup>
  - The colors, pattern, and trim used in the building's façade.
  - The design of the roof.
  - The proportions and relationships between doors and windows.

Proponents of these land development regulations argue that these regulations are needed to protect Florida's history and preserve Florida's character and architectural style.<sup>16</sup> Opponents of these regulations argue that these older buildings are damaged, do not meet the Building Code's minimum

<sup>9</sup> S. 553.73(26)(b), F.S.

<sup>10</sup> S. 553.79(26)(c), F.S.

<sup>11</sup> S. 553.79(26)(d), F.S.

<sup>12</sup> 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. 27, 2024); National Park Service, *How to List a Property*, <https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm> (last visited Jan. 27, 2024).

<sup>13</sup> National Park Service, *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, <https://www.nps.gov/orgs/1739/secretary-standards-treatment-historic-properties.htm> (last visited Jan. 29, 2024); 36 C.F.R. Parts 67 and 68.

<sup>14</sup> Sec. 54-71., 54-125., Town of Palm Beach Code of Ordinances.

<sup>15</sup> Sec. 54-122., Town of Palm Beach Code of Ordinances.

<sup>16</sup> Miami Herald Editorial Board, *Historic-home teardowns risk washing away Miami Beach's character in a flood of cash*, Miami Herald (Jan. 11, 2022), <https://www.miamiherald.com/article257198932.html> (last visited Jan. 27, 2024).

flood elevation requirements, which can make them dangerous and can be demolished for new structures or buildings that meet the requirements of the current Building Code.<sup>17</sup>

There appear to be conflicts<sup>18</sup> in some areas related to whether older buildings that may be unsafe should be demolished or be given time to be rehabilitated. Some argue that policies related to demolition are having an effect on affordable housing.<sup>19</sup>

## Unsafe Structures

Under the Florida Building Code, Existing Building, 8<sup>th</sup> Edition, buildings, structures or equipment must be deemed unsafe if they are:<sup>20</sup>

- Unsanitary;
- Deficient due to inadequate means of egress facilities or inadequate light and ventilation;
- A fire hazard;
- Structures or have individual structural members that are dangerous, meaning:
  - The building or structure has collapsed, has partially collapsed, has moved off its foundation, or lacks the necessary support of the ground.
  - There exists a significant risk of collapse, detachment or dislodgement of any portion, member, appurtenance or ornamentation of the building or structure under permanent, routine or frequent loads; under actual loads already in effect; or under wind, rain, flood or other environmental loads when such loads are imminent.
- Otherwise dangerous to human life or the public welfare;
- Involved in illegal or improper occupancy or inadequate maintenance; or
- Vacant and not secured against entry.

Various local governments across the state impose additional regulations regarding what deems a structure unsafe and what happens when a structure is deemed unsafe.

## National Flood Insurance Program

The National Flood Insurance Program (NFIP), which was created by the passage of the National Flood Insurance Act of 1968,<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> Within participating communities, the federal government makes flood insurance available throughout the community.<sup>24</sup> To join, a community must complete an application, adopt a resolution of intent to

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<sup>17</sup> Pedro Portal, *Miami Beach older homes demolished in part because of 'flood requirements'*, Miami Herald (Jan. 9, 2022), <https://www.miamiherald.com/news/business/real-estate-news/article257166737.html> (last visited Jan. 27, 2024); CBS Miami, *Miami Beach Waterfront Home Of Notorious Prohibition-Era Gangster Al Capone Slated For Demolition*, <https://www.cbsnews.com/miami/news/miami-beach-waterfront-home-of-notorious-prohibition-era-gangster-al-capone-slated-for-demolition/> (last visited Jan. 27, 2024).

<sup>18</sup> In November 2022, news reports indicated that there were “dozens of ongoing lawsuits that have recently been filed between property owners and the City of Miami over attempts to demolish their properties. WLRN Miami | South Florida, *After Surfside, Miami changes rules to fast-track demolition. Affordable housing is in the crosshairs*, December 5, 2022, <https://www.wlrn.org/housing/2022-12-05/after-surfside-miami-changes-rules-to-fast-track-demolition-affordable-housing-is-in-the-crosshairs> (last visited Jan. 27, 2024).

<sup>19</sup> In 2022, approximately “48 buildings were demolished by city order, including 30 residential properties. In 2019, 52 buildings were demolished by order of the city.” *Id.*

<sup>20</sup> § 202, FBC, Existing Building (2023 8th Ed.).

<sup>21</sup> 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](https://www.fema.gov/sites/default/files/2020-05/NFIP_50th_Final_8.5x11_Regional_Printable.pdf) (last visited Jan. 27, 2024).

<sup>22</sup> Benefits.gov, *National Flood Insurance Program (NFIP)*, available at <https://www.benefits.gov/benefit/435> (last visited Jan. 27, 2024).

<sup>23</sup> 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 Jan. 27, 2024).

<sup>24</sup> *Id.*

participate and cooperate with FEMA, and adopt and submit a floodplain management ordinance that meets or exceeds the minimum NFIP criteria.<sup>25</sup>

In coordination with participating communities, FEMA develops flood maps called Flood Insurance Rate Maps (FIRMs) that depict the community's flood risk and floodplain.<sup>26</sup> 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.<sup>27</sup> An area of specific focus on the FIRM is the Special Flood Hazard Area (SFHA).<sup>28</sup> The SFHA is intended to distinguish the flood risk zones that have a chance of flooding during a one-in-100 year flood or greater frequency. This means that properties in the SFHA have a risk of 1 percent or greater risk of flooding every year<sup>29</sup> (and at least a 26 percent chance of flooding over the course of a 30-year mortgage).<sup>30</sup> 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.<sup>31</sup>

### *Base Flood Elevation*

A base flood is a flood that has a 1 percent chance of occurring during any given year.<sup>32</sup> The base flood elevation (BFE) is how high floodwater is likely to rise during a one-percent-annual-chance flood event (base flood).<sup>33</sup> BFEs are measured from a reference point called North American Vertical Datum of 1988 (NAVD88),<sup>34</sup> which is approximately equal to sea level, and vary widely across geographies.<sup>35</sup> The BFE represents the minimum elevation of construction allowed by the NFIP.<sup>36</sup> The relationship between the BFE and a structure's elevation determines the flood insurance premium.<sup>37</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> Congressional Research Service, *Introduction to the National Flood Insurance Program* (Jan. 25, 2024), <https://crsreports.congress.gov/product/pdf/R/R44593> (last visited Jan. 27, 2024).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, [https://www.fema.gov/sites/default/files/documents/fema\\_coastal-glossary.pdf](https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf) (last visited Jan. 27, 2024).

<sup>31</sup> 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.*

<sup>32</sup> FEMA, *supra* note 29.

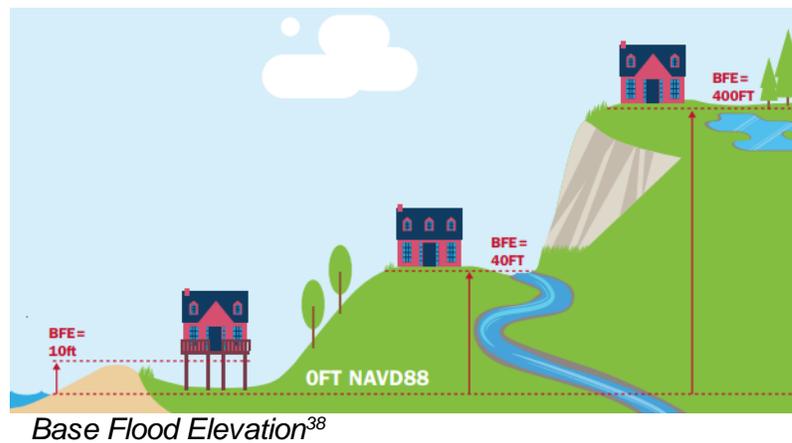
<sup>33</sup> *Id.*

<sup>34</sup> "A 'geodetic reference system' is used to precisely describe the location of a specific point on the Earth and is composed of latitude, longitude, and elevation. Its basis is composed of a geoid and a reference ellipsoid — two mathematical representations of the Earth's surface — along with base points to which the latitude, longitude and elevation of all other points in the system are referenced. These base points are known as 'datums'. The latitude-longitude base point is known as a horizontal datum, and the elevation base point is known as a vertical datum. Vertical datums are used to establish the elevation of monitoring locations, reference points and natural features such as lake levels and floodplains, as well as for bridges and levies. The currently accepted vertical datum is the North American Vertical Datum of 1988 (NAVD88), which was formally adopted in 1992. It consists of a leveling network that applies to the entire North American continent and which is affixed to a single origin point in Quebec, Canada." Coastal & Heartland National Estuary Partnership, University of South Florida Water Institute, *NAVD88 Datum*, Coastal & Heartland National Estuary Partnership Water Atlas, [https://chnep.wateratlas.usf.edu/library/learn-more/learnmore.aspx?toolsection=lm\\_navd88](https://chnep.wateratlas.usf.edu/library/learn-more/learnmore.aspx?toolsection=lm_navd88) (last visited Jan. 27, 2024).

<sup>35</sup> FEMA, *supra* note 29.

<sup>36</sup> See FEMA, *Residential Buildings with Basements*, <https://www.fema.gov/floodplain-management/manage-risk/residential-buildings-basements#:~:text=Since%201971%2C%20the%20National%20Flood%20Insurance%20Program%20%28NFIP%29,Zones%20only%29%20to%20the%20Base%20Flood%20Elevation%20%28BFE%29> (last visited Jan. 27, 2024).

<sup>37</sup> See Pinellas County, *Construction in a Floodplain*, Sept. 13, 2022, <https://pinellas.gov/construction-in-a-floodplain/> (last visited Jan. 27, 2024).



## Zones

Within the FIRMS or Flood Hazard Boundary Maps are designated zones, which are geographical areas that reflect the severity or type of flooding in the area.<sup>39</sup> Designated zones include:<sup>40</sup>

- V: Coastal areas with a 1 percent or greater chance of flooding and an additional hazard associated with storm waves. These areas have a 26 percent chance of flooding over the life of a 30-year mortgage. No base flood elevations are shown within these zones.
- VE: Coastal areas with a 1 percent or greater chance of flooding and an additional hazard associated with storm waves. These areas have a 26 percent chance of flooding over the life of a 30-year mortgage. Base flood elevations derived from detailed analyses are shown at selected intervals within these zones.
- AO: River or stream flood hazard areas, and areas with a 1 percent or greater chance of shallow flooding each year, usually in the form of sheet flow, with an average depth ranging from one to three feet. These areas have a 26 percent chance of flooding over the life of a 30-year mortgage. Average flood depths derived from detailed analyses are shown within these zones.
- AE: The base floodplain where base flood elevations are provided. AE Zones are now used on new format FIRMS instead of A1-A30 Zones.

Flood maps along the coasts show areas at high risk of flooding within the coastal SFHA. The coastal SFHA has three flood hazard zones: Zones V and VE (which are unique to coastal areas), AE, and AO. Zones V and VE, also known as a Coastal High Hazard Area, is where wave action and fast-moving water can cause extensive damage during a base flood event.<sup>41</sup>

## New Construction Requirements in Coastal Flood Hazard Zones

When a community is participating in the NFIP, FEMA places requirements on any new construction built in flood hazard areas. Generally, new construction in flood-prone areas must be:<sup>42</sup>

- 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.
- Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

<sup>38</sup> FEMA, *supra* note 29.

<sup>39</sup> FEMA, *Glossary*, <https://www.fema.gov/about/glossary> (last visited Jan. 27, 2024).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> 44 C.F.R. § 60.3(a)(3)

Specific conditions for new construction in coastal flood hazard zones include requiring all new construction to:<sup>43</sup>

- 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.
- 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.

When an NFIP-participating structure, in an SFHA, has “substantial damage”<sup>44</sup> for which the total cost of repairs is 50 percent or more of the structure’s market value before a disaster occurred, regardless of the cause of damage, the structure must undergo a “substantial improvement” and be brought into compliance with current local floodplain-management regulations and the Building Code. The decision and specific metrics used to determine if a structure is substantially damaged is made by the local government.<sup>45</sup>

For example, the City of Naples determined that a substantial improvement means any combination of repair, reconstruction, rehabilitation, addition, or improvement of a building or structure taking place during a one-year period from the date of permit issuance, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. Substantial improvement does not include:<sup>46</sup>

- Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- Any alteration of a historic structure provided that the alteration will not preclude the structure’s continued designation as a historic structure.

## Coastal Construction Control Line

The Department of Environmental Protection (DEP) regulates coastal construction to protect Florida’s beaches and dunes from imprudent construction that can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access.<sup>47</sup> Coastal construction is defined as any work or activity likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes.<sup>48</sup>

Section 161.053, F.S., defines the “coastal construction control line” (CCCL) as the portion of the beach-dune system that is subject to severe fluctuations caused by 100-year storm<sup>49</sup> surge, storm

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<sup>43</sup> 44 C.F.R. § 60.3(e)(3)-(5)

<sup>44</sup> 44 C.F.R. § 59.1

<sup>45</sup> FEMA, *FACT SHEET: “Substantial Damage” – What Does it Mean?*, December 2, 2019, <https://www.fema.gov/press-release/20210318/fact-sheet-substantial-damage-what-does-it-mean> (last visited Jan. 27, 2024).

<sup>46</sup> Sec. 16-112., City of Naples Ordinances.

<sup>47</sup> S. 161.053(1)(a), F.S.

<sup>48</sup> S. 161.021(6), F.S.

<sup>49</sup> A 100-year storm is a shore-incident hurricane or any other storm with accompanying wind, wave, and storm surge intensity that has a one percent chance of being equaled or exceeded in any given year. S. 161.053, F.S.; Rr. 62B-33.005(1) and 62B-33.002(41), F.A.C.; DEP, *The Homeowner’s Guide to the Coastal Construction Control Line Program* (2017), 3, available at [https://floridadep.gov/sites/default/files/Homeowner%27s%20Guide%20to%20the%20CCCL%20Program%206\\_2012%20%28002%29\\_0.pdf](https://floridadep.gov/sites/default/files/Homeowner%27s%20Guide%20to%20the%20CCCL%20Program%206_2012%20%28002%29_0.pdf) (last visited Jan. 27, 2024).

waves, or other forces such as wind, wave, or water level changes. Seaward of the CCCL, new construction and improvements to existing structures generally require a CCCL permit from DEP.<sup>50</sup>

Due to the potential environmental impacts and greater risk of hazards from wind and flood, the standards for construction seaward of the CCCL are often more stringent than those that apply to the rest of the coastal building zone.<sup>51</sup> Permit applicants must show that the proposed project will not result in a significant adverse impact.<sup>52</sup> CCCLs are set by DEP on a countywide basis and are currently established for the majority of Florida's coast.<sup>53</sup>

The "mean high-water line" is the point on the shore that marks the average height of the high waters over a 19-year period.<sup>54</sup> The mean high-water line is generally the boundary between the publicly owned shore (the land alternately covered and uncovered by the tide) and the dry sand above the line, which may be privately owned.<sup>55</sup> Generally, construction is prohibited within 50 feet of the mean high-water line, known as the 50-foot setback.<sup>56</sup> Any structures below the mean high-water line that are determined by DEP to serve no public purpose; to endanger human life, health, or welfare; or to be undesirable or unnecessary must be adjusted, altered, or removed.<sup>57</sup>

Above the mean high-water line is the "seasonal high-water line," which accounts for variations in the local mean high water, such as spring tides that occur twice per month.<sup>58</sup> The seasonal high-water line is used to create 30-year erosion projections of long-term shoreline recession based on historical measurements.<sup>59</sup> DEP makes 30-year erosion projections of the location of the seasonal high-water line on a site-specific basis upon receipt of a CCCL permit application.<sup>60</sup> With certain exceptions, DEP and local governments may not issue CCCL permits for the construction of major structures that are seaward of the 30-year erosion projection.<sup>61</sup>

### **Effect of the Bill**

The bill creates the "Resiliency and Safe Structures Act" (act), and provides the following definitions:

- "CCCL" means the boundary established under s. 161.053, F.S.
- "Law" means any statute, ordinance, rule, regulation, policy, resolution, code enforcement order, agreement, or other governmental act.
- "Local government" means a municipality, county, special district, or any other political subdivision of the state.
- "Nonconforming structure" means a structure or building that does not conform to the base flood elevation requirements for new construction issued by the National Flood Insurance Program (NFIP) for the applicable flood zone.
- "Replacement structure" means a new structure or building built on a property where a structure or building was demolished or will be demolished in accordance with this section.

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<sup>50</sup> S. 161.053, F.S.; Chs. 62B-33 and 62B-34, F.A.C.; DEP, *supra* note 48; DEP, *ASK - Have Questions about the Coastal Construction Control Line (CCCL)?*, available at <https://floridadep.gov/rcp/coastal-construction-control-line/content/ask-have-questions-about-coastal-construction-control> (last visited Jan. 27, 2024).

<sup>51</sup> Ch. 62B-33, F.A.C.

<sup>52</sup> R. 62B-33.005, F.A.C.

<sup>53</sup> S. 161.053(2), F.S.; DEP Geospatial Open Data, Coastal Construction Control Lines (CCCL), [https://geodata.dep.state.fl.us/datasets/4674ee6d93894168933e99aa2f14b923\\_2/explore?location=28.136793%2C-81.915502%2C8.56](https://geodata.dep.state.fl.us/datasets/4674ee6d93894168933e99aa2f14b923_2/explore?location=28.136793%2C-81.915502%2C8.56) (last visited Jan. 27, 2024).

<sup>54</sup> S. 177.27(14), (15), F.S.

<sup>55</sup> Ss. 161.052(1), 161.151(3), 161.161(3)-(5), 161.191, and 177.28, F.S. Where an "erosion control line" is established, it serves as the mean high-water line when it is landward of the existing mean high-water line, and all lands seaward of a recorded erosion control line are deemed to be vested in the state.

<sup>56</sup> R. 62B-33.002(17), F.A.C.

<sup>57</sup> S. 161.061, F.S.

<sup>58</sup> S. 161.053(5)(a)2., F.S., defines "seasonal high-water line" to mean the line formed by the intersection of the rising shore and the elevation of 150 percent of the local mean tidal range above local mean high water; NOAA, *What Are Spring and Neap Tides?*, available at <https://oceanservice.noaa.gov/facts/springtide.html> (last visited Jan. 27, 2024).

<sup>59</sup> Ch. 62B-33.024, F.A.C.

<sup>60</sup> *Id.*

<sup>61</sup> S. 161.053(5), F.S.; DEP, *supra* note 48.

The bill applies to any structure or building on a property in which all or a portion of such property is seaward of the CCCL and the structure or building is:

- A nonconforming structure;
- A structure or building determined to be unsafe by a local building official; or
- A structure or building ordered to be demolished by a local government with proper jurisdiction.

The bill does not apply to any of the following structures or buildings:

- A structure or building individually listed in the National Register of Historic Places.
- A single-family home.
- A contributing structure or building within a historic district which was listed in the National Register of Historic Places before January 1, 2000.
- A structure or building located on a barrier island in a municipality with a population of less than 10,000 according to the most recent decennial census and which has at least six city blocks that are not located in zones V, VE, AO, or AE, as identified in the FIRM issued by FEMA.

The bill prohibits a local government from prohibiting, restricting, or preventing the demolition of any structure or building to which the bill applies for any reason other than public safety. A local government may only administratively review an application for a demolition permit sought pursuant to the bill for compliance with the 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 impose additional local land development regulations or public hearings on an applicant for a permit under the bill.

The bill requires a local government to authorize replacement structures for qualifying buildings to which the bill applies to be developed to the maximum height and overall building size authorized by local development regulations for a similarly situated parcel within the same zoning district. A local government may not do any of the following:

- Limit, for any reason, the development potential of replacement structures below the maximum development potential allowed by local development regulations for a similarly situated parcel within the same zoning district.
- Require replication of a demolished structure.
- Require the preservation of any elements of a demolished structure.
- Impose additional regulatory or building requirements on replacement structures which would not otherwise be applicable to a similarly situated vacant parcel located in the same zoning district.
- Impose additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel within the same zoning district.

The bill requires that development applications submitted for replacement structures for qualifying buildings to which the bill applies must be processed in accordance with the process outlined in local land development regulations, including any required public hearings in front of the local historic board. However, a local government may not impose additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel within the same zoning district.

The bill provides that it applies retroactively to any law adopted contrary to the bill or its intent and must be liberally construed to effectuate its intent, but does not apply to or affect demolition procedures related to single-family homes under s. 553.79(26), F.S.

The bill provides that a local government may not adopt or enforce a law that in any way limits the demolition of an applicable structure or that limits the development of a replacement structure in violation of the bill. A local government may not penalize an owner or a developer of a replacement structure for a demolition pursuant to this section or otherwise enact laws that defeat the intent of this section. Any local government ordinance, resolution, or regulation contrary to this section is void.

The bill provides an effective date of upon becoming a law.

**B. SECTION DIRECTORY:**

- Section 1: Creates s. 553.8991, F.S., relating to demolition of certain buildings and structures.
- Section 2: Provides an effective date of upon becoming a law.

**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:  
There may be an increase in demolition permits, which may create an increase in permit revenue.
- 2. Expenditures:  
See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may allow more structures to be demolished and new structures to be built in their places, which would increase development.

**D. FISCAL COMMENTS:**

Local governments may have to expend funds to process a possible increase in demolition permits. The amount local governments will have to spend, if any, is indeterminate. However, local governments are permitted by state law to collect fees to cover the cost of their expenses to enforce the Building Code, which includes reviewing building permit applications.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

- 1. Applicability of Municipality/County Mandates Provision:  
Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.
- 2. Other:  
Special Laws

The Florida Constitution defines a special law as a special or local law.<sup>62</sup> As explained by case law: [A] special law is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of

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<sup>62</sup> Art X, s. 12(g), Fla. Const.  
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the State, or one that purports to operate within classified territory when classification is not permissible or the classification is illegal.<sup>63</sup>

Additionally, art. III, s. 10 of the Florida Constitution provides:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

Even though the Supreme Court of Florida has recognized that the Legislature has wide discretion in establishing statutory classification schemes,<sup>64</sup> “[a] statute is invalid if ‘the descriptive technique is employed merely for identification rather than classification.’”<sup>65</sup> In determining whether the class of persons regulated by a statute is open so as to make the statute a general law as opposed to a special law that requires enactment in accordance with state constitutional provisions, the question “is not whether it is imaginable or theoretically possible that the law might be applied to others, but whether it is reasonable to expect that it will.”<sup>66</sup> A general law may contain a classification if that scheme is reasonable and bears a reasonable relation to the purpose of the legislation.<sup>67</sup>

The bill provides an exemption for a structure or building located on a barrier island in a municipality with a population of less than 10,000 according to the most recent decennial census and which has at least six city blocks that are not located in zones V, VE, AO, or AE, as identified in the FIRM issued by FEMA. Due to the narrowness of this exemption and the particularity in which it may apply, this exemption may be a special act.

### Retroactivity

In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.<sup>68</sup> A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.<sup>69</sup> However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.<sup>70</sup> Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so “would attach new legal consequences to events completed before its enactment.”<sup>71</sup>

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<sup>63</sup> *Lawnwood Medical Ctr. Inc. v. Seeger, M.D.*, 959 So. 2d 1222 (Fla. 1<sup>st</sup> DCA 2007), *aff'd* by 990 So. 2d 503 (Fla. 2008). See also *R.J. Reynolds Tobacco Co. v. Hall*, 67 So.3d 1084 (Fla. 1<sup>st</sup> DCA 2011) rev. den. 67 So.3d 1050 (Fla. 2011); *Humana Med. Plan, Inc., v. State*, 898 So.2d 1040 (Fla. 1<sup>st</sup> DCA 2005); *Schrader v. Fla. Keys Aqueduct Auth.*, 840 So.2d 1050 (Fla. 2003); *Fla Dep't of Bus. Reg. v. Classic Mile, Inc.* 541 So.2d 1155 (Fla. 1989); *Pinellas Cnty. Dept. of Consumer Affairs v. Castle*, 392 So.2d 1292 (Fla. 1980); *Pinellas Cnty. Veterinary Med. Soc'y, Inc. v. Chapman*, 224 So.2d 307 (Fla. 1969); *State ex rel. Gray v. Stoutamire*, 131 Fla. 698 (1938).

<sup>64</sup> *Dep't of Business Regulation v. Classic Mile, Inc.*, 541 So. 2d 1155 (Fla. 1989); *Shelton v. Reeder*, 121 So. 2d 145 (Fla. 1960).

<sup>65</sup> *City of Miami v. McGrath*, 824 So. 2d 143, 150 (Fla. 2002), citing *West Flagler Kennel Club, Inc. v. Florida State Racing Commission*, 153 So. 2d 5 (Fla. 1963).

<sup>66</sup> *Dep't of Bus. & Prof'l Regulation v. Gulfstream Park Racing Ass'n*, 912 So. 2d 616, 621 (Fla. 1<sup>st</sup> DCA 2005), *aff'd sub nom. Florida Dep't of Bus. & Prof'l Regulation v. Gulfstream Park Racing Ass'n*, 967 So. 2d 802 (Fla. 2007); *Ocala Breeders' Sales Co., Inc. v. Fla. Gaming Centers, Inc.*, 731 So. 2d 21, 793 So. 2d 899 (Fla. 2001); *Fla Dep't of Bus. Reg. v. Classic Mile, Inc.* 541 So.2d 1155 (Fla. 1989); *Lewis v. Mathis*, 345 So.2d 1066 (Fla. 1977); *State ex rel. Landis v. Harris*, 120 Fla. 555 (Fla. 1935) (definition of “classification”).

<sup>67</sup> *Metropolitan Dade County v. Golden Nugget Group*, 448 So. 2d 515, 520 (Fla. 3<sup>rd</sup> DCA 1984), *aff'd* 464 So. 2d 535 (Fla. 1985) (finding that where the purpose of a law applicable only to those counties listed in s. 125.011(1), F.S., was related to the general tourism industry, the classification was sufficient for the court to find the law was not an improper special law); *Homestead Hospital v. Miami-Dade County*, 829 So. 2d 259, 260-263 (Fla. 3<sup>rd</sup> DCA 1992) (finding a law based on the classification in s. 125.011(1), F.S., was a special law because other provisions made clear the law could only apply to Miami-Dade County). See also *License Acquisitions, LLC v. Debary Real Estate Holdings, LLC*, 155 So. 3d 1137 (Fla. 2014).

<sup>68</sup> A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5<sup>th</sup> DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1<sup>st</sup> DCA 1999).

<sup>69</sup> *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

<sup>70</sup> *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).

<sup>71</sup> *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).

Whether some of bill's language is procedural, remedial, or substantive, is for the courts to decide.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 1, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute provides a severability provision and removes a retroactivity provision.

On February 22, 2024, the Commerce Committee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Provides a retroactivity provision.
- Provides that the bill does not apply to demolition procedures for single-family homes.
- Removes a severability provision.

This analysis is drafted to the committee substitute as passed by the Commerce Committee.