

1 A bill to be entitled
 2 An act relating to building design; amending s.
 3 163.3202, F.S.; providing that certain regulations
 4 relating to building design elements may not be
 5 applied to certain structures; providing exceptions;
 6 defining the term "building design elements";
 7 providing applicability; amending s. 553.73, F.S.;
 8 authorizing a substantially affected person to file a
 9 petition with the Florida Building Commission to
 10 review certain local government regulations, laws,
 11 ordinances, policies, amendments, or land use or
 12 zoning provisions; defining the term "local
 13 government"; providing requirements for the petition
 14 and commission; requiring the commission to issue a
 15 nonbinding advisory opinion within a specified
 16 timeframe; making technical changes; amending ss.
 17 125.01 and 125.56, F.S.; conforming cross-references
 18 to changes made by the act; making technical changes;
 19 providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Subsection (5) of section 163.3202, Florida
 24 Statutes, is renumbered as subsection (6), and a new subsection
 25 (5) is added to that section to read:

26 | 163.3202 Land development regulations.—

27 | (5) (a) Land development regulations relating to building
 28 | design elements may not be applied to a single- or two-family
 29 | dwelling unless:

30 | 1. The dwelling is listed in the National Register of
 31 | Historic Places, as defined in s. 267.021; or is located in a
 32 | National Register Historic District; or is designated as a
 33 | historic property or located in a historic district, under the
 34 | terms of a local preservation ordinance.

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

37 | 3. The regulations are adopted pursuant to and in
 38 | compliance with chapter 553.

39 | 4. The dwelling is located in a community redevelopment
 40 | area, as defined in s. 163.340(10).

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

51 neighbors.

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

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

57 553.73 Florida Building Code.—

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

75 (b) Local governments may, subject to the limitations in

76 ~~of~~ this section and not more than once every 6 months, adopt
77 amendments to the technical provisions of the Florida Building
78 Code that ~~which~~ apply solely within the jurisdiction of such
79 government and that ~~which~~ provide for more stringent
80 requirements than those specified in the Florida Building Code, ~~7~~
81 ~~not more than once every 6 months~~. A local government may adopt
82 technical amendments that address local needs if:

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

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

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

101 (c)4. The enforcing agency shall make readily available,
 102 in a usable format, all amendments adopted under ~~pursuant to~~
 103 this section.

104 (d)5. Any amendment to the Florida Building Code shall be
 105 transmitted within 30 days after adoption by the ~~adopting~~ local
 106 government to the commission. The commission shall maintain
 107 copies of all such amendments in a format that is usable and
 108 obtainable by the public. Local technical amendments are ~~shall~~
 109 not ~~become~~ effective until 30 days after the amendment has been
 110 received and published by the commission.

111 (e)6. ~~An~~ Any amendment to the Florida Building Code
 112 adopted by a local government under ~~pursuant to~~ this subsection
 113 ~~is paragraph shall be~~ effective only until the adoption ~~by the~~
 114 ~~commission~~ of the new edition of the Florida Building Code by
 115 the commission every third year. At such time, the commission
 116 shall review such amendment for consistency with the criteria in
 117 paragraph (9) (a) and adopt such amendment as part of the Florida
 118 Building Code or rescind the amendment. The commission shall
 119 immediately notify the respective local government of the
 120 rescission of any amendment. After receiving such notice, the
 121 respective local government may readopt the rescinded amendment
 122 under ~~pursuant to~~ the provisions of this subsection ~~paragraph~~.

123 (f)7. Each county and municipality desiring to make local
 124 technical amendments to the Florida Building Code shall ~~by~~
 125 ~~interlocal agreement~~ establish by interlocal agreement a

126 countywide compliance review board to review any amendment to
 127 the Florida Building Code that is~~r~~ adopted by a local government
 128 within the county under ~~pursuant to~~ this subsection and
 129 ~~paragraph~~, that is challenged by a any substantially affected
 130 party for purposes of determining the amendment's compliance
 131 with this subsection ~~paragraph~~. If challenged, the local
 132 technical amendments are ~~shall not become~~ effective until the
 133 time for filing an appeal under paragraph (g) ~~pursuant to~~
 134 ~~subparagraph 8.~~ has expired or, if there is an appeal, until the
 135 commission issues its final order determining if the adopted
 136 amendment is in compliance with this subsection.

137 (g) 8. If the compliance review board determines such
 138 amendment is not in compliance with this subsection ~~paragraph~~,
 139 the compliance review board shall notify such local government
 140 of the noncompliance and that the amendment is invalid and
 141 unenforceable until the local government corrects the amendment
 142 to bring it into compliance. The local government may appeal the
 143 decision of the compliance review board to the commission. If
 144 the compliance review board determines that such amendment is ~~to~~
 145 ~~be~~ in compliance with this subsection ~~paragraph~~, any
 146 substantially affected party may appeal such determination to
 147 the commission. Any such appeal must ~~shall~~ be filed with the
 148 commission within 14 days after ~~of~~ the board's written
 149 determination. The commission shall promptly refer the appeal to
 150 the Division of Administrative Hearings by electronic means

151 through the division's website for the assignment of an
152 administrative law judge. The administrative law judge shall
153 conduct the required hearing within 30 days after being assigned
154 to the appeal, and shall enter a recommended order within 30
155 days after ~~of~~ the conclusion of such hearing. The commission
156 shall enter a final order within 30 days after an order is
157 rendered thereafter. ~~The provisions of Chapter 120 and the~~
158 uniform rules of procedure shall apply to such proceedings. The
159 local government adopting the amendment that is subject to
160 challenge has the burden of proving that the amendment complies
161 with this subsection ~~paragraph~~ in proceedings before the
162 compliance review board and the commission, as applicable.
163 Actions of the commission are subject to judicial review under
164 ~~pursuant to~~ s. 120.68. The compliance review board shall
165 determine whether its decisions apply to a respective local
166 jurisdiction or apply countywide.

167 (h)9. An amendment adopted under this subsection ~~paragraph~~
168 shall include a fiscal impact statement that ~~which~~ documents the
169 costs and benefits of the proposed amendment. Criteria for the
170 fiscal impact statement shall include the impact to local
171 government relative to enforcement and, ~~the impact to property~~
172 and building owners and, ~~as well as to industry,~~ relative to the
173 cost of compliance. The fiscal impact statement may not be used
174 as a basis for challenging the amendment for compliance.

175 (i)10. In addition to paragraphs (f) and (g) ~~subparagraphs~~

176 ~~7. and 9.~~, the commission may review any amendments adopted
 177 under ~~pursuant to~~ this subsection and make nonbinding
 178 recommendations related to compliance of such amendments with
 179 this subsection.

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

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

197 (l) If a local government adopts a regulation, law,
 198 ordinance, policy, amendment, or land use or zoning provision
 199 without using the process established in this subsection, and a
 200 substantially affected person considers such regulation, law,

201 ordinance, policy, amendment, or land use or zoning provision to
202 be a technical amendment to the Florida Building Code, then the
203 substantially affected person may submit to the commission a
204 petition for a nonbinding advisory opinion. If a substantially
205 affected person submits a request in accordance with this
206 paragraph, the commission shall issue a nonbinding advisory
207 opinion stating whether or not the commission interprets the
208 regulation, law, ordinance, policy, amendment, or land use or
209 zoning provision as a technical amendment to the Florida
210 Building Code. As used in this paragraph, the term "local
211 government" means a county, municipality, special district, or
212 political subdivision of the state.

213 1. Requests to review a local government regulation, law,
214 ordinance, policy, amendment, or land use or zoning provision
215 may be initiated by any substantially affected person. A
216 substantially affected person includes an owner or builder
217 subject to the regulation, law, ordinance, policy, amendment, or
218 land use or zoning provision, or an association of owners or
219 builders having members who are subject to the regulation, law,
220 ordinance, policy, amendment, or land use or zoning provision.

221 2. In order to initiate a review, a substantially affected
222 person must file a petition with the commission. The commission
223 shall adopt a form for the petition and directions for filing,
224 which shall be published on the Building Code Information
225 System. The form shall, at a minimum, require the following:

226 a. The name of the local government that enacted the
227 regulation, law, ordinance, policy, amendment, or land use or
228 zoning provision.

229 b. The name and address of the local government's general
230 counsel or administrator.

231 c. The name, address, and telephone number of the
232 petitioner; the name, address, and telephone number of the
233 petitioner's representative, if any; and an explanation of how
234 the petitioner's substantial interests are being affected by the
235 regulation, law, ordinance, policy, amendment, or land use or
236 zoning provision.

237 d. A statement explaining why the regulation, law,
238 ordinance, policy, amendment, or land use or zoning provision is
239 a technical amendment to the Florida Building Code, and which
240 provisions of the Florida Building Code, if any, are being
241 amended by the regulation, law, ordinance, policy, amendment, or
242 land use or zoning provision.

243 3. The petitioner shall serve the petition on the local
244 government's general counsel or administrator by certified mail,
245 return receipt requested, and send a copy of the petition to the
246 commission, in accordance with the commission's published
247 directions. The local government shall respond to the petition
248 in accordance with the form by certified mail, return receipt
249 requested, within 14 days after receipt of the petition,
250 including Saturdays, Sundays, and legal holidays.

251 4. Upon receipt of a petition that meets the requirements
252 of this paragraph, the commission shall publish the petition,
253 including any response submitted by the local government, on the
254 Building Code Information System in a manner that allows
255 interested persons to address the issues by posting comments.

256 5. Before issuing an advisory opinion, the commission
257 shall consider the petition, the response, and any comments
258 posted on the Building Code Information System. The commission
259 may also provide the petition, the response, and any comments
260 posted on the Building Code Information System to a technical
261 advisory committee, and may consider any recommendation provided
262 by the technical advisory committee. The commission shall issue
263 an advisory opinion stating whether the regulation, law,
264 ordinance, policy, amendment, or land use or zoning provision is
265 a technical amendment to the Florida Building Code within 30
266 days after the filing of the petition, including Saturdays,
267 Sundays, and legal holidays. The commission shall publish its
268 advisory opinion on the Building Code Information System and in
269 the Florida Administrative Register. The commission's advisory
270 opinion is nonbinding and is not a declaratory statement under
271 s. 120.565.

272 Section 3. Paragraph (bb) of subsection (1) of section
273 125.01, Florida Statutes, is amended to read:

274 125.01 Powers and duties.—

275 (1) The legislative and governing body of a county shall

276 have the power to carry on county government. To the extent not
277 inconsistent with general or special law, this power includes,
278 but is not restricted to, the power to:

279 (bb) Enforce the Florida Building Code~~7~~ as provided in s.
280 553.80~~7~~ and adopt and enforce local technical amendments to the
281 Florida Building Code as provided in s. 553.73(4)~~, pursuant to~~
282 ~~s. 553.73(4)(b) and (c).~~

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

285 125.56 Enforcement and amendment of the Florida Building
286 Code and the Florida Fire Prevention Code; inspection fees;
287 inspectors; etc.—

288 (1) The board of county commissioners of each of the
289 several counties of the state may enforce the Florida Building
290 Code and the Florida Fire Prevention Code~~7~~ as provided in ss.
291 553.80, 633.206, and 633.208~~7~~ and, at its discretion, adopt
292 local technical amendments to the Florida Building Code as
293 provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~
294 and local technical amendments to the Florida Fire Prevention
295 Code as provided in~~, pursuant to~~ s. 633.202~~7~~ to provide for the
296 safe construction, erection, alteration, repair, securing, and
297 demolition of any building within its territory outside the
298 corporate limits of any municipality. Upon a determination to
299 consider amending the Florida Building Code or the Florida Fire
300 Prevention Code by a majority of the members of the board of

301 county commissioners of such county, the board shall call a
302 public hearing and comply with the public notice requirements of
303 s. 125.66(2). The board shall hear all interested parties at the
304 public hearing and may then amend the building code or the fire
305 code consistent with the terms and purposes of this act. Upon
306 adoption, an amendment to the code shall be in full force and
307 effect throughout the unincorporated area of such county until
308 otherwise notified by the Florida Building Commission under
309 ~~pursuant to~~ s. 553.73 or the State Fire Marshal under ~~pursuant~~
310 ~~to~~ s. 633.202. This subsection does not ~~Nothing herein contained~~
311 ~~shall be construed to~~ prevent the board of county commissioners
312 from repealing such amendment to the building code or the fire
313 code at any regular meeting of such board.

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