

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 Community Affairs

BILL: CS/SB 284

INTRODUCER: Community Affairs Committee and Senators Perry and Hutson

SUBJECT: Building Design

DATE: March 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	Fav/CS
2.			RI	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 284 amends the Community Planning Act to prohibit local governments from regulating specific building design elements for residential dwellings, with certain exceptions. 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.

The bill:

- Prohibits local governments from adopting zoning and development regulations that require specific building design elements for residential dwellings, unless certain conditions are met.
- Provides that local governments may adopt zoning and development regulations requiring certain building design elements for residential dwellings when:
 - The dwelling is a historic property or a contributing property to a historic district; or
 - The regulations are adopted in order to implement the National Flood Insurance Program;
 - The regulations are adopted pursuant to chapter 553;
 - The dwelling is located in a community redevelopment area; or
 - The dwelling is located in a pre-existing planned unit development or master planned community.
- 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, the location or orientation of the garage, and number, type, and layout of rooms.

- Provides that the term “building design elements” does not include the height, bulk, orientation, or location of a dwelling 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 takes effect July 1, 2021.

II. Present Situation:

The Community Planning Act

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

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

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

- Capital improvements;⁶
- Future land use plan;⁷
- Intergovernmental coordination;⁸
- Conservation;⁹
- Transportation;¹⁰
- Sanitary sewer, solid waste, drainage, potable water and aquifer recharge;¹¹
- Recreation and open space;¹²

¹ Chapter 11-139, Laws of Fla.

² Section 163.3161(4), F.S.

³ Section 163.3177(1), F.S.

⁴ Section 163.3177(1)(d), F.S.

⁵ Section 163.3177(1)(a), F.S.

⁶ Section 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.

⁷ Section 163.3177(6)(a), F.S.

⁸ Section 163.3177(6)(h), F.S.

⁹ Section 163.3177(6)(d), F.S.

¹⁰ Section 163.3177(6)(b), F.S.

¹¹ Section 163.3177(6)(c), F.S.

¹² Section 163.3177(6)(e), F.S.

- Housing;¹³ and
- Coastal management (for coastal local governments).¹⁴

All local government land development regulations must be consistent with the local comprehensive plan.¹⁵ Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.¹⁶ However, plans cannot require any special district to undertake a public facility project which would impair the district's bond covenants or agreements.¹⁷

Land Development Regulations

The comprehensive plan is implemented via land development regulations. Land development regulations are ordinances that regulate any aspect of development including any local government zoning, rezoning, subdivision, building construction, sign regulations, or any regulation that controls the development of land.¹⁸

Counties and municipalities are required to adopt or amend land development regulations within 1 year after submitting its comprehensive or revised comprehensive plan for review.¹⁹ Section 163.3202(2), F.S., outlines the minimum provisions that counties and municipalities should include in their local government land development regulations. These provisions include:

- Regulating the subdivision of land;
- Regulating the use of land and water;
- Providing for protection of potable water wellfields;
- Regulating areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensuring the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulating signage;
- Addressing concurrency;
- Ensuring safe and convenient onsite traffic flow; and
- Maintaining the existing density of residential properties or recreational vehicle parks.

Under certain circumstances, the Department of Economic Opportunity (DEO) may require a local government to submit one or more land development regulations for the agency's review.²⁰ The DEO is required to adopt rules for review and schedules for adoption of land development regulations.²¹

¹³ Section 163.3177(6)(f), F.S.

¹⁴ Section 163.3177(6)(g), F.S.

¹⁵ Section 163.3194(1)(b), F.S.

¹⁶ See ss. 163.3161(6) and 163.3194(1)(a), F.S.

¹⁷ Section 189.081(1)(b), F.S.

¹⁸ Sections 163.3164(26) & 163.3202(1), F.S.

¹⁹ Section 163.3202(1), F.S.

²⁰ Section 163.3202(4), F.S.

²¹ Section 163.3202(5), F.S.

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

- External paint color;²²
- Architectural style of:²³
 - Windows;
 - Doors, including garage doors;
 - Front porches; and
 - Roofs.
- Exterior building material;²⁴ and
- Location of windows and garage doors.²⁵

States that Prohibit Local Government Regulations for Building Design Elements

North Carolina and Arkansas are two states that prohibit local governments from adopting regulations that require specific building design elements for single- and two- family dwellings unless certain conditions exist.²⁶ Tennessee and Georgia considered bills to enact laws similar to North Carolina and Arkansas; however, the bills did not pass.²⁷

Passed in 2015, North Carolina’s law prohibits cities and counties from adopting regulations that require “building design elements” for single- and two- family dwellings. The North Carolina law also prohibits such regulations from being applied to any zoning district or conditional district unless voluntarily consented to by the owners of all the properties subject to the proposed regulation.²⁸ The North Carolina law defines “building design elements”²⁹ and allows cities and counties to adopt and enforce regulations that require “building design elements” for single- and two- family dwellings in certain situations.³⁰

²² Osceola County Land Development Code, s. Ch. 3, Article 3.2.2.; Code of the City of Orlando, s. Ch. 58, Part 3, Section 58.517; Orange County Code, s. Chapter 38, Article VIII, Division 8.

²³ Osceola County Land Development Code, s. Ch. 3, Article 3.2.2.; Code of the City of Orlando, s. Ch. 58, Part 3, Section 58.517; City of Winter Park Code of Ordinances, s. Ch. 58, Art. 3, Section 58-67; Orange County Code, s. Chapter 38, Article VIII, Division 8.

²⁴ Orange County Code, s. Chapter 38, Article VIII, Division 8; City of Winter Park Code of Ordinances, s. Ch. 58, Art. 3, Section 58-67

²⁵ Code of the City of Orlando, s. Ch. 58, Part 3, Section 58.517.

²⁶ N.C. Gen. Stat. s. 160D-702; Ark. Code Ann. s. 14-17-212 & 14-56-204.

²⁷ 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).

²⁸ N.C. Gen. Stat. s. 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).

²⁹ “Building design element” means exterior building color, type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; number and types of rooms; and interior layout of rooms. The phrase does not include a single and two-family dwelling’s height, bulk, orientation, and location of a structure on a zoning lot. *See* N.C. Gen. Stat. s. 160D-702.

³⁰ *Id.*

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.³¹ 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 under certain circumstances, including within central business districts and by pre-existing local regulations.

III. Effect of Proposed Changes:

The bill amends s. 163.3202, F.S., to prohibit local governments from adopting zoning and development regulations that relate to building design elements for residential dwellings.

The bill defines the term “building design elements” to mean:

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

The term does not include a residential dwelling’s height, bulk, orientation, location on a zoning lot, or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

The bill allows local governments to 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 a contributing property to a historic district in the National Register of Historic Places;
- The dwelling is listed as a historic property or a contributing property to a historic district by a local preservation ordinance;
- The regulations are adopted in order to implement the National Flood Insurance Program;
- The regulations are adopted pursuant to chapter 553;
- The dwelling is located in a community redevelopment area; or
- The dwelling is located in a pre-existing planned unit development or master planned community.

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

The bill takes effect July 1, 2021.

³¹ Ark. Code Ann. s. 14-17-212 & 14-56-204; SB 170, 92nd Leg. Reg. Sess. (AR 2019).

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

Indeterminate. Local governments may experience costs associated with repealing, amending, and defending existing ordinances, zoning codes, and regulations prohibited by this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that zoning and development regulations may not relate to “building design elements.” However, zoning and development regulations are not defined in the Community Planning Act. Land development regulations is, however, defined in the Community Planning Act to mean ordinances enacted by governing bodies for the regulation of any aspect of

development, and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations.

VIII. Statutes Affected:

This bill substantially amends section 163.3202 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 by Community Affairs on March 16, 2021:

The committee substitute adds exceptions to the bill's preemption to include regulations adopted pursuant to ch. 553, F.S. (regarding local amendments to the Florida Building Code), dwellings in community redevelopment areas, and dwellings located in a planned unit development or master planned community created by ordinance before July 1, 2021. It also adds the location or orientation of the garage to the definition of "building design elements."

- B. **Amendments:**

None.