

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 Regulated Industries

BILL: CS/SB 284

INTRODUCER: Community Affairs Committee and Senator Perry and others

SUBJECT: Building Design

DATE: March 18, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
2.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

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 single-family or two-family 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 and meet the building construction standards in ch. 553, F.S.;
 - 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 the exterior color, the type or style of exterior cladding, the style or material of roof structures or porches, the exterior nonstructural architectural ornamentation, the location or architectural styling of windows or doors, the location or orientation of the garage, and the 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 governs how local governments create and adopt their local comprehensive plans.

It is the intent of the Community Planning 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

¹ Ch. 2011-139, 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 local governments annually. *See* s. 163.3177(3)(b), F.S.

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.

- Recreation and open space;¹²
- 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 through enactment by local government of 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 one 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 must 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), the state land planning agency, 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

¹² Section 163.3177(6)(e), F.S.

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 Sections 163.3164(44) and 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:
 - Windows;
 - Doors, including garage doors;
 - Front porches; and
 - Roofs.²³
- 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-family 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 and amended in 2020, North Carolina's law prohibits cities and counties from adopting regulations that require "building design elements" or a minimum square footage for single-family and two-family dwellings. The North Carolina law also prohibits such regulations

²² Osceola County Land Development Code, Ch. 3, Art. 3.2.2, *available at* https://library.municode.com/fl/osceola_county/codes/land_development_code?nodeId=LAND_DEVELOPMENT_CODE_CH3PESIST_ART3.2DIDEST (last visited Mar. 18, 2021); Code of the City of Orlando, Ch. 58, Part 3, s. 58.517; Orange County Code, Ch. 38, Art. VIII, Division 8, *available at* [Mini TOC: Chapter 58 - ZONING DISTRICTS AND USES | Code of Ordinances | Orlando, FL | Municode Library](#) (last visited Mar. 18, 2021).

²³ Osceola County Land Development Code, s. Ch. 3, Article 3.2.2., *supra* n. 22; Code of the City of Orlando, Ch. 58, Part 3, Section 58.517, *supra* n. 22; City of Winter Park Code of Ordinances, s. Ch. 58, Art. 3, s. 58-67, *available at* [ARTICLE III. - ZONING | Code of Ordinances | Winter Park, FL | Municode Library](#); Orange County Code, Ch. 38, Art. VIII, Division 8, *available at* [Mini TOC: ARTICLE VIII. - P-D PLANNED DEVELOPMENT DISTRICT | Code of Ordinances | Orange County, FL | Municode Library](#) (all last visited Mar. 18, 2021).

²⁴ Orange County Code, Ch. 38, Art. VIII, Division 8, *supra* n. 22; City of Winter Park Code of Ordinances, Ch. 58, Art. 3, s. 58-67, *supra* n. 23 (both last visited Mar. 18, 2021).

²⁵ Code of the City of Orlando, Ch. 58, Part 3, s. 58.517, *supra* n. 22 (last visited Mar. 18, 2021).

²⁶ N.C. Gen. Stat. s. 160D-702, as amended by 15, Session Law 2020-25 (2019 Session), *available at* <https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2019-2020/SL2020-25.pdf>; Ark. Code Ann. s. 14-17-212, *available at* https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=6a4a4908-dbc8-43cd-9ed8-2bccdf000d36&config=00JAA2ZjZiM2VhNS0wNTVILTQ3NzUtYjQzYy0yYWZmODJiODRmMDYKAFBvZENhdGFsb2fXiYCNsel0pllgqYkw9PK&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A5VSN-D4R0-R03K-N11B-00008-00&pdcontentcomponentid=234170&pdteaserkey=sr0&pditab=allpods&ecomp=L5w_kkk&earg=sr0&prid=6bfe3e0a-c2e5-40e1-a90e-bef6c97ccf07 and Ark. Code Ann., s. 14-56-204, *available at* https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=a8de7f95-1022-4544-997e-17735d0b47f&config=00JAA2ZjZiM2VhNS0wNTVILTQ3NzUtYjQzYy0yYWZmODJiODRmMDYKAFBvZENhdGFsb2fXiYCNsel0pllgqYkw9PK&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A5VSN-DBJ0-R03J-P11G-00008-00&pdcontentcomponentid=234170&pdteaserkey=sr0&pditab=allpods&ecomp=L5w_kkk&earg=sr0&prid=9a148755-666d-4208-89b7-4feed3ebdab4 (both last visited Mar. 18, 2021).

²⁷ Georgia General Assembly, 2019-2020 Regular Session - HB 302, <http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/302> (last visited Mar. 18, 2021); Tennessee General Assembly, 2017-2018 Session – HB 476 <http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB0476&ga=110> (last visited Mar. 18, 2021).

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-family and two-family dwellings in certain situations.³⁰

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.³²

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 single-family or two-family dwellings.

The bill allows local governments to adopt and enforce regulations that require “building design elements” for single-family or two-family dwellings if:

- The dwelling is listed in the National Register of Historic Places;³³
- The dwelling is located in a National Register Historic District;
- The dwelling is designated as a historic property or located in a historic district by a local preservation ordinance;
- The regulations are adopted in order to implement the National Flood Insurance Program;
- The regulations are adopted pursuant to and meet the building construction standards in ch. 553, F.S.;
- The dwelling is located in a community redevelopment area, as defined in s. 163.340(10), F.S.;³⁴ or

²⁸ N.C. Gen. Stat. s. 160D-702, *supra* n. 26; see General Assembly of North Carolina, Session Law 2015-86 Senate Bill 25, June 9, 2015, available at <https://www.ncleg.gov/Sessions/2015/Bills/Senate/PDF/S25v3.pdf> and R. Erika Churchill, Staff Attorney for the North Carolina General Assembly, *Analysis of S.L. 2015-86* (last updated 10/12/2015), available at <https://www.ncleg.gov/Legislation/Bills/Summaries/2015/S25> (both last visited Mar. 18, 2021).

²⁹ The term “building design element” in the North Carolina law 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, *supra* n. 26.

³⁰ *Id.*

³¹ Ark. Code Ann. ss. 14-17-212 and 14-56-204, *supra* n. 26; SB 170, 92nd Leg. Reg. Sess. (AR 2019) available at <https://legiscan.com/AR/text/SB170/2019> (last visited Mar. 18, 2021).

³² *Id.*

³³ Section 267.021(5), F.S., relating to historical resources, provides the term “National Register of Historic Places” means “the list of historic properties significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of the Interior, as established by the National Historic Preservation Act of 1966, as amended.”

³⁴ Under s. 163.340(10), F.S., the term “community redevelopment area” means “ a slum area, a blighted area, or an area in which there is a shortage of housing that is affordable to residents of low or moderate income, including the elderly, or a coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot layout or inadequate street layout, or a combination thereof which the

- The dwelling is located in a pre-existing planned unit development or master planned community created pursuant to local ordinance enacted on or before July 1, 2021.

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

- External building color;
- Type or style of exterior cladding material;
- Style or material of roof structures or porches;
- Exterior nonstructural architectural ornamentation;
- Location or architectural styling of windows or doors;
- Location and orientation of the garage;
- Number and type of rooms; and
- Interior layout of rooms.
- The term does not include a 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 defines “planned unit development” and “master planned community” as:

an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots.

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.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

governing body designates as appropriate for community redevelopment. For community redevelopment agencies created after July 1, 2006, a community redevelopment area may not consist of more than 80 percent of a municipality.”

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 of affected single-family or two-family dwellings.

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 enacted by local governments may not relate to “building design elements.” However, the term “zoning and development regulations” is not defined in the Community Planning Act. The term “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, sign regulations, or any other regulation controlling the development of land.³⁵

The bill provides the term “building design elements” does not include location on a zoning lot. The term “zoning lot” used in the bill is not defined in the bill or in the Florida Statutes.

³⁵ Section 163.3164(25), F.S., also provides the definition does not apply in s. 163.3213, F.S., relating to administrative review of land development regulations; in that section, the term “land development regulation” means “an ordinance enacted by a local governing body for the regulation of any aspect of development, including a subdivision, building construction, landscaping, tree protection, or sign regulation or any other regulation concerning the development of land. This term shall include a general zoning code, but shall not include a zoning map, an action which results in zoning or rezoning of land, or any building construction standard adopted pursuant to and in compliance with the provisions of chapter 553.”

VIII. Statutes Affected:

This bill substantially amends the following section 163.3202 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of 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.