

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1317 Local Regulation of Nonconforming or Unsafe Structures

**SPONSOR(S):** Regulatory Reform & Economic Development Subcommittee, Roach

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 1 N, As CS	Wright	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N	Roy	Darden
3) Commerce Committee			

### SUMMARY ANALYSIS

The Florida Building Codes Act requires a person, firm, or corporation that wishes to demolish any building to first obtain a building permit from the local government. Some local governments in Florida have placed additional requirements or restrictions on property owners when obtaining permits for the demolition of buildings deemed historic.

The bill creates the "Resiliency and Safe Structures Act," which provides that:

- A "nonconforming structure" means a structure located in a coastal high-hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency which does not conform to the requirements for new construction issued by the National Flood Insurance Program.
- A local government may not prohibit, restrict, or prevent the demolition of any nonconforming structures, any structure determined to be unsafe by a local building official, or any structure ordered to be demolished by a local government for any reason other than public safety, unless the structure is a single-family home or individually listed on the National Register of Historic Places.
- A local government may not impose or enforce any limitation or condition on the approval of a replacement structure including a requirement for replication of the demolished structure, a limitation on the size or height of the replacement structure, or the maintenance of any of the demolished structure's elements.
- A local government may not in any way limit the demolition of structures and buildings to which the act is applicable or limit the development of a replacement structure in a way that would divest property owners or developers of land use, zoning, or other land development rights for demolishing a structure in accordance with the bill.

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

The bill provides an effective date of upon becoming 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 seventh edition, which is referred to as the 2020 Florida Building Code.<sup>2</sup>

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (FBCA). The Act 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 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>

The FBCA 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

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<sup>1</sup> The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, [http://www.floridabuilding.org/fbc/2006\\_Legislature\\_Rpt\\_rev2.pdf](http://www.floridabuilding.org/fbc/2006_Legislature_Rpt_rev2.pdf) (last visited Mar. 14, 2023).

<sup>2</sup> Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Mar. 14, 2023).

<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(25)(a), F.S.

Management Agency (FEMA) for the purpose of participating in the National Flood Insurance Program;

- 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; and
- Such permit complies with all applicable Building Code, Fire Prevention Code, and local amendments to such codes.

However, a local law, ordinance, or regulation may restrict demolition permits for a:<sup>9</sup>

- Structure designated on the National Register of Historic Places;<sup>10</sup>
- 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

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>11</sup> and
- Requiring new construction on the site of the demolished structure to be subject to certain architectural regulations, related to:<sup>12</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>13</sup> Opponents of these regulations argue that these older buildings are damaged, do not meet the Building Code's minimum 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>14</sup>

There appear to be conflicts<sup>15</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>16</sup>

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<sup>9</sup> S. 553.79(25)(d), F.S.

<sup>10</sup> The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. In order to be listed on the register the owner of the property must not object. National Park Service, *What is the National Register of Historic Places*, <https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm> (last visited Mar. 13, 2023); National Park Service, *How to List a Property*, <https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm> (last visited Mar. 13, 2023).

<sup>11</sup> Sec. 54-71., 54-125., Town of Palm Beach Code of Ordinances.

<sup>12</sup> Sec. 54-122., Town of Palm Beach Code of Ordinances.

<sup>13</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/opinion/editorials/article257198932.html> (last visited Mar. 14, 2023).

<sup>14</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 Mar. 14, 2023); CBS Miami, *Miami Beach Waterfront Home Of Notorious Prohibition-Era Gangster Al Capone Slated For Demolition*, <https://miami.cbslocal.com/video/5955888-miami-beach-waterfront-home-of-notorious-prohibition-era-gangster-al-capone-slated-for-demolition/> (last visited Mar. 14, 2023).

<sup>15</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, *After Surfside, Miami changes rules to fast-track demolition. Affordable housing is in the crosshairs* | WLRN (last visited Mar. 16, 2023).

<sup>16</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.*

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## **FEMA Flood Insurance Rate Map, Coastal High Hazard Area**

In order to support the National Flood Insurance Program (NFIP), FEMA identifies, publishes, and periodically updates flood hazard data nationwide. This data is provided to communities in the form of a Flood Insurance Rate Map and Flood Insurance Study report, typically prepared in a countywide format.<sup>17</sup>

Along the coast, the flood map has delineated coastal Special Flood Hazard Areas (SFHA), where the source of flooding is from coastal hazards, such as storm surge and waves. FEMA scientists and engineers work with other federal, state, regional, community, tribal, nonprofit, non-governmental, and private-sector partners to determine flood hazards along the U.S. coastline.<sup>18</sup>

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 VE (which are unique to coastal areas), AE and AO. Zone 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>19</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>20</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; and
- 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.

Specific conditions for new construction in coastal flood hazard zones include requiring all new construction to:<sup>21</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; and
- Have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.
  - Such space may be used only for parking of vehicles, building access, or storage.

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<sup>17</sup> FEMA, *Adoption of Flood Insurance Rate Maps by Participating Communities*, FEMA 495 January 2019, [https://www.fema.gov/sites/default/files/2020-07/fema\\_adoption-flood-insurance-rate-maps-participating-communities\\_bulletin.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf) (last visited Mar. 13, 2023).

<sup>18</sup> FEMA, *Features of Flood Insurance Rate Maps in Coastal Areas*, <https://www.fema.gov/flood-maps/coastal/insurance-rate-maps> (last visited Mar. 13, 2023).

<sup>19</sup> *Id.*

<sup>20</sup> 44 C.F.R. § 60.3(a)(3)

<sup>21</sup> 44 C.F.R. § 60.3(e)(3)-(5)

When an NFIP-participating structure, in an SFHA, has “substantial damage”<sup>22</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>23</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>24</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.

### **Effect of the Bill**

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

- "Nonconforming structure" means a structure located in a coastal high-hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency (FEMA) which does not conform to the requirements for new construction issued by the National Flood Insurance Program.
- "Replacement structure" means a structure built on a property where a structure was demolished or will be demolished.

Unless the structure is a single-family home or individually listed on National Register of Historic Places, the bill provides that the act applies to the following structures (applicable structures):

- Nonconforming structures in coastal high-hazard areas which fail to meet FEMA standards for new construction.
- Any structure determined to be unsafe by a local building official.
- Any structure ordered to be demolished by a local government that has proper jurisdiction.

The bill provides that a local government may not prohibit, restrict, or prevent the demolition of any applicable structure for any reason, other than public safety.

The bill provides that a local government may not impose or enforce any limitation or condition on the approval of a replacement structure that replaces a demolished applicable structure, including a requirement for replication of the demolished structure, a limitation on the size or height of the replacement structure, or the maintenance of any of the demolished structure's elements.

Owners or developers of replacement structures are permitted to develop in accordance with all land use, zoning, and other land development rights, whether established by law, ordinance, rule, regulation, policy, development order, or any other act, without regard to any local government restrictions or penalties resulting from the demolition of an applicable structure that may restrict development of a replacement structure as a result of a local government order, a designation, a code enforcement proceeding, or an ordinance.

The bill provides that the act applies prospectively and retroactively to any law adopted contrary to the bill and its intent.

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<sup>22</sup> 44 C.F.R. § 59.1

<sup>23</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 Mar. 16, 2023).

<sup>24</sup> Sec. 16-112., City of Naples Ordinances.

The bill provides a that a municipality, county, special district, or political subdivision may not adopt or apply a law, an ordinance, a rule, a regulation, a policy, a resolution, or any other act that in any way limits the demolition of structures and buildings to which the act is applicable or limits the development of a replacement structure in a way that would divest property owners or developers of land use, zoning, or other land development rights for demolishing a structure in accordance with the bill. All laws, ordinances, rules, regulations, policies, resolutions, and other acts of a municipality, county, special district, or political subdivision to the contrary are void.

The bill provides an effective date of upon becoming law.

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 553.8991, F.S.; relating to demolition of nonconforming structures.

**Section 2:** Providing an effective date.

**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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 16, 2023, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Provided that the bill does not apply to single-family homes or structures individually listed on the National Register of Historic Places.
- Removed the provision relating to demolition permits for single family homes.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.