

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 Rules

BILL: CS/SB 1526

INTRODUCER: Environment and Natural Resources Committee and Senator Avila

SUBJECT: Local Regulation of Nonconforming and Unsafe Structures

DATE: February 13, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Barriero</u>	<u>Rogers</u>	<u>EN</u>	Fav/CS
3.	<u>Hunter</u>	<u>Twogood</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1526 creates the Resiliency and Safe Structures Act, providing that a local government may not prohibit, restrict, or prevent the demolition of the following structures for any reason other than public safety:

- Nonconforming structures;
- Structures or buildings determined to be unsafe by a local building official; and
- Structures or buildings ordered to be demolished by a local government that has proper jurisdiction.

The bill provides that a local government must authorize replacement structures for qualifying buildings 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. The bill prohibits a local government from imposing certain restrictions and limitations on a replacement structure to be built on the property where a qualifying structure was demolished. A local government may only administratively review an application for a demolition permit for compliance with the Florida 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 this bill.

The provisions of the bill do not apply to:

- Structures or buildings individually listed in the National Register of Historic Places;

- Single-family homes;
- Contributing structures or buildings within a historic district which was listed in the National Register of Historic Places before January 1, 2000;
- Structures or buildings 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 Flood Insurance Rate Map issued by the Federal Emergency Management Agency.

II. Present Situation:

The Florida Building Code

In 1974, Florida passed legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met.¹ Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes as they saw fit.²

In 1992, Hurricane Andrew destroyed many structures that were built according to code, demonstrating that Florida's system of local codes was flawed.³ The Governor appointed a study commission to review the system of local codes and make recommendations for its modernization. The 1998 Legislature adopted the study commission's 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 Building Code, and that first edition replaced all local codes on March 1, 2002.⁴

The Building Code is updated every three years.⁵ The current edition of the Building Code is the 8th edition, which is referred to as the 2023 Florida Building Code. Among other things, the Building Code sets limitations on building height and size.⁶ Height restrictions are determined based on the type of construction, occupancy classification, and whether there is an automatic sprinkler system installed throughout the building.⁷

The Florida Building Commission was statutorily created to implement the Building Code.⁸ The commission, which is housed within the Department of Business and Professional Regulation, is a 19-member technical body made up of design professionals, contractors, and government

¹ Dep't of Community Affairs, *The Florida Building Commission Report to the 2006 Legislature*, 4 (2006), available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf.

² *Id.*

³ *Id.*

⁴ *Id.*; Dep't of Business and Professional Regulation, *Building Code Information System*, <https://floridabuilding.org/c/default.aspx> (last visited Jan. 25 2024).

⁵ See Fla. Bldg. Commission, *Florida Building Codes and Effective Dates*, 1 (2023), available at https://www.floridabuilding.org/fbc/Publications/2023_Effective_Dates.pdf.

⁶ Florida Building Code, *2023 Florida Building Code, Building: 8th Edition*, s. 503 (2023), available at https://codes.iccsafe.org/content/FLBC2020P1/chapter-5-general-building-heights-and-areas#FLBC2020P1_Ch05_Sec502.

⁷ *Id.* at s. 504.1.

⁸ See section 553.74(1), F.S.

experts in various disciplines covered by the Building Code.⁹ The commission reviews International Codes published by the International Code Council,¹⁰ the National Electric Code, and other nationally adopted model codes during its triennial update of the Building Code.¹¹ Local governments may adopt amendments to the technical provisions of the Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Building Code.¹² A local government must determine there is a need to strengthen the requirements of the Building Code based on a review of local conditions.¹³ Such amendments may not introduce a new subject not addressed in the Building Code.¹⁴ Most technical amendments sunset upon adoption of the newest edition of the Building Code, unless adopted into the Building Code.¹⁵

Local Enforcement of the Florida Building Code

Local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.¹⁶ Every local government must enforce the Building Code and issue building permits.¹⁷ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit.¹⁸ Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code, including certain building, electrical, plumbing, mechanical, and gas inspections.¹⁹ Construction work may not be done beyond a certain point until it passes an inspection.²⁰

Demolition Permits

Under state law, a permit is required to demolish a building.²¹ The enforcing agency may revoke any such permit if the demolition is in violation of, or not in conformity with, the provisions of the Building Code.²² However, an application for 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

⁹ *Id.*

¹⁰ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to construct safe, sustainable, affordable and resilient structures. ICC, *About the ICC*, <https://www.iccsafe.org/about/who-we-are/> (last visited Jan. 25, 2024).

¹¹ Section 553.73(3), F.S.

¹² Section 553.73(4)(b), F.S.

¹³ Section 553.73(4)(b)1., F.S.

¹⁴ Section 553.73(4)(b)3., F.S.

¹⁵ Section 553.73(4)(e), F.S.

¹⁶ Section 553.72(2), F.S.

¹⁷ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

¹⁸ Sections 125.56(4)(a) and 553.79(1), F.S.

¹⁹ Florida Building Code, *2023 Florida Building Code: 8th Edition*, s. 110 (2023), available at https://codes.iccsafe.org/content/FLBC2023P1/chapter-1-scope-and-administration#FLBC2023P1_Ch01_SubCh02_Sec110.

²⁰ *Id.*

²¹ Section 553.79(1)(a), F.S.

²² *Id.*

situated parcel.²³ A local government may not subject applications to any additional local land development regulations or public hearings or penalize a private property owner for a demolition that is in compliance with the demolition permit.²⁴

However, a local law, ordinance, or regulation may restrict demolition permits for certain designated historic structures:²⁵

- Structure designated on the National Register of Historic Places;²⁶
- 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.

National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by the passage of the National Flood Insurance Act of 1968.²⁷ The NFIP 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.²⁸ 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.²⁹ Within participating communities, the federal government makes flood insurance available throughout the community.³⁰ To join, a community must:

- Complete an application;
- Adopt a resolution of intent to participate and cooperate with FEMA; and
- Adopt and submit a floodplain management ordinance that meets or exceeds the minimum NFIP criteria.³¹

In coordination with participating communities, FEMA develops flood maps called Flood Insurance Rate Maps (FIRMs) that depict the community's flood risk and floodplain.³² While FEMA is largely responsible for the creation of the FIRM, the community itself must pass the

²³ Section 553.79(26)(b), F.S.

²⁴ *Id.*

²⁵ Section 553.79(25)(d), F.S.

²⁶ 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 Jan. 25, 2024).

²⁷ FEMA, *50 Years of the NFIP*, 2 (2020), available at https://www.fema.gov/sites/default/files/2020-05/NFIP_50th_Final_8.5x11_Regional_Printable.pdf.

²⁸ Benefits.gov, *National Flood Insurance Program (NFIP)*, <https://www.benefits.gov/benefit/435> (last visited Jan. 25, 2024).

²⁹ 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. 25, 2024).

³⁰ *Id.*

³¹ *Id.*

³² See Congressional Research Service, *Introduction to the National Flood Insurance Program*, 3 (2023), available at <https://crsreports.congress.gov/product/pdf/R/R44593>.

map into its local regulations in order for the map to be effective.³³ An area of specific focus on the FIRM is the Special Flood Hazard Area (SFHA).³⁴ The SFHA is intended to distinguish the flood risk zones that have a chance of flooding during a 1-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 year³⁵ and at least a 26 percent chance of flooding over the course of a 30-year mortgage.³⁶ Flood maps along the coasts show areas at high risk of flooding within the coastal SFHA.³⁷ The coastal SFHA includes several flood hazard zones:

- Zone V, or coastal high-hazard area, are coastal areas with a 1 percent or greater chance of flooding and an additional hazard associated with storm waves;³⁸
- Zone VE, also known as the coastal high-hazard area, is where wave action and fast-moving water can cause extensive damage during a base flood event;³⁹
- Zone AE indicates areas that have at least a 1 percent-annual-chance of being flooded, but where wave heights are less than 3 feet;⁴⁰
- Zone AO is used to map areas at risk of shallow flooding during a base flood (1 percent-annual-chance), where water with average depths of one to three feet flows over sloping ground. On flood maps in coastal communities, Zone AO usually marks areas at risk of flooding from wave overtopping, where waves are expected to wash over the crest of a dune or bluff and flow into the area beyond.⁴¹

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.⁴²

Key conditions of the NFIP minimum floodplain management standards include, among things, that communities:

- Require permits for development in the SFHA;
- Require elevation of the lowest floor of all new residential buildings in the SFHA to or above the base flood elevation;
- Restrict development in floodways to prevent increasing the risk of flooding; and
- Require certain construction materials and methods that minimize future flood damage.⁴³

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, available at https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

³⁷ FEMA, *Features of Flood Insurance Rate Maps in Coastal Areas*, <https://www.fema.gov/flood-maps/coastal/insurance-rate-maps> (last visited Jan. 25, 2024).

³⁸ FEMA, *Zone V*, <https://www.fema.gov/glossary/zone-v> (last visited Jan. 25, 2024); see also FEMA, *Coastal High Hazard Areas*, <https://www.fema.gov/node/404318> (last visited Jan. 25, 2024).

³⁹ FEMA, *Features of Flood Insurance Rate Maps in Coastal Areas*, <https://www.fema.gov/flood-maps/coastal/insurance-rate-maps> (last visited Jan. 25, 2024).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Congressional Research Service, *Introduction to the National Flood Insurance Program*, 10 (2023), available at <https://crsreports.congress.gov/product/pdf/R/R44593>. 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 or the Office of the Comptroller of the Currency.

⁴³ *Id.* at 6.

New Construction Requirements in Coastal Flood Hazard Zones

For communities participating in the NFIP, FEMA places requirements on any new construction built in flood hazard areas.⁴⁴ Generally, new construction in flood-prone areas must be:⁴⁵

- 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 to prevent water from entering or accumulating within the components during conditions of flooding.⁴⁶

Specific conditions for new construction in coastal flood hazard zones include requiring all new construction to:⁴⁷

- 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;⁴⁸
- 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 vehicles, building access, or storage.⁴⁹

Coastal Construction Control Line (CCCL)

The CCCL defines the portion of the beach-dune system that is subject to severe fluctuations caused by a 100-year storm surge, storm waves, or other forces such as wind, wave, or water level changes.⁵⁰ DEP establishes CCCLs on a county basis along the sand beaches of the state fronting on the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida.⁵¹

⁴⁴ See 44 C.F.R. § 60.3.

⁴⁵ 44 C.F.R. § 60.3(a)(3).

⁴⁶ *Id.*

⁴⁷ 44 C.F.R. § 60.3(e)(3)-(5).

⁴⁸ The base flood level is how high floodwater is likely to rise during a 1-percent-annual-chance flood event and represents the minimum elevation of construction allowed. FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, available at https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

⁴⁹ 44 C.F.R. § 60.3(e)(3)-(5).

⁵⁰ Section 161.053(1)(a), F.S.; Fla. Admin. Code R. 62B-33.005(1); DEP, *The Homeowner's Guide to the Coastal Construction Control Line Program*, 3 (2017), available at https://floridadep.gov/sites/default/files/Homeowner%27s%20Guide%20to%20the%20CCCL%20Program%206_2012%20%28002%29_0.pdf.

⁵¹ Section 161.053(1)(a), F.S.

CCCLs are established by DEP after it has been determined from a comprehensive engineering study and topographic survey that the establishment of such control lines is necessary for the protection of upland properties and the control of beach erosion.⁵² DEP may establish a segment or segments of a CCCL further landward than the impact zone of a 100-year storm surge provided such segment or segments do not extend beyond the landward toe of the coastal barrier dune structure that intercepts the 100-year storm surge.⁵³ Such segment or segments may not be established if adequate dune protection is provided by a state-approved dune management plan.⁵⁴

Seaward of the CCCL, new construction and improvements to existing structures require a CCCL permit from DEP.⁵⁵ The line defines the landward limit of DEP's authority to regulate construction.⁵⁶ CCCLs currently exist for large portions of Florida's coast.⁵⁷

A coastal county or coastal municipality may establish coastal construction zoning and building codes if such zones and codes are approved by DEP as being adequate to preserve and protect the beaches and coastal barrier dunes adjacent to such beaches from imprudent construction that will 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.⁵⁸

III. Effect of Proposed Changes:

Section 1 creates s. 553.8991, F.S., which establishes the Resiliency and Safe Structures Act. The bill applies to any structure or building on a property in which all or a portion of such property is seaward of the coastal construction control line 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 that has proper jurisdiction.

The bill defines “nonconforming structure” as a structure or building 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. The bill defines “coastal construction control line” as the boundary established under current law pursuant to s. 161.053, F.S., which requires the Department of Environmental Protection to establish coastal construction control lines to define that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.

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;

⁵² Section 161.053(2)(a), F.S.

⁵³ Section 161.053(1)(a), F.S.

⁵⁴ *Id.*

⁵⁵ DEP, *The Homeowner's Guide to the Coastal Construction Control Line Program* at 2.

⁵⁶ *Id.*

⁵⁷ DEP, *Geospatial Open Data, CCCL*,

https://geodata.dep.state.fl.us/datasets/4674ee6d93894168933e99aa2f14b923_2/explore (last visited Jan. 18, 2023).

⁵⁸ Section 161.053(3), F.S.

- 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 Flood Insurance Rate Map issued by the Federal Emergency Management Agency.⁵⁹

The bill provides that a “local government”—defined as any municipality, county, special district, or any other political subdivision of the state—may not prohibit, restrict, or prevent the demolition of any structure or building identified in this section for any reason other than public safety. A local government may only administratively review an application for a demolition permit for compliance with the Florida 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 this bill.

In addition, the bill provides that local governments must authorize “replacement structures” for qualifying buildings 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. The bill defines “replacement structure” as a new structure built on a property where a structure was demolished or will be demolished in accordance with this section. A local government may not:

- 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 provides that development applications submitted for replacement structures for qualifying buildings 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.

The bill applies prospectively and retroactively to any “law”—defined as any statute, ordinance, rule, regulation, policy, resolution, code enforcement order, agreement, or other governmental act—that is contrary to the bill or its intent. The bill must be liberally construed to effectuate its

⁵⁹ Municipalities meeting this description may include, but are not limited to: Bal Harbour, Briny Breezes, Cape Canaveral, Golden Beach, Gulf Stream, Hillsboro Beach, Indian River Shores, Indian Harbour Beach, Jupiter Island, Manalapan, Ocean Ridge, Palm Beach, Palm Beach Shores, Sanibel Island, Sea Ranch Lakes, and Surfside.

intent. However, the bill does not apply to s. 553.79(25), F.S., regarding the demolition of single-family residential structures located in certain high-hazard areas and flood zones.

The bill also includes a preemption provision that prohibits a local government from adopting or enforcing a law that in any way limits the demolition of a qualifying structure or that limits the development of a replacement structure. A local government may not penalize an owner or a developer of a replacement structure or otherwise enact laws that defeat the intent of the bill. Any local government law contrary to this bill is void.

Section 2 provides that the act will take effect upon becoming a law.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

Local governments may have to expend funds to process a possible increase in demolition permits. However, local governments may collect fees to cover the cost of

their expenses to enforce the Building Code, which includes reviewing building permit applications.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 553.8991 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 Environment and Natural Resources on January 30, 2024:

- Provides that the bill applies to any qualifying structure and building on a property in which all or a portion of such property is seaward of the coastal construction control line (CCCL);
- Defines CCCL as the boundary established under s. 161.053, F.S.;
- Removes provision that, to be a qualifying structure under the bill, nonconforming structures must be located within one-half mile of the coastline and within flood zones V, VE, AO, or AE;
- Provides that the bill does not apply to:
 - A contributing structure or building within a historic district which was listed in the National Register of Historic Places before January 1, 2000; or
 - 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 flood zones V, VE, AO, or AE;
- Clarifies that a local government must authorize replacement structures for qualifying buildings to be developed in accordance with local development regulations for a similarly situated parcel within the same zoning district;
- Prohibits a local government from imposing additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel within the same zoning district;
- Provides that development applications submitted for replacement structures for qualifying buildings 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; and
- Corrects a citation.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
