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 1094

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Peril of Flood

DATE: March 20, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow/Knudson	Knudson	BI	**Fav/CS**
2.	Stearns	Yeatman	CA	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1094 requires coastal management plans to include the reduction of flood risks and losses, creates new requirements related to flood elevation certificates, and revises requirements related to flood insurance.

The bill requires local governments to include development and redevelopment principles, strategies, and engineering solutions that reduce flood risks and losses within coastal areas in their comprehensive coastal management plan.

The bill requires surveyors or mappers that complete an elevation certificate to submit a copy of the certificate to the Division of Emergency Management within 30 days of its completion.

The bill allows insurers to sell flexible flood insurance coverage which is defined as coverage for the peril of flood that may include water intrusion coverage and differs from standard or preferred coverage by:

- Being in an agreed upon amount between the insurer and policyholder.
- Including a deductible as authorized in s. 627.701, F.S.
- Being adjusted in accordance with s. 627.7011(3), F.S., or adjusted only on the basis of the actual cash value of the property.
- Covering only the principal building, as defined in the policy.
- Including or excluding coverage for additional living expenses.
- Excluding coverage for personal property or contents.

The bill removes current law prohibiting a supplemental flood insurance policy from being used for excess coverage over any other insurance policy covering the peril of flood. The bill clarifies that the declarations page or face page of a flood insurance policy must prominently note the deductibles and coverage limits of the policy.

The bill also allows an insurer to request from the Office of Insurance Regulation a certification that acknowledges that the insurer provides a flood policy, contract, or endorsement that equals or exceeds flood coverage by the National Flood Insurance Program.

II. Present Situation:

National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by passage of the National Flood Insurance Act of 1968.[1] The NFIP is administered by the Federal Emergency Management Agency (FEMA) and provides property owners located in flood-prone areas the ability to purchase flood insurance protection from the federal government. Flood insurance through the NFIP is only available in communities that adopt and enforce federal floodplain management criteria.[2]

Standard NFIP Flood Insurance

The standard flood insurance policy dwelling form offered by the NFIP[3] is a single peril flood policy that pays for direct physical damage to the insured residential property up to the replacement cost value,[4] actual cash value, or the policy limit.[5] The maximum coverage limit for a NFIP standard flood insurance policy is $250,000. The NFIP also offers up to $100,000 in personal property (contents) coverage, which is always valued at the actual cash value.[6] Most NFIP policies also include Increased Cost of Compliance coverage of up to $30,000 of the cost to comply with state or community floodplain management laws or ordinances after a flood in which a building has been declared substantially damaged or repetitively damaged.[7] The

[1] http://www.fema.gov/media-library/assets/documents/7277?id=2216 (Last accessed by staff on March 18, 2015).

[2] *National Flood Insurance Program: Program Description*, pgs. 2-4., Federal Emergency Management Agency/Federal Insurance and Mitigation Administration (August 1, 2002) http://www.fema.gov/media-library/assets/documents/1150?id=1480 (Last accessed by staff on March 18, 2015).

[3] The standard form insures one-to-four family residential buildings and single-family dwelling units in a condominium building. The NFIP also offers (a) a general property form that is used to insure five-or-more-family residential buildings and non-residential buildings and (b) a residential condominium building association policy form that insures residential condominium association buildings.

[4] To obtain RCV coverage under the NFIP dwelling form, the building must be a single-family dwelling, be the principal residence of the insured at the time of loss (the insured lives there at least 80 percent of the year), and the building coverage of at least 80 percent of the full replacement cost of the building or its the maximum available for the property under the NFIP.

[5] *National Flood Insurance Program: Summary of Coverage*, Federal Emergency Management Agency (FEMA F-679/November 2012) http://www.fema.gov/media-library-data/20130726-1620-20490-4648/f_679_summaryofcoverage_11_2012.pdf (Last accessed by staff on March 18, 2015).

[6] See footnote 4.

[7] The total amount of a building claim and ICC claim cannot exceed the maximum limit for building property coverage. For a single-family home, this is the $250,000 maximum limit on coverage to the building. See footnote 4 and footnote 5 at page 26.

maximum coverage available to a condominium association is $250,000 per unit multiplied by the total number of units.[8] The limits of coverage for NFIP flood insurance on non-residential buildings are $500,000 in coverage to the building and $500,000 in contents coverage.[9]

Flood is defined in the standard NFIP policy as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.[10]

The minimum deductibles for NFIP flood coverage are:

- For properties built before the effective date of the first Flood Insurance Rate Map[11] (FIRM) for a community, the minimum deductible is:
  - $1,500 if the property is insured for $100,000 or less.
  - $2,000 if the property is insured for over $100,000.
- For properties built after the effective date of the first FIRM for a community, the minimum deductible is:
  - $1,000 if the property is insured for $100,000 or less.
  - $1,250 if the property is insured for over $100,000.

Elevation Certificates

The NFIP elevation certificate is used to provide elevation information necessary to ensure compliance to community floodplain management ordinances, to determine the proper insurance premium rate, or to support a request for a Letter of Map Amendment.[12] As part of the agreement for making flood insurance available in a community, the NFIP requires each community to adopt floodplain management regulations that specify minimum requirements for reducing flood losses. [13] One such requirement is for the community to obtain the elevation of the lowest floor (including basement) of all new and substantially improved buildings, and maintain a record of such information.[14] The elevation certificate provides a way for a community to document compliance with the community's floodplain management ordinance.

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[8] *FDIC Compliance Manual*, V – 6.8. http://www.fdic.gov/regulations/compliance/manual/index.html (Last accessed by staff on March 18, 2015).

[9] *Reducing Damage from Localized Flooding: A Guide for Communities*, 11-2. http://www.fema.gov/media-library/assets/documents/1012 (Last accessed by staff on March 18, 2015).

[10] http://www.fema.gov/national-flood-insurance-program/definitions (Last accessed by staff on March 18, 2015).

[11] The effective date of the first FIRM for Florida communities can be found at http://www.fema.gov/cis/FL.pdf (Last accessed by staff on March 18, 2015).

[12] https://www.fema.gov/media-library/assets/documents/160 (Last accessed by staff on March 18, 2015).

[13] Federal Emergency Management Agency, *National Flood Insurance Program Elevation Certificate and Instructions Form 086-0-33* (2012).

[14] See id.

Federal Requirements to Obtain Flood Insurance

The U.S. Congress passed the Flood Disaster Protection Act in 1973.[15] The Act mandated property owners with mortgages issued by federally regulated or insured lenders must purchase flood insurance if their properties are located in Special Flood Hazard Areas. Special Flood Hazard Areas are defined by FEMA as high-risk areas where there is at least a one in four chance of flooding during a 30-year mortgage.[16]

The National Flood Insurance Reform Act of 1994[17] (1994 Reform Act) required federal financial regulatory agencies[18] to revise their flood insurance regulations. The 1994 Reform Act applied flood insurance requirements to loans purchased by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and to agencies that provide government insurance or guarantees such as the Small Business Administration, the Federal Housing Administration, and the Veterans Administration. Lending institutions regulated by federal agencies are prohibited from offering loans on properties located in a Special Flood Hazard Area of a community participating in the NFIP unless the property is covered by flood insurance.[19] The amount of flood insurance required by lending institutions must be at least equal to the outstanding principal balance of the loan, or the maximum amount available under the NFIP, whichever is less.

The Biggert-Waters Flood Insurance Reform Act

In 2012[20] the United States Congress passed the Biggert-Waters Flood Insurance Reform Act (Biggert-Waters Act). The Biggert-Waters Act reauthorized the NFIP for 5 years. Key provisions of the legislation require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how FIRM updates impact policyholders. These changes by Congress have resulted in premium rate increases for approximately 20 percent of NFIP policyholders nationwide.

The Biggert-Waters Act increases flood insurance premiums purchased through the program for second homes, business properties, severe repetitive loss properties, and substantially improved damaged properties by requiring premium increases of 25 percent per year until premiums meet the full actuarial cost of flood coverage. Most residences immediately lose their subsidized rates if the property is sold, the policy lapses, repeated and severe flood losses occur, or a new policy is purchased. Policyholders whose communities adopt a new, updated FIRM that results in higher rates will experience a 5-year phase in of rate increases to achieve rates that incorporate the full actuarial cost of coverage.

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[15] http://www.fema.gov/media-library-data/20130726-1545-20490-9247/frm_acts.pdf (Last accessed by staff on March 18, 2015).

[16] http://www.floodsmart.gov/floodsmart/pages/flooding_flood_risks/defining_flood_risks.jsp (Last accessed by staff on March 18, 2015).

[17] Title V of the Riegle Community Development and Regulatory Improvement Act of 1994. Pub. L. 103-325, Title V, 108 Stat. 2160, 2255-87 (September 23, 1994).

[18] Office of Comptroller of Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Farm Credit Administration and Federal Reserve.

[19] *FDIC Compliance Manual*, V – 6.1. http://www.fdic.gov/regulations/compliance/manual/index.html (Last accessed by staff on March 18, 2015).

[20] http://www.fema.gov/flood-insurance-reform-act-2012 (Last accessed by staff on March 18, 2015).

2014 Federal Flood Reform Bills

The Consolidated Appropriations Act of 2014 and the Homeowner Flood Insurance Affordability Act of 2014 repealed and modified some provisions of the Biggert-Waters Act. The new law reduced the mandatory rate increases for subsidized properties from 25 percent annually to no less than 5 percent, generally not to increase more than 18 percent annually.[21] Properties that remain subject to the 25 percent annual increase include older business properties, older non-primary residences, severe repetitive loss properties, and pre-FIRM properties. The 20 percent annual phase in of premium increases after adoption of a new or updated FIRM was reduced to a maximum of no more than an 18 percent annual premium increase. The policyholder refunds were provided to policyholders whose rate increases were revised by the 2014 changes. Additional revisions included increasing the maximum flood insurance deductibles, directing FEMA to consider property specific flood mitigation in determining a full-risk rate, and creating the position of a Flood Insurance Advocate.

Flood Insurance in Florida

NFIP Flood Insurance in Florida

Over two million NFIP policies are written on Florida properties, with approximately 268,500 policies receiving subsidized rates.[22] This accounts for approximately 37 percent of the total policies written by the NFIP.

Historically, properties insured in Florida have paid approximately $3.60 in premium for NFIP flood coverage for every $1 received in claims payments.[23] The rate impact of the Biggert-Waters Act on subsidized policies in Florida is approximately as follows:

- Approximately 50,000 secondary residences, businesses, and severe repetitive loss properties are subject to immediate, annual 25 percent increases until their premiums are full risk premiums.
- Approximately 103,000 primary residences will lose their subsidy if the property is sold, the policy lapses, the property suffers severe, repeated flood losses, or a new policy is purchased.
- Approximately 115,000 non-primary residences, business properties, and severe repetitive loss properties are subject to the elimination of subsidies once FEMA develops guidance for their removal.

Private Market Flood Insurance in Florida

The 2014 Legislature enacted CS/CS/CS/SB 542, governing the sale of personal lines residential flood insurance. Authorized insurers may sell four different types of flood insurance products:

- Standard coverage, which covers only losses from the peril of flood as defined in the bill (which is the same definition used by the NFIP). The policy must be the same as coverage

[21] Federal Emergency Management Agency, Homeowner Flood Insurance Affordability Act Overview (April 3, 2014). (Last accessed by staff on March 9, 2015).

[22] Office of Insurance Regulation, *The Biggert-Waters Flood Insurance Reform Act of 2012*, (Presentation to the Florida Senate Banking and Insurance Committee on October 8, 2013). http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket_2346.pdf (Last accessed by staff on March 18, 2015).

[23] Wharton Center for Risk Management and Decision Processes, *Who's Paying and Who's Benefiting Most From Flood Insurance Under the NFIP? A Financial Analysis of the U.S. National Flood Insurance Program (NFIP)*, (Issue Brief, Fall 2011).

offered from the NFIP regarding the definition of flood, coverage, deductibles, and loss adjustment.
- Preferred coverage, which includes the same coverage as standard flood insurance and also must cover flood losses caused by water intrusion from outside the structure that are not otherwise covered under the definition of flood in the bill.
- Customized coverage, which is coverage that is broader than standard flood coverage.
- Supplemental coverage, which supplements an NFIP flood policy or a standard or preferred policy from a private market insurer. Supplemental coverage may provide coverage for jewelry, art, deductibles, and additional living expenses. It does not include excess flood coverage over other flood policies.

Insurers must provide prominent notice on the policy declarations page or face page of deductibles and any other limitations on flood coverage or policy limits. Insurance agents that receive a flood insurance application must obtain a signed acknowledgement from the applicant stating that the full risk rate for flood insurance may apply to the property if flood insurance is later obtained under the NFIP.

An insurer may establish flood rates through the standard process in s. 627.062, F.S. Alternatively, rates filed before October 1, 2019, may be established through a rate filing with the Office of Insurance Regulation (OIR) that is not required to be reviewed by the OIR before implementation of the rate (“file and use” review) or shortly after implementation of the rate (“use and file” review). Specifically, the flood rate is exempt from the “file and use” and “use and file” requirements of s. 627.062(2)(a), F.S. Such filings are also exempt from the requirement to provide information necessary to evaluate the company and the reasonableness of the rate. The OIR may, however, examine a rate filing at its discretion. To enable the office to conduct such examinations, insurers must maintain actuarial data related to flood coverage for two years after the effective date of the rate change. Upon examination, the OIR will use actuarial techniques and the standards of the rating law to determine if the rate is excessive, inadequate or unfairly discriminatory. The bill allows projected flood losses for personal residential property insurance to be a rating factor. Flood losses may be estimated using a model or straight average of models found reliable by the Florida Commission on Hurricane Loss Projection Methodology.

Insurers that seek to write flood coverage in Florida must notify the OIR at least 30 days before doing so and file a plan of operation, financial projections, and any such revisions with the OIR. Surplus lines agents may export flood insurance without making a diligent effort to seek coverage from three or more authorized insurers until July 1, 2017. Citizens Property Insurance Corporation is prohibited from providing flood insurance and the Florida Hurricane Catastrophe Fund is prohibited from reimbursing flood losses.

Local Government Comprehensive Planning and Coastal Management

The Local Government Comprehensive Planning and Land Development Regulation Act (the Act),[24] also known as Florida’s Growth Management Act, was adopted by the 1985 Legislature. Significant changes have been made to the Act since 1985 including major growth management

[24] See Chapter 163, Part II, F.S.

bills in 2005, 2009 and 2011. The Act requires all of Florida's 67 counties and 413 municipalities to adopt local government comprehensive plans that guide future growth and development. "Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period."[25] Comprehensive plans contain chapters or "elements" that address future land use, housing, transportation, water supply, drainage, potable water, natural groundwater recharge, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements, and public schools. A key component of the Act is its "concurrency" provision that requires facilities and services to be available concurrent with the impacts of development. The state land planning agency that administers these provisions is the Department of Economic Opportunity.

Local governments in coastal areas or contiguous to specified waters must include a coastal management element in their comprehensive plan.[26] The coastal management element must set forth the principles, guidelines, standards, and strategies that shall guide the local government's decisions and program implementation. Section 163.3178, F.S., requires coastal management to be based on studies, surveys, and data. The plan must contain a redevelopment component which outlines the principles which shall be used to eliminate inappropriate and unsafe development in coastal areas.[27]

III. Effect of Proposed Changes:

Section 1 amends s. 163.3178(2)(f), F.S., to require local governments when drafting their comprehensive coastal management plans to:

- Include development and redevelopment principles, strategies, and engineering solutions that reduce the flood risk in coastal areas which results from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea-level rise.
- Encourage the use of best practices development and redevelopment principles, strategies, and engineering solutions that will result in the removal of coastal real property from flood zone designations established by the FEMA.
- Identify site development techniques and best practices that may reduce losses due to flooding and claims made under flood insurance policies issued in this state.

Section 2 creates s. 195.088, F.S., to require surveyors and mappers to submit elevation certificates to the Division of Emergency Management (DEM). The bill defines an elevation certificate as the certificate used to demonstrate the elevation of property which has been developed by FEMA under federal floodplain management regulation or which is completed by a surveyor and mapper. The surveyor and mapper must complete the elevation certificate in accordance with the checklist adopted by DEM. A surveyor and mapper who completes an elevation certificate must submit a copy of the certificate to the DEM within 30 days of its completion.

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[25] Section 163.3177(5), F.S.
[26] Section 163.3177(6)(g), F.S.
[27] Section 163.3178(2)(g), F.S.

Section 3 amends s. 627.715, F.S., to allow insurers to sell flexible flood insurance, which is defined as coverage for the peril of flood that may include water intrusion coverage and differs from standard or preferred coverage by:

- Being in an agreed upon amount between the insurer and policyholder.
- Including a deductible as authorized in s. 627.701, F.S.
- Being adjusted in accordance with s. 627.7011(3), F.S., or adjusted only on the basis of the actual cash value of the property.
- Covering only the principal building, as defined in the policy.
- Including or excluding coverage for additional living expenses.
- Excluding coverage for personal property or contents.

Flexible flood coverage must be acceptable to the mortgage lender if it is intended to satisfy a mortgage requirement.

The section removes language in statute that specifies a supplemental flood insurance policy does not include flood coverage for the purpose of excess coverage over any other insurance policy covering the peril of flood. Removing this language from law could allow a supplemental flood insurance policy to provide coverage in excess of other coverage that is insuring for the peril of flood.

The section clarifies that deductibles for flood coverage and flood insurance policy limits must be prominently noted on a policy's declarations page or face page.

The bill also clarifies the signed acknowledgement that a licensed insurance agent must obtain notifying the applicant about the potential loss of subsidized rates when discontinuing coverage from the NFIP. The notice is revised to specify that the policyholders who might lose subsidies are those who have subsidized NFIP policies.

Lastly, the section allows an insurer to request from the OIR a certification that acknowledges that the insurer provides a policy, contract, or endorsement for the flood insurance that provides coverage equaling or exceeding the flood coverage offered by the NFIP. A certified policy must be in compliance with 42 U.S.C. s. 1042a(b), which requires federally regulated lending institutions to accept private flood insurance that insures the building and personal property securing the loan for the term of the loan in an amount not less than the outstanding principal balance of the loan or the limit of NFIP flood insurance coverage, whichever is less. An insurer or its agent may reference or include such certification in advertising and communications with an agent, a lending institution, an insured, and a potential insured. The authorized insurer may also include a statement that notifies an insured of the certification on the declarations page or other policy documentation related to flood coverage. A knowing misrepresentation that a flood insurance policy is certified is an unfair or deceptive act.

Section 4 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Policyholders will have greater flexibility when purchasing flood insurance.

C. Government Sector Impact:

Local governments must include flood risks within their coastal management plan. There could be added costs to local governments for the added development of the plan and its enforcement.

Licensed surveyors and mappers must regularly submit elevation certificates to the DEM. The DEM must establish the schedule for regular submission of elevation certificates. The added cost to the department is unknown.

The OIR must establish a flood certification that is to be issued to companies that sell private flood insurance policies that are equal to or greater than the coverages in a policy sold by the NFIP.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3178 and 627.715.

This bill creates section 195.088 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 Banking and Insurance on March 10, 2015:
Authorizes insurers to sell flexible flood insurance and specifies the requirements for such coverage.

- Specifies that insurers must credit excessive or unfairly discriminatory flood rates back to policyholders.
- Removes a requirement that county property appraisers submit elevation certificates to DEM; instead surveyors and mappers will make the submission.
- Deletes a bill provision that would have required agents to quote a flood policy for properties in Special Flood Hazard Areas.
- Specifies that it is an unfair and deceptive practice for an insurer or agent to knowingly falsely claim a flood insurance policy is certified by the OIR as complying with federal mortgage requirements when it is not.

B. Amendments:

None.