HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 895 Peril of Flood
SPONSOR(S): Regulatory Affairs Committee; Insurance & Banking Subcommittee; Ahern and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 1094

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Cooper	Cooper
2) Appropriations Committee	22 Y, 3 N	Keith	Leznoff
3) Regulatory Affairs Committee	15 Y, 2 N, As CS	Cooper	Hamon

SUMMARY ANALYSIS

The National Flood Insurance Program (NFIP) is a federal program that offers federally-subsidized flood insurance to property owners and promotes land-use controls in floodplains. The Federal Emergency Management Agency (FEMA) administers the NFIP. The Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12) made major changes to the NFIP, including an increase in rates charged by the NFIP for flood insurance, starting in 2013**.** However, starting October 1, 2013, some NFIP policies that were subsidized moved directly to full-risk rates, resulting in dramatic flood insurance rate increases for some homeowners. In March 2014, federal legislation was enacted to moderate some of the rate increases resulting from BW-12.

In 2014, the Legislature enacted s. 627.715, F.S., to provide a framework for a private, personal lines flood insurance market in Florida. The section provides for four types of flood insurance: *standard flood insurance* (which is equivalent to a standard policy under the NFIP), *preferred flood insurance, customized flood insurance*, and *supplemental flood insurance*. The section allows insurers to develop rates for flood coverage, by either filing the rate with the Office of Insurance Regulation (OIR) and obtaining approval, or, until October 1, 2019, use a rate without the OIR's approval, so long as the rate is not excessive, inadequate, or unfairly discriminatory.

The bill requires surveyors and mappers to complete elevation certificates in accordance with procedures developed by the Division of Emergency Management and requires local governments to include certain coastal management elements for their comprehensive plans. In addition, the bill amends s. 627.715, F.S., to:

- Create a fifth type of flood insurance, called "flexible flood insurance," which is defined as the coverage for the peril of flood that may include water intrusion coverage, and includes or excludes specified provisions, including the authority to limit coverage to only the outstanding mortgage on the property and to allow dwelling loss to be adjusted only on the actual cash value of the property.
- Clarify the definition of supplemental insurance to permit coverage in excess over any other insurance covering the peril of flood.
- Provide that the notice that insurance agents must provide to potential insureds must notify the applicant that the full risk rate may apply, if NFIP coverage at a subsidized rate is discontinued.
- Authorizes the OIR to require insurers to provide appropriate return of premium to former insureds or to credit current policyholders, if the OIR determines a flood coverage rate is excessive or unfairly discriminatory.
- Allow an insurer to request a certification from the OIR that acknowledges that a private flood policy equals or exceeds the coverage offered by NFIP. Subject to the OIR's verification that such policy is NFIP-equivalent, these certifications may be used in advertising and communications with agents, lenders, insureds, and potential insureds. The bill provides that an insurer or agent who knowingly misrepresents that a flood policy, contract, or endorsement is certified commits an unfair and deceptive act.

The bill has no fiscal impact on state government revenues and an indeterminate fiscal impact on state and local expenditures. The bill may have a positive impact on the private sector.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

National Flood Insurance Program

The National Flood Insurance Program (NFIP or program) was created by the passage of the National Flood Insurance Act of 1968 to offer federally-subsidized flood insurance to property owners and to promote land-use controls in floodplains. The NFIP is administered by the Federal Emergency Management Agency (FEMA). The federal government will make flood insurance available within a community, if that community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains.[1]

Nationally, the NFIP provided flood insurance coverage for 5.8 million properties and insured more than $1.3 trillion in assets in 2013.[2] Total earned premium for NFIP coverage for 2012 was $3.5 trillion.

Federal Requirements to Obtain NFIP Flood Insurance

In 1973 the U.S. Congress passed the Flood Disaster Protection Act.[3] The Act required property owners with mortgages issued by federally regulated or insured lenders to purchase flood insurance if their property was located in a Special Flood Hazard Area. 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.

The National Flood Insurance Reform Act of 1994[4] (1994 Reform Act) required federal financial regulatory agencies[5] to revise their flood insurance regulations. The 1994 Reform Act also applied flood insurance requirements to loans purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) and to agencies that provide government insurance or guarantees, such as the Small Business Administration, the Federal Housing Administration, and the Veterans Administration.[6]

The 1994 Reform Act prohibits federally regulated lending institutions 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.[7] The minimum amount of NFIP flood insurance required by the 1994 Reform Act must be *at least* equal to the outstanding principal balance of the loan, or the maximum amount available under the NFIP, whichever is less.[8] This minimum standard also applies to private flood insurance accepted in lieu of NFIP flood insurance.[9] These provisions do not apply to state-owned property covered under an adequate state self-insurance policy satisfactory to FEMA, or to small loans (defined as having an original outstanding principal balance of $5,000 or less and a repayment term of one year or less).[10]

For properties located outside Special Flood Hazard Areas, lenders on their own initiative may require flood insurance to be purchased to protect their investment. Additionally, it is noted that the Federal Housing

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[1] FEMA, *National Flood Insurance Program, Program Description*, (Aug. 1, 2002), https://www.fema.gov/media-library/assets/documents/1150?id=1480 (last viewed Mar. 26, 2015)
[2] All 2013 NFIP statistics are available at http://www.fema.gov/statistics-calendar-year (last viewed Mar. 26, 2015).
[3] These statutes are codified at 42 U.S.C. §§4001-4129.
[4] 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).
[5] The federal financial regulators are the Office of Comptroller of Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Farm Credit Administration, and the Board of Governors of the Federal Reserve System.
[6] *FDIC Compliance Manual*, V – 6.1. http://www.fdic.gov/regulations/compliance/manual/index.html (last viewed Mar. 26, 2015).
[7] 42 U.S.C §4012a(b).
[8] 42 U.S.C. §4012a(b)(1)(A).
[9] 42 U.S.C. §4012a(b)(1)(B).
[10] 42 U.S.C. §4012a(c).

Administration, a federal mortgage insurer, is authorized to require flood insurance coverage higher than the NFIP minimum requirement on FHA-guaranteed mortgages, under the authority of the federal Housing Act.[11]

Standard NFIP Flood Insurance Policies

The standard flood insurance policy dwelling form offered by the NFIP[12] is a single peril flood policy that pays for direct physical damage to the insured residential property up to the replacement cost[13] (RCV) or actual cash value (ACV) or the policy limit.[14] The maximum coverage limit for a NFIP standard residential flood insurance policy is $250,000.[15] The NFIP also offers up to $100,000 in personal property (contents) coverage for residential property, which is always paid at ACV.[16]

The maximum coverage available to a condominium association purchased to cover the condominium building, the common and individually owned building elements within the condominium units, improvements within the units, and contents owned in common is $250,000 per unit multiplied by the total number of units, or the replacement cost of the condominium building, whichever is less.[17] Individual condominium unit owners can purchase flood insurance through the NFIP to insure contents in their condominium unit with a separate dwelling form policy. The NFIP flood insurance coverage limits on non-residential buildings are $500,000 in coverage to the building and $500,000 in contents coverage.[18] Properties that cannot obtain flood insurance through the NFIP or need more coverage (called excess coverage) than that provided by the NFIP can purchase flood insurance from licensed Florida insurers in the admitted market or surplus lines insurers,[19] although availability may be limited.

Most NFIP policies also include increased cost of compliance coverage of up to $30,000 per building for the increased cost to elevate, demolish, or relocate a building to comply with state or community floodplain management laws or ordinances after a flood which substantially damages or repetitively damages the building.[20]

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[11] *Feaz v. Wells Fargo Bank, N.A.*, 745 F.3d 1098 (11th C.A. 2014). The Housing Act confers on the Secretary of the U.S. Department of Housing and Urban Development the authority to prescribe terms for FHA-insured mortgage contracts, such as mandatory covenants requiring a FHA borrower to maintain hazard and flood insurance in amounts required by the lender. In *Feaz*, the Eleventh Circuit interpreted a FHA covenant to permit the lender to require flood coverage above the NFIP minimum (i.e., the lesser of the loan's principal balance or the NFIP maximum of $250,000), to require the lesser of the home's replacement value or $250,000.

[12] 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. *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 viewed Mar. 26, 2015).

[13] 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.

[14] *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 viewed Mar. 26, 2015).

[15] 44 C.F.R. §61.6.

[16] *Id.*

[17] 44 C.F.R. §61.6(b).

[18] 44 C.F.R. §61.6.

[19] Unlike insurers in the admitted market, surplus lines insurers are not licensed insurers, do not have their rates regulated by the Office of Insurance Regulation, and do not participate in the Florida Insurance Guaranty Association.

[20] The total amount of a building claim and an increased cost of coverage claim cannot exceed the maximum limit for building property coverage. For a single-family home, this is $250,000. The limit is $500,000 for non-residential structures. See *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 viewed Mar. 26, 2015).

NFIP flood policies have separate deductibles for building and personal property (contents) coverage, so a policyholder could pay two deductibles if a loss occurs. Generally, for most properties built before the effective date of the first flood insurance rate map[21] for a community, the minimum deductible[22] is:

- $1,000 if the property is located in certain flood zones.
- $2,000 if the property is located in other flood zones.

For most properties built after the effective date of the first flood insurance rate map for a community, the minimum deductible is $1,000 if the property is insured in any flood zone.[23]

Generally, deductibles for most NFIP residential policies can increase in $1,000 increments from the required minimum, with the maximum deductible being $5,000 for building coverage and $5,000 for contents coverage.[24]

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.[25] 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.[26] 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.[27] The elevation certificate provides a way for a community to document compliance with the community's floodplain management ordinance, and is to be completed by authorized land surveyors, engineers, architects, or community officials.

NFIP Community Rating System (CRS)

The NFIP Community Rating System (CRS) was implemented in 1990 as a voluntary program to recognize and encourage community floodplain management activities exceeding the NFIP's minimum standards. Any community fully complying with the NFIP's minimum floodplain management requirements may apply to join the CRS. Participation in the CRS may lower the flood insurance premium for property owners in the participating community. Under the CRS, discounts are provided on flood insurance insured by the NFIP if the community takes specified actions that:

1. Reduce flood damage to insurable property;
2. Strengthen and support the insurance aspects of the NFIP; and
3. Encourage a comprehensive approach to floodplain management.

Nationwide, 1,296 of the over 22,000 communities participating in the NFIP also participate in the CRS. Thus, the almost 3.8 million NFIP policyholders living in those communities benefit from discounted flood

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[21] The effective date of the first flood insurance rate map (FIRM) for Florida communities can be found at http://www.fema.gov/cis/FL.pdf (last viewed Mar. 26, 2015); *National Flood Insurance Program Flood Insurance Manual*, RATE 16, Federal Emergency Management Agency (Revised Oct. 2013), http://www.fema.gov/media-library/assets/documents/34745 (last viewed Mar. 26, 2015).

[22] The minimum deductible for properties located in any flood zone in the NFIP emergency program is $2,000. The minimum deductible for pre-FIRM properties with optional post-FIRM elevation ratings in any flood zone is $1,000. See *National Flood Insurance Program Flood Insurance Manual*, RATE 14, Federal Emergency Management Agency (Revised October 2013). http://www.fema.gov/media-library/assets/documents/34745 (last viewed Mar. 26, 2015).

[23] *National Flood Insurance Program Flood Insurance Manual*, RATE 14, Federal Emergency Management Agency (Revised October 2013). http://www.fema.gov/media-library/assets/documents/34745 (last viewed Mar. 26, 2015).

[24] For a full listing of NFIP deductible options, see *National Flood Insurance Program Flood Insurance Manual*, RATE 14-RATE 15, Federal Emergency Management Agency (Revised October 2013). http://www.fema.gov/media-library/assets/documents/34745 (last viewed Mar. 26, 2015). Deductibles for non-residential flood policies can increase to $50,000 for building and $50,000 for contents coverage.

[25] Federal Emergency Management Agency, *National Flood Insurance Program Elevation Certificate and Instructions Form* (2012), at https://www.fema.gov/media-library/assets/documents/160?id=1383 (last viewed Apr. 17, 2015).

[26] Id.

[27] Id.

insurance premiums due to their community's CRS participation. Community CRS participation percentage nationwide is five percent. In comparison, Florida has a much higher CRS participation percentage. Forty seven percent of Florida's 461 NFIP communities participate in the CRS program.[28]

The CRS uses a rating system, differentiated by ten class levels, to determine how much of a flood insurance premium discount all property owners of the CRS rated community will receive. A Class 1 community receives the greatest flood insurance discount (45 percent maximum discount) and a Class 10 community receives no discount. A community receives a five percent greater discount on flood insurance premiums for its property owners each time it moves to a lower CRS class. The city of Roseville, California is the only Class 1 community in the nation, with an average premium discount of $832.[29]

FEMA determines a community's class, after a verification visit to the community, based on points earned by the community from 18 creditable activities in the areas of public information, mapping and regulations, flood damage reduction, and flood preparedness. The NFIP specifies the creditable activities and the maximum number of points that can be earned for the activity.[30] A community can improve its class rating by undertaking new mitigation and floodplain management activities that earn more points. Each year, in order to maintain its class rating, a community participating in the CRS must verify to FEMA that it is continuing to perform the creditable activities that resulted in its rating[31] and a full review is done every five years.

Florida does not have any communities lower than Class 5, so the highest flood insurance discount any Florida property owner currently receives is 25 percent. Florida has 17 Class 5 communities and property owners in these 17 communities receive a maximum 25 percent flood insurance discount.[32] Florida has 12 Class 10 communities and property owners in these 12 communities receive no flood insurance discount under CRS.

The Biggert-Waters Flood Insurance Reform Act of 2012

Following flood losses from the 2005 hurricanes Katrina, Rita, and Wilma, the NFIP borrowed $21 billion from the U.S. Treasury in order to remain solvent. However, flood losses in 2012 from Super-storm Sandy increased the NFIP's deficit. In 2012, the United States Congress passed the Biggert-Waters Flood Insurance Reform Act (Biggert-Waters Act).[33] The Biggert-Waters Act reauthorized the National Flood Insurance Program for five 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 Flood Insurance Rate Map 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. Some flood maps used by FEMA have not been updated since the 1980s. Policyholders whose communities adopt a new, updated Flood Insurance Rate Map (FIRM) that results in higher rates will experience a five year phase in of rate increases to achieve rates that incorporate the full actuarial cost of coverage.

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[28] FEMA, *Community Rating System Participation State Maps*, at http://www.fema.gov/media-library/assets/documents/27808?id=6202 (last viewed on Apr. 16, 2015). Information available includes a list of Florida community CRS participation ranked by flood insurance policy count and includes a community's CRS Class as of 2012.
[29] *Community Rating System Fact Sheet*, Federal Emergency Management Agency, Mar. 21, 2014: http://www.fema.gov/media-library/assets/documents/9998 (last viewed Apr. 16, 2015).
[30] FEMA, *NFIP Community Rating System Coordinator's Manual*. http://www.fema.gov/media-library/assets/documents/8768?id=2434 (last viewed Apr. 16, 2015).
[31] See footnote 29.
[32] See footnote 28.
[33] FEMA, *Flood Insurance Reform*, https://www.fema.gov/national-flood-insurance-program/flood-insurance-reform (last viewed Mar. 26, 2015).

The Reform Act also requires most NFIP policyholders to pay a 5% assessment on their policy to create a reserve fund for catastrophic losses.[34] Additional changes to premium rates, including those paid by the 80 percent of NFIP policyholders with non-subsidized rates, can occur upon remapping. Current law limits rate increases due to remapping to 10 percent per year, so Biggert-Waters allows a larger annual rate increase for remapped properties. However, federal action in the 2014 federal omnibus spending bill has likely delayed rate increases associated with remapping for 12-18 months, as described below.

2014 Federal Flood Reform Bills

The Consolidated Appropriations Act of 2014 and the Homeowner Flood Insurance Affordability Act of 2014[35] repealed or modified some provisions of the Biggert-Waters Act. The new law reduced the rate mandatory rate increases for subsidized properties from 25% annually to no less than 5%, generally not to increase more than 18% annually.[36] 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% annual phase-in of premium increases after adoption of a new or updated flood insurance rate map was reduced to a maximum of no more than an 18% annual premium increase. For property not currently at a full-risk rate, a minimum increase of 5% per year is required for flood policies on primary residences built on or before December 31, 1994 or before the effective date of the initial flood insurance rate map for the community was adopted.[37]

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.

NFIP Flood Insurance in Florida

Over two million NFIP policies are written on Florida properties, with approximately 268,500 policies receiving subsidized rates. This accounts for approximately 37% of the total flood policies written by the NFIP, more than any other state.[38] Eighty-seven percent of the two million Florida policies (1.78 million policies) have nonsubsidized rates, so they will not be subject to the 25% annual rate increases under Biggert-Waters. These policies, however, may see routine annual rate increases and rate increases of up to 20% per year, due to remapping after FEMA is allowed to spend funds on remapping.

From 1987-2008, the NFIP collected $3.60 in Florida premiums for every $1 paid in claims to Florida.[39] 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, if the property suffers severe, repeated flood losses, or if 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

[34] For those NFIP policies with a 25% rate increase, the 5% assessment is not on top of the 25% rate increase. In other words, 5% of the 25% increase will be allocated to the Reserve Fund.
[35] Homeowner Flood Insurance Affordability Act of 2014, H.R. 3370, 113th Cong. (2014) (Pub. L. No. 113-89).
[36] FEMA, *Homeowner Flood Insurance Affordability Act Overview*, https://www.fema.gov/media-library/assets/documents/93074 (last viewed Mar. 26, 2015).
[37] FN 27, at section 5.
[38] Florida NFIP statistics contained in this and the following paragraphs are from the House Insurance & Banking Subcommittee meeting materials for the September 25, 2013 meeting.
[39] Wharton Center for Risk Management and Decision Processes, Issue Brief, Fall 2011 – "Who's paying and who's benefiting most from flood insurance under the NFIP? A Financial Analysis of the US. National Flood Insurance Program," opim.wharton.upenn.edu/risk/library/WRCib2011b-nfip-who-pays.pdf

The 2014 Legislature enacted s. 627.715, F.S., governing the sale of personal lines, residential flood insurance.[40] 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.

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 definition used by the National Flood Insurance Program (NFIP). The policy must be the same as coverage 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 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 law 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 write flood coverage must notify the OIR at least 30 days before doing so in this state 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),[41] also known as Florida's Growth Management Act, was adopted by the 1985 Legislature. Significant changes

[40] Ch. 2014-80, Laws of Fla.

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

have been made to the Act since 1985 including major growth management 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."[42] 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.[43] 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.[44]

<u>Effect of the Bill</u>

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.
- Be consistent with, or more stringent than, the flood-resistant construction requirements in the Florida Building Code and applicable flood plain management regulations set forth in 44 C.F.R. part 60.
- Require construction activities seaward of the coastal construction control lines established pursuant to s. 161.053, F.S., be consistent with ch. 161, F.S.
- Encourage local governments to participate in the National Flood Insurance Program Community Rating System administered by the Federal Emergency Management Agency to achieve flood insurance premium discounts for their residents.

Section 2 creates s. 472.0366, F.S., to require surveyors and mappers to submit elevation certificates to the Division of Emergency Management (DEM).[45] 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. Surveyors and mappers who complete elevation certificates must submit copies of the certificate to the DEM within 30 days of their completion.

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:

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[42] Section 163.3177(5), F.S.
[43] Section 163.3177(6)(g), F.S.
[44] Section 163.3178(2)(g), F.S.
[45] Ch. 472, F.S., relates to the regulation of land surveying and mapping and is administered by the Department of Agriculture and Consumer Services. Section 472.005(2), F.S.

- Being in an amount agreed upon between the insurer and policyholder, such as coverage that is limited to the total amount of each outstanding mortgage applicable to the covered property.
- Including a deductible as authorized in s. 627.701, F.S., including a deductible in an amount authorized for hurricanes.
- Requiring flood loss to dwellings be adjusted in accordance with s. 627.7011(3), F.S., or adjusted only on the basis of the actual cash value of the property.
- Limiting flood coverage to the principal building, as defined in the policy.
- Including or excluding coverage for additional living expenses.
- Excluding coverage for personal property or contents as to the peril of flood.

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 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. Additionally, if the OIR finds that a flood coverage rate is excessive or unfairly discriminatory, the bill authorizes OIR to require insurers to return premium to former insureds or to credit current policyholders.

Lastly, the bill 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. Subject to the OIR's verification that the policy is NFIP-equivalent, 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.

B. SECTION DIRECTORY:

Section 1. Amends s. 163.3178, F.S., relating to coastal management.

Section 2. Creates s. 472.0366, F.S., relating to elevation certificates; requirements for surveyors or mappers.

Section 3. Amends s. 627.715, F.S., relating to flood insurance.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None reported by the OIR.[46]

2. Expenditures:

   None reported by the OIR.[47]

[46] Office of Insurance Regulation, Agency Analysis of 2015 House Bill 895, p. 4 (Mar. 4, 2015).
[47] Id.

The bill requires surveyors and mappers to complete and timely submit elevation certificates to the DEM. The DEM notes that it currently does not have staff or a system to collect, maintain, and administer the elevation certificates.[48]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill encourages more private insurers to provide coverage for flood loss, consumers may ultimately benefit from increased competition.

D. FISCAL COMMENTS:

None.

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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Insurance & Banking Subcommittee considered a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS made multiple changes, as follows:

- Removed a provision from the bill that required components for inclusion in the coastal management element of local government comprehensive plans.

[48] Division of Emergency Management, Agency Analysis of 2015 House Bill 895, pp. 2 and 4 (Mar. 9, 2015).

- Removed a provision from the bill that required licensed surveyors and mappers to complete elevation certificates in accordance with procedures developed by the Division of Emergency Management.
- Removed a provision from the bill that allowed insurers to offer flood coverage only for the outstanding mortgage on the property.
- Removed a provision from the bill that allowed dwelling loss to be adjusted only on the basis of the actual cash value of the property.
- Removed a provision of the bill that required an agent to offer a flood insurance quote for a residence located within a Special Flood Hazard Area designated by the Federal Emergency Management Agency.
- Added a provision to the bill that allowed OIR to require insurers to return premium to affected insureds if the office determined that a rate was excessive or unfairly discriminatory.
- Added a provision that an insurer's advertisement of its policy coverage as being equal or exceeding coverage offered by the NFIP may only occur if OIR confirms that statement's veracity.
- Added a provision to the bill that an insurer or agent who knowingly misrepresents that a flood insurance policy is certified commits an unfair or deceptive act.

On April 14, 2015, the Regulatory Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The adopted amendment made the following changes:

- Added a provision to require components for inclusion in the coastal management element of local government comprehensive plans.
- Added a provision to require surveyors and mappers to complete elevation certificates in accordance with procedures developed by the Division of Emergency Management.
- Added a provision to allow insurers to offer flexible flood coverage only for the outstanding mortgage on the property.
- Added a provision to allow dwelling loss to be adjusted only on the basis of the actual cash value of the property.
- Amended a provision for OIR to require insurers to return premium to affected former insureds but permits credits to current policyholders if the office determines that a rate was excessive or unfairly discriminatory.
- Removed a requirement that flexible flood insurance must be acceptable to the mortgage lender if such policy is intended to satisfy a mortgage requirement.

The staff analysis is drafted to reflect the committee substitute as passed by the Regulatory Affairs Committee.