

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7065      PCB EDTS 14-02      Division of Emergency Management  
**SPONSOR(S):** Economic Affairs Committee; Economic Development & Tourism Subcommittee, Eagle  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee	12 Y, 0 N	Duncan	West
1) Economic Affairs Committee	15 Y, 0 N, As CS	Duncan	Creamer

### SUMMARY ANALYSIS

CS/HB 7065 amends the Bert J. Harris, Jr., Private Property Rights Protection Act to provide that no cause of action may be predicated upon an act of a governmental entity if such act is to implement a Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the purpose of participating in the National Flood Insurance Program (NFIP). There is an exception to this provision if a governmental entity's action incorrectly applies any aspect of the FIRM to a property.

The Emergency Management Assistance Compact (EMAC) is an agreement entered into by the 50 states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions to provide mutual assistance to manage an emergency or disaster declared by the governor of the affected state.

The Division of Emergency Management (DEM) has received numerous requests through EMAC to assist states responding to manmade or natural disasters. There are times when DEM employees work in a state in which the travel and meal costs are greater than the rate authorized for reimbursement. Current law does not permit state employees traveling under EMAC to receive travel reimbursement based on the amount agreed upon by the requesting state and DEM.

The bill provides that the travel expense reimbursement provisions under s. 112.061, F.S., do not apply to a state employee traveling under EMAC when such expenses are reimbursed by the state in need of assistance based on the amount agreed upon in an interstate mutual aid request for assistance.

The bill does not have a fiscal impact on state or local government revenues.

The bill provides an effective date of July 1, 2014.

### FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7065a.EAC

DATE: 4/14/2014

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Private Property Rights

In 1995, the Bert J. Harris, Jr., Private Property Rights Protection Act (Act) was enacted by the Legislature to provide a new cause of action for private property owners whose property has been “inordinately burdened”<sup>1</sup> by state and local government action that may not rise to the level of a “taking” under the State or Federal Constitution.<sup>2</sup> The inordinate burden applies to an existing use of real property or a vested right to a specific use.<sup>3</sup>

The Act provides that actions of the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority are not subject to the Act.<sup>4</sup>

##### National Flood Insurance Program

The National Flood Insurance Program (NFIP) is a federal program created by Congress with the passage of the National Flood Insurance Act of 1968.<sup>5</sup> The NFIP was created to mitigate future flood losses nationwide through sound, community-enforced building and zoning ordinances and to provide access to affordable, federally backed flood insurance protection for property owners. The NFIP is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods.<sup>6</sup>

Community participation in the NFIP is voluntary (although some states require NFIP participation as part of their floodplain management program). Each identified flood-prone community must assess its flood hazard and determine whether flood insurance and floodplain management would benefit the community’s residents and economy.<sup>7</sup>

Participation in the NFIP is based on an agreement between local communities and the federal government that states that if a community will adopt and enforce a floodplain management ordinance to reduce future flood risks to new construction in Special Flood Hazard Areas, the federal government will make flood insurance available within the community as a financial protection against flood losses.<sup>8</sup> FEMA identifies flood hazard areas throughout the United States and its territories. Areas of flood hazard are commonly identified on an official map of a community, referred to as a Flood Insurance Rate Map (FIRM).<sup>9</sup>

##### Florida Division of Emergency Management

Florida’s Division of Emergency Management (DEM) is administratively housed within the Executive Office of the Governor.<sup>10</sup> DEM is responsible for all professional, technical, and administrative support

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<sup>1</sup> See s. 70.001(3)(e), F.S.

<sup>2</sup> Section 70.001(1) and (9), F.S.

<sup>3</sup> Section 70.001(2) and (3), F.S.

<sup>4</sup> Section 70.001(3)(c), F.S.

<sup>5</sup> Florida Emergency Management Act, National Flood Insurance Program – Answers to Questions About the NFIP, FEMA F-084/March 2011, at 1, <http://www.fema.gov/library/viewRecord.do?id=1404> (last visited April 11, 2014).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2.

<sup>10</sup> Section 14.2016, F.S. DEM is a separate budget entity, as provided in the General Appropriations Act and is required to prepare and submit a budget amendment in accordance with Ch. 216, F.S. *Id.*

functions necessary to carry out its responsibilities. The Director of DEM is appointed by, and serves at the pleasure of, the Governor and is the head of DEM for all purposes. DEM is tasked with administering programs to rapidly apply all available aid to communities stricken by an emergency and serves as a liaison with federal agencies and other public and private agencies.<sup>11</sup>

The State Emergency Management Act (Act)<sup>12</sup> establishes the powers of DEM. It tasks DEM with maintaining a comprehensive statewide program of emergency management efforts that includes coordinating efforts with the Federal Government, local governments, other state agencies, school boards, and private agencies that have a role in emergency management.<sup>13</sup> The statewide program of emergency management includes, but is not limited to:

- preparation of a comprehensive statewide emergency management plan;
- adopting standards and requirements for county emergency management plans;
- assisting political subdivisions in preparing and maintaining emergency management plans;
- ascertaining the requirements for equipment and supplies for use in an emergency;
- instituting statewide public awareness programs;
- coordinating federal, state, and local emergency management activities in advance of an emergency; and
- using and employing the property, services, and resources within the state in accordance with the Act.<sup>14</sup>

#### State Floodplain Management

The State Floodplain Management Office (Office) is housed in DEM's Bureau of Mitigation and is the state coordinating agency for the NFIP. The Office assists local governments to manage development in their floodplains and monitors these efforts to assure compliance with the NFIP. The Office also coordinates and/or collaborates on the following activities statewide:

- map modernization and FEMA Risk MAP priorities;
- integration of flood-resistant standards into the Florida Building Code;
- coordination with federal flood mitigation grant programs;
- integration of floodplain management concepts and tasks into local mitigation strategies (developed by each of the 67 Florida counties);
- floodplain management and flooding issues pertaining to the State's Enhanced Hazard Mitigation Plan and planning process;
- state agency management of state-owned facilities in SFHAs;
- training of local floodplain management officials in partnership with the Florida Floodplain Managers Association;
- local floodplain management challenges and opportunities;
- coordination with the Florida Dam Safety Program; and
- partnerships with federal, state and local organizations pertinent to floodplain management.

#### Emergency Management Assistance Compact (EMAC)

In 1996, a joint resolution of the U.S. Congress granted consent for EMAC.<sup>15</sup> That same year, the Florida Legislature authorized the state's participation in EMAC,<sup>16</sup> an agreement entered into by 50

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<sup>11</sup> *Id.*

<sup>12</sup> Sections 252.31 – 252.60, F.S.

<sup>13</sup> Section 252.35(1), F.S.

<sup>14</sup> Section 252.35, F.S.

<sup>15</sup> Public Law 104-321 – Oct. 19, 1996.

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states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions. The purpose of EMAC is to provide mutual assistance between states entering into the compact in managing an emergency or disaster declared by the governor of the affected state. The emergency may arise from a natural or manmade disaster, technological hazard, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack.

### The EMAC Process<sup>17</sup>

1. Governor declares a state of emergency due to a natural or man-made disaster/emergency.
2. Affected state assesses resource needs and identifies shortfalls for which assistance will be requested.
3. State requests resources from EMAC member states through the state emergency management agencies.
4. State emergency management personnel and local resource providers work together to identify available resources and estimated mission costs.
5. The requesting and assisting states execute the EMAC Request for Assistance Form, which is called the REQ-A.<sup>18</sup>
6. Personnel deploying under EMAC are given a Mission Order Authorization Form which outlines the mission, helpful information, and guidance.
7. Resources are sent to the requesting state from the assisting state.
8. When the mission is completed, resources return to the home state.
9. Deployed personnel provide receipts/records and work with the home state to develop and review reimbursement packages.
10. Reimbursement package is sent to the requesting state.
11. The requesting state reimburses the assisting state.

A properly executed REQ-A authorizes the EMAC mission and constitutes a contract between two states. Upon accepting resources offered by another EMAC member state, the requesting state is financially obligated to reimburse the assisting states for expenses incurred in performance of the EMAC mission. Self-dispatched resources that deploy without state authorization are not recognized under EMAC and are not eligible for reimbursement.<sup>19</sup>

Reimbursement under EMAC is not dependent upon the receipt of disaster relief funds that are available through the Federal Emergency Management Agency (FEMA) after the president declares a major disaster or emergency. The requesting state may seek funds from FEMA or any other sources but its obligation under EMAC to pay for services rendered are not contingent upon the receipt of federal funds.<sup>20</sup>

### DEM Deployment - EMAC

DEM has received numerous requests through EMAC to assist states responding to manmade or natural disasters. There are times when DEM employees work in a state in which the travel and meal costs are greater than the rate authorized by Florida law. Current law does not permit state employees traveling on an EMAC mission to receive travel reimbursement based on the amount agreed upon by

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<sup>16</sup> Chapter 96-244, L.O.F.

<sup>17</sup> Emergency Management Assistance Compact, Training & Education, Education Publications, [Being Deployed Under EMAC? What You Need To Know](#), July 2013, p. 3, [2013 EMAC Deployment Brochure – July 2013.pdf](#).

<sup>18</sup> The REQ-A is the official form used by states to request, offer, and accept assistance through EMAC. It is also the basis for reimbursement. [The Emergency Management Assistance Compact](#), EMAC Overview 9-2011.pptx, Library Documents Docs ID #2646, Slide 35, *available at* [http://www.nemaweb.org/index.php?option=com\\_pollybrowser&Itemid=201](http://www.nemaweb.org/index.php?option=com_pollybrowser&Itemid=201)

<sup>19</sup> National Emergency Management Association, [Section III. Reimbursement](#), NEMA Library Documents Doc ID#2492, *available at* [http://www.nemaweb.org/index.php?option=com\\_pollydoc&format=raw&view=doc&id=2492](http://www.nemaweb.org/index.php?option=com_pollydoc&format=raw&view=doc&id=2492).

<sup>20</sup> *Id.*

the requesting state and DEM. Below is a list of missions in which DEM staff was deployed to provide assistance under EMAC from 2010-2013.<sup>21</sup>

MISSION	NUMBER DEPLOYED	LOCATION	EVENT
<b>2013</b>			
Hazard mitigation grant experts	2	Colorado	Flood
Public information specialist to assist with operations JFO	2	Alaska	Flood
State Volunteer Agency Liaison	1	Alaska	Flood
<b>2012</b>			
Law enforcement strike Teams	28	New Jersey	Sandy
Region IV Support Team to assist in staffing EOC.	10	New York	Sandy
Donations Management Coordinator	1	New Jersey	Sandy
Personnel able to support NYC EOC	14	New York	Sandy
Donations Coordinators	1	New York	Sandy
Governor's Office of Volunteerism	1	New Jersey	Sandy
Finance personnel to assist NYS EOC	1	New York	Sandy
Field operations (door to door)	2	New York	Sandy
Request for assistance with mass care/feeding	2	Maryland	Sandy
<b>2011</b>			
Need for mitigation officer	2	Vermont	Irene
Request ESF 6 support	1	New Jersey	Irene
Donations Manager	1	New York	Tropical Storm Lee
Request EOC support team	17	New York	Irene
Mitigation personnel	3	Tennessee	Flood
Cadaver Dog Team	7	Alabama	Tornados
Communication teams	2	Alabama	Tornados
Volunteer donations coordinator	1	Missouri	Tornados
Volunteer donations coordinator	1	Alabama	Tornados
PIO Request	2	Alabama	Tornados
Individual Assistance Personnel	5	Mississippi	Severe weather
<b>2010</b>			
Air Craft Crew Chiefs for oil spill	15	Louisiana	Deep Water Horizon
National Guard	20	Louisiana	Deep Water Horizon

### Party State Responsibilities

Each member state (party state) of the EMAC program is directed to compose procedural plans and programs for interstate cooperation in the performance of the required responsibilities.<sup>22</sup> The authorized representative of a party state may request verbally or in writing the assistance of another party state by contacting the authorized representative of that state. Verbal requests must be followed by a written request within 90 days of the verbal request. The provisions of the agreement only apply

<sup>21</sup> Florida Division of Emergency Management, Email to House Economic Development & Tourism Subcommittee staff, Dec. 10, 2013. Email on file.

<sup>22</sup> Section 252.924(1), F.S.

to requests for assistance made by and to authorized representatives. Requests must provide the following information:<sup>23</sup>

- a description of the emergency service function for which the support is needed, such as fire services, law enforcement, emergency medical transportation, communications, public works and engineering, building code inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;
- the amount and type of personnel, equipment, materials, and supplies needed, and a reasonable estimate of the length of time the resources will be needed; and
- the specific place and time for staging of the assisting party's response and a point of contact at that location.

Certain EMAC provisions require frequent consultation with free exchange of information between state officials who have assigned emergency management responsibilities, other appropriate representatives of the party states with affected jurisdictions, and the U.S. Government.<sup>24</sup>

### Reimbursement

A party state that provides aid to another state through an EMAC mission must be reimbursed by the party state receiving the aid for any loss or damage or expense incurred in the operation of any equipment or services provided in answering a request for aid. However, any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost. Party states are authorized to enter into supplementary agreements establishing a different allocation of costs among those states.<sup>25</sup>

### State Travel Law

The Legislature has standardized travel reimbursement rates, procedures, and limitations, with certain justifiable exceptions and exemptions, applicable to all public officers, employees, and authorized persons whose travel is authorized and paid for by a public agency.<sup>26</sup> All travel must be authorized by the head of the agency, or his or her designated representative, from whose funds the travel is paid.<sup>27</sup> State law establishes three categories of travel:<sup>28</sup>

- Class A Travel – continuous travel of 24 hours or more away from official headquarters.<sup>29</sup>
- Class B Travel – continuous travel of less than 24 hours which involves overnight absence from official headquarters
- Class C Travel – travel for short or day trips where the traveler is not away from his or her official headquarters overnight.

Class A and Class B travel includes any assignment on official business outside of regular office hours and away from regular places of employment when it is considered reasonable and necessary to stay overnight and for which travel expenses are approved.<sup>30</sup>

The state is required to allow for subsistence for public employees engaged in Class A or Class B Travel and provided two travel reimbursement options:<sup>31</sup>

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<sup>23</sup> Section 252.924(2), F.S.

<sup>24</sup> Section 252.924(3), F.S.

<sup>25</sup> Section 252.929, F.S.

<sup>26</sup> Section 112.061(1), F.S.

<sup>27</sup> Section 112.061(3), F.S. The funds appropriated to each state agency for travel by state employees must be limited to travel activities that are critical to each state agency's mission. Funds may not be used to pay for travel by state employees to foreign countries, other states, conferences, staff-training activities, or other administrative functions unless the agency head has approved in writing that such activities are critical to the agency's mission. This section does not apply to travel for law enforcement purposes, military purposes, emergency management activities, or public health activities. Section 46, ch. 2013-41, L.O.F.

<sup>28</sup> Section 112.061(k)-(m), F.S.

<sup>29</sup> See s. 112.061(4), F.S.

<sup>30</sup> Section 112.061(5)(a), F.S.

- \$80 per diem; or
- If actual expenses exceed \$80, the state will pay a maximum of \$36 (\$6 for breakfast, \$11 for lunch, and \$19 for dinner) in addition to the actual expenses for lodging at a single-occupancy rate supported by paid bills.

### **Effect of Proposed Changes**

The bill amends the Bert J. Harris, Jr., Private Property Rights Protection Act to provide that a cause of action does not exist with respect to an administrative action taken or an ordinance adopted by a governmental entity if such action or ordinance is for the purpose of implementing a FIRM issued by FEMA for the purpose of participating in the NFIP. However, this provision's protection of a governmental entity's action does not apply if the administrative action or ordinance incorrectly applies any aspect of the FIRM to a property such as, but not limited to, incorrectly assessing the elevation of a property.

The bill provides that the travel expense reimbursement provisions under s. 112.061, F.S., do not apply to a state employee traveling on an EMAC mission when such expenses are reimbursed based on the amount agreed upon in an interstate mutual aid request for assistance.

#### **B. SECTION DIRECTORY:**

Section 1: Creates s. 70.001(14), F.S., relating to private property rights protection, to provide that a cause of action does not exist for administrative actions taken or ordinances adopted by a governmental entity such as a county or municipality, to implement a FIRM issued by the FEMA if such action or ordinance is for the purpose of participating in the NFIP. Establishes when the protection granted pursuant to this provision does not apply.

Section 2: Amends s. 252.921, F.S., relating to the short title of the Emergency Management Assistance Compact, to identify the statutory sections that govern the EMAC.

Section 3: Creates s. s. 252.9335, F.S., relating to expense reimbursement under the EMAC, to provide that expense reimbursement provisions under s. 112.061, F.S., do not apply to an employee traveling under the EMAC when such expenses are reimbursed based on the amount agreed upon in an interstate mutual aid request for assistance.

Section 4: Provides an effective date of July 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

Party states requesting the state's assistance in the form of staff and/or other resources in response to a manmade or natural disaster are obligated to reimburse the assisting state whether or not the requesting state receives federal funds.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

#### Economic Development & Tourism Subcommittee

On February 19, 2014, the Economic Development & Tourism Subcommittee adopted 2 amendments and reported the bill favorably.

Amendment 1 removes sections 1 and 2 of the bill authorizing a statewide registry of persons with special needs to be maintained by DEM.

Amendment 2 removes section 5 of the bill, requiring nurse registries to assist persons in need of assistance and sheltering during evacuations in registering with DEM, rather than the appropriate local emergency management agency.

The analysis has been updated to reflect the amendments adopted by the Economic Development & Tourism Subcommittee.

## Economic Affairs Committee

On April 11, 2014, the Economic Affairs Committee adopted an amendment and passed the bill as a committee substitute. The amendment provides that a cause of action does not exist for administrative actions taken or ordinances adopted by a governmental entity if such action or ordinance is for the purpose of implementing a Flood Insurance Rate Map (FIRM) issued by FEMA for the purpose of participating in the National Flood Insurance Program (NFIP). However, this provision's protection of a governmental entity's action does not apply if the administrative action or ordinance incorrectly applies any aspect of the FIRM to a property such as, but not limited to, incorrectly assessing the elevation of the property.

The analysis has been updated to reflect the committee substitute as passed by the Economic Affairs Committee.