HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 879 Flood Insurance
SPONSOR(S): Regulatory Affairs Committee; Insurance & Banking Subcommittee; Hooper and others
TIED BILLS: HB 7159 **IDEN./SIM. BILLS:** CS/CS/CS/SB 542

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee	15 Y, 0 N, As CS	Callaway	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**.** Under BW-12, policyholders with subsidized flood policies for non-primary residences, businesses, and severe repetitive loss properties have a phased in rate increase of 25 percent a year until full-risk rates are achieved. 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. Thirteen percent of Florida NFIP policies (268,500 policies) have subsidized rates and are impacted by the rate increases required by BW-12. In March 2014, federal legislation was enacted to moderate some of the rate increases resulting from BW-12.

The bill creates laws governing the sale of insurance policies, contracts, or endorsements providing flood coverage. The laws created only apply to personal lines residential coverage for flood written by insurers outside of the NFIP. The bill allows insurers to write four types of flood insurance: standard, preferred, customized, or supplemental flood insurance. Standard flood insurance provides the same coverage as standard flood insurance under the NFIP. Preferred flood insurance provides additional coverage than standard NFIP coverage in three areas: the definition of "flood," additional living expenses, and replacement cost for personal property. Customized flood insurance provides additional coverage than standard NFIP coverage, but the additional coverage provided is not limited to only three areas like preferred flood insurance. Supplemental flood insurance covers items typically excluded from flood insurance. The bill allows insurers to develop rates for flood coverage two ways: use the rate after filing with and approval by the OIR or until October 1, 2019, use the rate without filing with or approval by the OIR. The Florida Commission on Hurricane Loss Methodology (Commission) is required to adopt, by July 1, 2017, actuarial methods, principles, standards, models, or output ranges for flood loss to be used in setting rates for personal lines residential flood coverage.

Until July 1, 2017, the bill allows primary flood coverage for personal lines residential property to be written by a surplus lines insurer without the agent obtaining three declinations for insurance from Florida licensed flood insurers. The bill requires insurers taking policies out of the NFIP to notify the consumer that if the policy returns to the NFIP, a full–risk rate could be charged. The bill also puts additional regulatory requirements on insurers who want to write flood insurance.

It is anticipated that the implementation of the bill will result in additional insurers offering flood coverage in the private market which may increase competition in the marketplace and provide consumers with more coverage options. However, the rate for the coverage is unknown.

The bill has a fiscal impact on the Florida Commission on Hurricane Loss Methodology of approximately $350,000 to develop standards for review of flood models. The Commission's cost related to the bill will be funded from the Florida Hurricane Catastrophe Fund with the other administrative operating costs of the commission. The bill has an indeterminate fiscal impact on the Department of Financial Services (see fiscal section).

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

National Flood Insurance Program (NFIP)

The National Flood Insurance Program (NFIP or program) is a federal program created in 1968 to offer federally-subsidized flood insurance to property owners and to promote land-use controls in floodplains. The Federal Emergency Management Agency (FEMA) administers the NFIP. If a community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains, the federal government will make flood insurance available within the community.[1] Community participation in the NFIP is voluntary. As of February 17, 2014, Florida has 462 communities participating in the NFIP and 13 communities not participating.[2]

In 2012, nationwide, the NFIP provided flood insurance coverage for 5.6 million properties and insured more than $1 trillion in assets.[3] About $3.6 billion was paid to the program in total premium in 2012.

Under the program, the NFIP does not charge risk-based premiums (full-risk rate) for all properties. Flood policies on buildings constructed on or before December 31, 1974 or before the effective date of the initial flood insurance rate map for the community, whichever is later, receive subsidized rates for flood insurance.[4] Approximately 20 percent of the policies in the NFIP have subsidized rates. The remaining 80 percent have full-risk rates.

Federal Requirements to Obtain Flood Insurance

In 1973 the U.S. Congress passed the Flood Disaster Protection Act.[5] 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 1 in 4 chance of flooding during a 30-year mortgage.

The National Flood Insurance Reform Act of 1994[6] (1994 Reform Act) required federal financial regulatory agencies[7] to revise their flood insurance regulations. The 1994 Reform Act 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.[8] Under the 1994 Reform Act, lending institutions regulated by federal agencies cannot offer 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.[9] 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.

For property located outside Special Flood Hazard Areas, lenders on their own initiative may require flood insurance to be purchased to protect their investment.

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[1] *National Flood Insurance Program, Program Description*, dated August 1, 2002, prepared by FEMA. https://www.fema.gov/media-library/assets/documents/1150?id=1480 (last viewed December 26, 2013).

[2] List of participating communities for Florida and nationwide. http://www.fema.gov/national-flood-insurance-program/national-flood-insurance-program-community-status-book (last viewed February 19, 2014).

[3] All 2012 NFIP statistics are available at http://www.fema.gov/statistics-calendar-year (last viewed December 23, 2013).

[4] *National Flood Insurance Program, Program Description*, dated August 1, 2002, prepared by FEMA. https://www.fema.gov/media-library/assets/documents/1150?id=1480 (last viewed December 26, 2013).

[5] http://www.fema.gov/media-library-data/20130726-1545-20490-9247/frm_acts.pdf (last viewed January 23, 2014).

[6] 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). http://www.fema.gov/media-library/assets/documents/7281?id=2217 (last viewed January 23, 2013).

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

[8] *FDIC Compliance Manual*, V – 6.1. http://www.fdic.gov/regulations/compliance/manual/index.html (last viewed January 23, 2014).

[9] *FDIC Compliance Manual*, V – 6.1. http://www.fdic.gov/regulations/compliance/manual/index.html (last viewed January 23, 2014).

Standard NFIP Flood Insurance Policy

The standard flood insurance policy dwelling form offered by the NFIP[10] is a single peril flood policy that pays for direct physical damage to the insured residential property up to the replacement cost[11] (RCV) or actual cash value (ACV) or the policy limit.[12] The maximum coverage limit for a NFIP standard residential flood insurance policy is $250,000.[13] The NFIP also offers up to $100,000 in personal property (contents) coverage for residential property, which is always paid at ACV.[14]

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.[15] 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.[16]

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,[17] 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.[18]

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 <u>before</u> the effective date of the first flood insurance rate map[19] for a community, the minimum deductible[20] is:

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[10] 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 January 23, 2014)..

[11] 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.

[12] *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 January 23, 2014).

[13] *National Flood Insurance Program Flood Insurance Manual*, RATE 1, Federal Emergency Management Agency (Revised October 2013) http://www.fema.gov/media-library/assets/documents/34745 (last viewed February 19, 2014).

[14] *National Flood Insurance Program Flood Insurance Manual*, RATE 1, Federal Emergency Management Agency (Revised October 2013) http://www.fema.gov/media-library/assets/documents/34745 (last viewed February 19, 2014).

[15] *FDIC Compliance Manual*, V – 6.8. http://www.fdic.gov/regulations/compliance/manual/index.html (last viewed January 23, 2014); www.fema.gov/pdf/nfip/.../06condo.pdf. Residential condominium buildings can be insured up to RCV, but those not insured to 80% of replacement cost will have reduced claim payments.

[16] *Reducing Damage from Localized Flooding: A Guide for Communities*, 11-7. http://www.fema.gov/media-library/assets/documents/1012 (last viewed January 23, 2014).

[17] 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.

[18] 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 January 23, 2014).

[19] 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 January 23, 2014); *National Flood Insurance Program Flood Insurance Manual*, RATE 16, Federal Emergency Management Agency (Revised October 2013), http://www.fema.gov/media-library/assets/documents/34745 (last viewed February 19, 2014).

[20] 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 February 19, 2014).

- $1,000 if the property is located in certain flood zones.[21]
- $2,000 if the property is located in other flood zones.[22]

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]

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, 1,211 of the over 21,000 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 insurance premiums due to their community's CRS participation. Community CRS participation percentage nationwide is six 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.[25]

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. Property owners in that community receive a 45 percent flood insurance discount.[26]

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

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[21] Flood zones B, C, X, A99, and D. Flood hazard areas or flood zones identified on the Flood Insurance Rate Map are identified as a Special Flood Hazard Area (SFHA). SFHA are defined as the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. The 1-percent annual chance flood is also referred to as the base flood or 100-year flood. SFHAs are labeled as Zone A, Zone AO, Zone AH, Zones A1-A30, Zone AE, Zone A99, Zone AR, Zone AR/AE, Zone AR/AO, Zone AR/A1-A30, Zone AR/A, Zone V, Zone VE, and Zones V1-V30. Moderate flood hazard areas, labeled Zone B or Zone X are also shown on the FIRM, and are the areas between the limits of the base flood and the 0.2-percent-annual-chance (or 500-year) flood. The areas of minimal flood hazard, which are the areas outside the SFHA and higher than the elevation of the 0.2-percent-annual-chance flood, are labeled Zone C or Zone X. See http://www.fema.gov/floodplain-management/flood-zones and https://msc.fema.gov/webapp/wcs/stores/servlet/info?storeId=10001&catalogId=10001&langId=-1&content=floodZones&title=FEMA%2520Flood%2520Zone%2520Designations (last viewed February 20, 2014) for more information on flood zones.

[22] Flood zones A, AO, AH, A1-A30, AE, V1-V30, VE, V, AR, AR/AE, AR/AH, AR/AO, AR/A1-A30, AR/A.

[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 February 19, 2014).

[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 February 19, 2014). Deductibles for non-residential flood policies can increase to $50,000 for building and $50,000 for contents coverage.

[25] Information obtained from the Florida Division of Emergency Management on file with the Insurance & Banking Subcommittee. Further information detailing Florida community participation in CRS is available at http://www.fema.gov/media-library/assets/documents/27808?id=6202 (last viewed on February 19, 2014). 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.

[26] *Community Rating System Fact Sheet*, Federal Emergency Management Agency, November 8, 2012. http://www.fema.gov/media-library/assets/documents/9998 (last viewed February 19, 2014).

regulations, flood damage reduction, and flood preparedness.[27] The *National Flood Insurance Program Community Rating System Coordinator's Manual*[28] specifies the creditable activities and the maximum number of points that can be earned for the activity. 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[29] 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.[30] Florida has 12 Class 10 communities and property owners in these 12 communities receive no flood insurance discount under CRS. According to the Florida Division of Emergency Management, Florida saves over $191.6 million annually on insurance premiums due to the CRS.[31]

The Biggert-Waters Flood Insurance Reform Act of 2012

The NFIP remained financially solvent until the 2005 hurricane season when flood losses from Hurricanes Katrina, Rita, and Wilma caused the program to borrow $21 billion from the U.S. Treasury. In addition, flood losses from Superstorm Sandy in 2012 increased the program's deficit. Although Congress enacted several extensions of the program after the 2005 hurricane season, major reform of the NFIP was not enacted until the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12 or Reform Act). The Reform Act, passed by Congress on June 29, 2012 and signed into law by President Obama on July 6, 2012, reauthorized the NFIP for five years (through September 30, 2017) and made significant reforms to make the program more financially and structurally sound.

One of the biggest areas of reform provided by BW-12 is increased rates charged by the NFIP for flood insurance, starting in 2013.[32] However, the rate increases provided in BW-12 will primarily affect only the 20 percent of flood insurance policyholders paying subsidized rates. Thus, 80 percent of policyholders will not likely be affected unless there is a triggering event such as a policy lapse, purchase of a new policy, or sale of the property. But, twenty percent annual rate increases associated with remapping could affect these policyholders, as discussed below.

Policyholders with subsidized flood policies for non-primary residences, businesses, and severe repetitive loss properties have a phased in rate increase of 25 percent a year under BW-12 until full-risk rates are achieved. However, starting October 1, 2013, some NFIP policies that were subsidized moved directly to full-risk rates (i.e., without a phased in rate increase). Subsidized rate policies first in effect on or after July 6, 2012, (the date BW-12 was signed by the President) moved to full-risk rates at policy renewal after October 1, 2013. Subsidized rate policies on homes purchased on or after July 6, 2012 moved to full-risk rates. In addition, lapsed subsidized rate policies that were reinstated on or after October 4, 2012, moved to full-risk rates at policy renewal after October 1, 2013. Thus, in these three instances, flood insurance premiums could dramatically increase from the premium that has historically been paid on the property.

The Reform Act also requires most NFIP policyholders to pay a 5 percent assessment on their policy to create a reserve fund for catastrophic losses.[33] Additional changes to premium rates, including those

[27] Credits are awarded for each creditable activity. A community must earn a minimum of 500 points to qualify as a Class 9 community and earn a 5% premium reduction. A community that earns 4,500 points or more qualifies as a Class 1 community and earns a 45% premium reduction. http://www.fema.gov/national-flood-insurance-program-community-rating-system (last viewed February 19, 2014).

[28] *Coordinator's Manual*. http://www.fema.gov/media-library/assets/documents/8768?id=2434 (last viewed February 19, 2014).

[29] *Community Rating System Fact Sheet*, Federal Emergency Management Agency, November 8, 2012. http://www.fema.gov/media-library/assets/documents/9998 (last viewed February 19, 2014).

[30] Based on 2012 data. http://www.fema.gov/media-library/assets/documents/27808?id=6202 (last viewed February 19, 2014).

[31] Information received from the Florida Division of Emergency Management on file with the Insurance & Banking Subcommittee.

[32] Rate increase information obtained from the brochure "Changing Risks Changing Rates" published by FEMA on October 2, 2013. http://www.fema.gov/media-library/assets/documents/84512 (last viewed December 26, 2013).

[33] 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.

paid by the 80 percent of NFIP policyholders with non-subsidized rates, can occur upon remapping. Some flood maps used by FEMA have not been updated since the 1980's. Rate changes due to remapping are not implemented until late 2014 and are phased in over a five year period at a rate of 20 percent per year until full-risk rates are charged. Current law limits rate increases due to remapping to 10 percent per year, so BW-12 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 Response to Biggert-Waters Flood Insurance Reform Act
Flood insurance rate increases of up to 20 percent per year due to remapping, which were to be implemented in late 2014, have been delayed by Congress. The 2014 federal omnibus spending bill, which was signed by President Obama on January 17, 2014, contains a provision preventing use of any funds contained in the spending bill to be used to implement, carry out, administer, or enforce the remapping requirements in BW-12.[34] Accordingly, FEMA is prevented from spending funds on remapping for flood insurance purposes through September 31, 2014, the end of the 2014 fiscal year. Even if Congress restores funding for the planning and development of remapping required by BW-12 for the next fiscal year, it will likely take an additional 12-18 months after the funding is restored for the rate increases associated with remapping to take effect.[35] According to the Florida Division of Emergency Management, 31 of the 67 counties in Florida are planning to remap and 36 counties do not plan to remap.[36] Thus, the rate increase delay should apply to flood insurance policies in those Florida counties planning to remap.

In addition, on March 21, 2014, President Obama signed into law the Homeowner Flood Insurance Affordability Act of 2014 (the 2014 Act or the 2014 legislation).[37] This legislation repeals and modifies certain provisions of BW-12. It also moderates some of the flood insurance rate increases allowed under BW-12 by implementing caps on increases for some flood policies issued through the NFIP.

In general, under the 2014 legislation, flood insurance rate increases can be no more than 15 percent a year within a single property class, and no more than 18 percent per year per policy.[38] For property not currently at a full-risk rate, a minimum increase of 5 percent 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.[39] The 2014 legislation requires refunds to homeowners who had rate increases in excess of the caps due to BW-12.[40] FEMA is instructed in the 2014 Act to "strive to minimize the number of policies with annual premiums that exceed one percent of the total coverage provided by the policy," but is not required to do so.[41]

The rate caps in the 2014 Act apply to properties with rate increases under BW-12 due to remapping.[42] However, the 2014 Act does not change the 25 percent per year rate increases authorized by BW-12 on non-primary homes, businesses, and severe repetitive loss properties.

The 2014 Act repeals some of the provisions of BW-12 that made property with subsidized rates move immediately to full-risk rate with a triggering event.[43] For example, a sale of a home with a subsidized flood rate after July 6, 2012, will no longer require the new owner to pay full-risk rate; the new

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[34] Sec 572, Pub. L. 113-76. http://beta.congress.gov/bill/113th-congress/house-bill/3547 (last viewed January 24, 2014).
[35] Memorandum for Write Your Own (WYO) Principal Coordinators and the National Flood Insurance Program (NFIP) Servicing Agent dated February 5, 2014, issued by the FEMA, on file with the Insurance & Banking Subcommittee. See also, Simpson, Andrew. "Flood Insurance Premium Hikes from New Maps Could be Delayed until 2015." *Insurance Journal* 10 February 2014. http://www.insurancejournal.com/news/national/2014/02/10/319954.htm. (last viewed February 14, 2014).
[36] Meeting materials presented by Florida Division of Emergency Management at Senate Banking and Insurance Committee meeting on October 8, 2013. http://flsenate.gov/Committees/Show/BI/ (last viewed January 29, 2014).
[37] Homeowner Flood Insurance Affordability Act of 2014, H.R. 3370, 113th Cong. (2014) (Pub. L. No. 113-89).
[38] *Id.* at section 5.
[39] *Id.* at section 5.
[40] *Id.* at section 3. Although refunds are required, it will likely be months before policyholders entitled to refunds receive them from FEMA, through the NFIP. The 2014 Act requires refunds only after FEMA issues rate tables to implement the 2014 Act and FEMA is given eight months to finalize new rate tables. In the interim, policyholders must keep paying the increased rates caused by BW-12.
[41] *Id.* at section 7.
[42] *Id.* at sections 4 and 6.
[43] *Id.* at section 3.

homeowner can keep the subsidized rate, but rate increases in accordance with rate caps established by the 2014 legislation will apply. Property that had to be insured at a full-risk rate because it was not insured by the NFIP as of July 6, 2012, can now receive a subsidized rate, with future premium increases subject to the caps. Some properties that had to move to full-risk rates due to lapses in flood insurance will receive a subsidized rate under the 2014 legislation, with future premium increases subject to the caps.

The 2014 flood legislation also applies a surcharge of $25 per policy for all NFIP subsidized flood policies on primary residences until the policy is at a full-risk rate.[44] The surcharge is $250 per policy for all NFIP subsidized flood policies on non-primary residences and businesses until the policy is at a full-risk rate.[45]

The legislation allows an optional NFIP flood insurance deductible in various amounts up to $10,000, rather than $5,000, for residential property.[46] Under the legislation, structures that are detached from the primary residential structure, and not used as a residence, do not have to be covered by flood insurance unless the mortgage lender requires the structure to be covered.[47]

Flood Insurance in Florida from the NFIP

Florida has just over 2 million policies in the NFIP, representing 37 percent of the total policies in the program.[48] Eighty seven percent of the 2 million Florida policies (1.78 million policies) have nonsubsidized rates, so will not be subject to the 25 percent annual rate increases under BW-12. These policies, however, may see routine annual rate increases and rate increases of up to 20 percent per year due to re-mapping after FEMA is allowed to spend funds on remapping.

Florida has more subsidized flood policies than any other state.[49] Thirteen percent of Florida NFIP policies (268,500 policies) have subsidized rates and are impacted by BW-12. The impact on these policies is as follows:[50]

- 50,500 secondary residences, businesses, or severe repetitive loss properties will have a 25 percent per year rate increase until full-risk rate is implemented.[51]
- 103,000 primary residences will have no immediate rate change under BW-12, but will lose their subsidized rate if the property is sold (full-risk rate charged to the next owner), the policy lapses, the property suffers severe and repeated flood losses or a new policy is purchased.
- 115,000 policies insuring condominiums or non-condominium multifamily properties will have no rate change until FEMA develops guidelines for removing the subsidy on these properties.

Pinellas County has more subsidized policies than any other Florida county. Thirty five percent of the flood policies in Pinellas County (50,255 out of 141,764 policies) are subsidized. Miami-Dade County ranks second in terms of the number of subsidized policies, with 47,442 out of 366,376 policies, or 13 percent of its policies, being subsidized.

Additionally, currently Florida pays more in premium to the NFIP than it receives in claim payments. From 1978-2008, for Florida policies, the NFIP collected $3.60 in premium for every $1 paid in claims.[52] Other states, such as Louisiana and Texas, pay less in premium than they receive in claim payments.

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[44] *Id.* at section 8.
[45] *Id.* at section 8.
[46] *Id.* at section 12.
[47] *Id.* at section 13.
[48] 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.
[49] http://www.arcgis.com/home/webmap/viewer.html?webmap=e0208985e8e64d44bca999325254ff5b&extent=-106.6909,33.1708,-76.9399,43.9898 (last viewed December 26, 2013).
[50] The numbers are approximations.
[51] Rate increases for secondary residences were effective January 1, 2013 and for businesses and severe repetitive loss properties on October 1, 2013.
[52] 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 U.S. National Flood Insurance Program (NFIP)." opim.wharton.upenn.edu/risk/library/WRCib2011b-nfip-who-pays.pdf (last viewed December 23, 2013).

Flood Insurance in Florida outside of the NFIP

According to the Office of Insurance Regulation (OIR), there are currently six Florida-licensed insurance companies writing flood insurance outside of the NFIP, ten insurers writing excess flood coverage (insurance over the coverage limit of NFIP), and one surplus lines insurer writing flood insurance.[53] Some of these insurers, however, write only a limited number of flood policies or only certain types of flood policies, such as for high value homes.

On October 28, 2013, Florida's Insurance Commissioner issued an Informational Memorandum to all property insurers relating to flood insurance.[54] Although current law allows insurers to write primary flood insurance, because it is currently written so infrequently, the Memorandum provided suggestions and guidance relating to flood insurance forms and rates to facilitate the regulatory review and approval process for insurers wanting to start writing flood insurance.

Effect of Proposed Changes

The bill creates laws governing the sale of insurance policies, contracts, or endorsements providing flood coverage. Because current law allows insurers to write flood insurance, but does not contain provisions specific to this type of insurance, the bill creates specific laws for flood insurance and also provides that the flood insurance laws created by the bill supersede any other conflicting law in the Florida Insurance Code.[55]

The laws for flood insurance created by the bill only apply to personal lines residential coverage for flood written by insurers outside of the NFIP. Flood coverage outside of the NFIP written as commercial lines residential and commercial lines nonresidential coverage is not governed by the bill. Likewise, excess flood coverage is not governed by the bill. In addition, the bill specifically prohibits Citizens Property Insurance Corporation[56] (Citizens) from writing flood insurance and provides the Florida Hurricane Catastrophe Fund will not pay for flood losses, which is consistent with current law governing the Fund.[57]

Flood Insurance Coverage

The bill allows insurers providing personal lines residential coverage for flood outside of the NFIP to write four types of flood insurance:

1. Standard flood insurance.
2. Preferred flood insurance.
3. Customized flood insurance.
4. Supplemental flood insurance.

Standard flood insurance under the bill provides the same coverage as standard flood insurance under the NFIP. Thus, standard flood insurance created by the bill has the same coverage limits, building and contents deductibles, RCV and ACV loss payment parameters, and cost of compliance coverage as a standard flood policy issued under the NFIP and outlined previously in the analysis. The definition of "flood" used in the standard flood policy created by the bill is also the same definition that is used in the NFIP, so both standard policies will cover the same losses.

Preferred flood insurance under the bill, however, provides additional coverage than standard NFIP coverage in three areas: the definition of "flood," additional living expenses, and replacement cost for personal property. The preferred policy created by the bill has an expanded definition of "flood" so that losses from water intrusion originating outside a structure that are not considered a flood loss under a standard flood policy under the NFIP or the bill are considered a covered flood loss under the preferred policy created by the bill.

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[53] A list of these insurers is available at http://www.floir.com/Sections/PandC/FloodInsurance/FloodInsuranceWritersFL.aspx (last viewed February 20, 2014).

[54] http://www.floir.com/Sections/PandC/FloodInsurance/FloodInsuranceResources.aspx (last viewed February 20, 2014).

[55] The Florida Insurance Code is chapters 624-632, chapters 634-636, chapters 641-642, chapter 648, and chapter 651. (s. 624.01, F.S.)

[56] Citizens Property Insurance Corporation is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market in Florida. It is not a private insurance company, but is the largest property insurer in Florida.

[57] See s. 215.555(2)(d), (3), and (4)(b), F.S.

In addition, additional living expenses[58] are required to be covered under the preferred policy created by the bill. These expenses are not covered under an NFIP standard flood policy or a standard flood policy created by the bill. Finally, the preferred flood policy under the bill pays replacement cost for personal property or contents losses caused by a flood, whereas a standard flood policy under the NFIP or the bill pays only actual cash value for such losses.

Customized flood insurance must provide more coverage than standard flood insurance, but unlike preferred flood insurance, no specific coverages are required by customized flood insurance.

Supplemental flood insurance provides coverage that supplements the coverage provided by flood insurance from the NFIP or standard or preferred flood insurance under the bill. Thus, this insurance will provide flood insurance coverage for items typically excluded from coverage under a flood insurance policy issued by the NFIP or from licensed insurers providing flood insurance under the bill.

Flood Insurance Rates

The bill allows insurers providing personal lines residential coverage for flood to develop rates for the coverage two ways:

1. Use the rate after filing with and approval by the OIR.
2. Use the rate without filing with or approval by the OIR.

Insurers can only use the second way to develop flood insurance rates until October 1, 2019. After this date, all insurers must use the first option which requires a full rate review and approval by the OIR before a flood insurance rate can be used. The allowable rating methods apply to both the standard and preferred flood insurance coverage created by the bill.

Use the Rate after Filing with and Approval by the OIR

Rates for property, casualty, and surety insurance cannot be excessive, inadequate, or unfairly discriminatory.[59] When an insurer submits a rate to the OIR for a full rate review, the OIR uses statutory factors and rate standards found in s. 627.062(2), F.S., to determine if a rate is excessive, inadequate, or unfairly discriminatory. If a flood insurer opts to file its flood insurance rates with the OIR for approval before using the rates, the rates cannot be excessive, inadequate, or unfairly discriminatory. To make this determination, the OIR will use the same statutory factors and rate standards that it uses for rates for property, casualty, and surety insurance.

Use the Rate without Filing with or Approval by the OIR

Although the bill allows insurers to use a rate for flood coverage without filing it or obtaining approval of it from the OIR, a rate set this way still cannot be excessive, inadequate, or unfairly discriminatory, the same rate requirement for rates filed with and approved by the OIR. The insurer writing the flood insurance is responsible for ensuring the rate charged meets this requirement.

The bill allows the OIR to examine an insurer's documentation supporting a rate to verify the rate meets the requirement with the insurer paying for the examination. During an examination, the OIR uses the rate factors and standards in current law that apply to property, casualty and surety insurance rates filed with the OIR to determine whether the flood insurance rate charged is excessive, inadequate, or unfairly discriminatory. Additionally, the insurer must notify the OIR within 30 days of a rate change for flood insurance that was originally set by this method. Setting flood rates using this method is similar to what is allowed in current law for rates for certain types of commercial lines risks under s. 627.062(3)(d), F.S.

Use of Flood Models to Set Flood Rates

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[58] Although not defined in the law, additional living expenses are extra charges covered by an insurance policy (usually a property insurance policy) above the policyholder's customary living expenses and are paid by the insurer when the policyholder is temporarily displaced from their place of residence due to damage to the residence by a covered peril making the residence temporarily uninhabitable. The coverage limit for additional living expenses is usually a stated percentage of the dwelling limit for a homeowner's policy or personal property limit for a tenant's policy.

[59] s. 627.062(1), F.S.

To support a flood insurance rate for those filed with and approved by the OIR before use, the bill allows flood losses to be projected by a flood model found acceptable or reliable by the Florida Commission on Hurricane Loss Projection (Commission). For flood rates not filed with or approved by the OIR, if the OIR examines the rate after use, it will consider whether the insurer's flood rates were set based on flood losses projected by a Commission approved model.

In 1995 the Legislature established the Commission to serve as an independent body within the State Board of Administration.[60] The Commission is comprised of 12 members. Members include experts in insurance finance, statistics, computer system design, structural engineering, and meteorology who are full-time faculty members in the State University System, three actuaries, the Executive Director of Citizens, the senior employee responsible for Florida Hurricane Catastrophe Fund operations, the Insurance Consumer Advocate, and the Director of Emergency Management. The Commission sets standards for hurricane loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting property insurance rates to determine whether they meet the Commission's standards.

The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Only hurricane loss models or methods the Commission deems accurate or reliable can be used by insurers in rate filings to estimate hurricane losses used to set property insurance rates.

The duties of the Commission are expanded by the bill to require the Commission to adopt, by July 1, 2017, actuarial methods, principles, standards, models, or output ranges for flood loss to be used in setting rates for personal lines residential flood coverage. This is consistent with the Commission's duties relating to hurricane loss. The bill further requires the OIR to consider projected flood losses from models or methods found to be acceptable or reliable by the Commission or a straight average of the model results for a rate filing that includes flood coverage.

There are two primary differences between current law for rate filings for hurricane loss and the proposed law for flood loss. First, current law does not allow insurers to average hurricane model results, and the bill allows insurers to use a straight average of flood model results. Second, the current law requires hurricane losses used to support a rate filing to be estimated by a Commission approved hurricane model, whereas the bill allows, but does not require, flood losses to be estimated by a Commission approved flood model. Thus, insurers are given the flexibility to use other means to estimate flood losses, especially since the Commission has not yet approved any flood models.

Consumer Notification

The bill requires an agent taking a flood insurance policy out of the NFIP and putting it into the admitted market to obtain an acknowledgment, signed by the property owner, notifying the owner that if flood insurance is later obtained from the NFIP, a full risk rate for flood insurance could be charged by the NFIP.

Flood Insurance in the Surplus Lines Market

Until July 1, 2017, the bill allows primary flood coverage for personal lines residential property to be written by a surplus lines insurer without the agent obtaining three declinations for insurance from Florida licensed flood insurers.

The bill also requires an agent taking a flood insurance policy out of the NFIP and putting it into the surplus lines market to obtain an acknowledgment, signed by the property owner, notifying the owner that if flood insurance is later obtained from the NFIP, a full risk rate for flood insurance could be charged by the NFIP. This notification requirement is the same for flood insurance policies taken out of the NFIP and put into the admitted market.

Additional Insurer Regulatory Requirements Relating to Flood Insurance

[60] The Commission is created in s. 627.0628, F.S. This statute also provides the composition and duties of the Commission.

The bill puts additional regulatory requirements on insurers wanting to write primary flood insurance in Florida for personal lines residential property. The insurer must notify the OIR at least 30 days before it begins to write flood insurance and file a plan of operation and financial projection with the OIR relating to its flood insurance writings. However, insurers having at least $35 million in surplus and that are writing flood insurance as an endorsement to a property insurance policy, instead of a stand-alone policy, do not have to file a plan of operation or financial projection with the OIR. These insurers must still notify the OIR 30 days before they begin to write flood insurance.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.062, F.S., relating rate standards.

Section 2: Amends s. 627.0628, F.S., relating to Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.

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

Section 4: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the Department of Financial Services (DFS), there could be a positive, yet indeterminate impact to revenues deposited into the Insurance Regulatory Trust Fund within the DFS. Provisions of the bill will allow disputed flood claims issued by property insurers to be eligible for participation in the residential property mediation program administered by the Division of Consumer Services (Division). The current cost for mediation is $350, and is borne by the insurer. The mediation fee is divided between the mediator and the Division; $300 is paid to the mediator and a $50 administrative fee is paid to the Division. However, the DFS indicates that a revenue projection cannot be made at this time due to uncertain number of requests for potential flood mediation that could be submitted in the upcoming fiscal years.[61]

2. Expenditures:

The bill requires the Florida Commission on Hurricane Loss Methodology (Commission) to develop standards for review of flood models. This entails additional Commission meetings, research, workshops, consultants, and possible meetings at each flood modeler’s location, costing an estimated $350,000. The Commission is funded by the Florida Hurricane Catastrophe Fund (Fund) so the additional costs will be paid from the Fund. The Fund is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers. Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must buy specified reinsurance coverage from the Fund and pays a premium to the fund for the reinsurance purchased. The Fund does not receive any state funding (from the General Revenue Fund or other state trust funds) and receives its funding from the reinsurance premium it charges insurers and investment income from investing the reinsurance premium received. According to the Commission, the estimated 2014 year-end balance of the Fund will be approximately $11 billion.[62]

The bill has an indeterminate fiscal impact on expenditures of the Department of Financial Services[63]. According to the DFS, it is presumed that the bill will allow disputed flood claims issued

[61] Department of Financial Services bill analysis (March 12, 2014) on file with the Government Operations Appropriations Subcommittee.
[62] Email correspondence with the Florida Commission on Hurricane Loss Methodology (March 12, 2014) on file with the Government Operations Appropriations Subcommittee.
[63] Department of Financial Services bill analysis (February 14, 2014) on file with the Government Operations Appropriations Subcommittee.

by property insurers to be eligible for participation in the residential property mediation program[64] administered by the Division of Consumer Services. The DFS indicates a potential fiscal impact on the Division of Consumer Services if requests are forthcoming by insurers or the insured for participation in the residential property mediation program. However, the exact amount of workload is unknown at this time due to the uncertainty of the number of potential requests for mediation as a result of the bill. Based on current staffing within the Division of Consumer Services any workload associated with the bill can likely be absorbed within current resources until the exact workload, if any, can be identified by the DFS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is anticipated that the implementation of the bill will result in additional insurers offering flood coverage in the private market which may increase competition in the marketplace and provide consumers with more coverage options. It is unknown what the rate for the flood coverage created by the bill will be.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The 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 in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute.

[64] s. 627.7015, F.S.

The proposed committee substitute made the following major changes to the filed version of the bill:

- Maintained the same number of members of the Commission as under current law instead of increasing membership by two members with conforming changes.
- Extended the date by which the Commission must adopt information relating to flood loss models.
- Removed language requiring a flood deductible based on a stated dollar amount or percentage of coverage.
- Removed language requiring flood losses to be adjusted on an actual cash value or replacement cost basis.
- Removed language allowing a flood insurance policy to be for an agreed-upon amount.
- Removed authority for insurers to rate flood insurance on an individually rated risk basis or consent to rate basis.
- Allowed pooled insurer surplus or intercompany reinsurance to be used in determining whether an insurer must file a plan of operation and financial projections about flood insurance writings with the OIR.
- Prohibited Citizens from writing flood insurance.
- Prohibited the Florida Hurricane Catastrophe Fund from reimbursing insurers for flood losses.

On April 10, 2014, the Regulatory Affairs Committee considered the bill, adopted five amendments, and reported the bill favorably with a committee substitute. The amendments adopted:

- Changed the date the Commission must adopt flood models for use in rate filings for flood insurance from July 1, 2016 to July 1, 2017.
- Authorized insurers to offer customized flood insurance and specified this type of flood insurance must provide broader coverage than standard flood insurance.
- Authorized insurers to offer supplemental flood insurance and outlined what supplemental flood insurance covers.
- Until July 1, 2017, allowed a surplus lines agent to place flood insurance with a surplus lines insurer without obtaining three declinations of coverage from Florida licensed insurers.
- Clarified the regulation of flood insurance provided by the bill applies only to flood insurance written by Florida licensed insurers and not surplus lines insurers.

The staff analysis was updated to reflect the committee substitute.