

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Transportation, Tourism, and Economic Development

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BILL: CS/SB 584

INTRODUCER: Community Affairs Committee and Senator Brandes

SUBJECT: Peril of Flood

DATE: January 12, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Gusky</u>	<u>Miller</u>	<u>ATD</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 584 authorizes the Division of Emergency Management (Division) to administer a matching grant program, subject to appropriation, that provides up to \$50 million annually in technical and financial assistance grants to local governments to implement certain flood risk reduction policies and projects. The Division is also authorized to contract with third parties to store elevation certificates and maintain a centralized database allowing the public to access elevation certificates.

Flood mitigation projects are added to the list of eligible projects under the Florida Communities Trust (FCT) program. The bill includes language indicating the proper purpose of the flood mitigation projects under FCT project guidelines. The bill adds to the conditions of grants and loans that land acquired for flood mitigation projects must be maintained strictly for flood mitigation purposes or conservation.

Finally, the bill extends the informational filing of rates for flood coverage from October 1, 2019 to October 1, 2025, exempting insurers from the usual rate filing process. The bill also extends the expiration date of a provision which allows a surplus lines agent to obtain flood coverage through a surplus lines insurer without making a diligent effort to seek coverage from other authorized insurers from July 1, 2017 to July 1, 2025.

The bill has potential fiscal impacts to the private and government sectors. See Section V.

The bill has an effective date of July 1, 2016.

## II. Present Situation:

### Flood Issues

Flood is defined in the standard National Flood Insurance Program (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.<sup>1</sup>

### *National Flood Insurance Program's Community Rating System*

The Community Rating System (CRS) of the NFIP recognizes floodplain management and outreach activities performed by communities that exceed the NFIP minimum standards.<sup>2</sup> CRS is a voluntary program that recognizes these efforts by reducing the cost of flood insurance premiums by 5 to 45 percent for flood insurance policies in communities that participate in the CRS.<sup>3</sup> The CRS recognizes 19 creditable activities organized under four categories: Public Information, Mapping and Regulations, Flood Damage Reduction, and Warning and Response.<sup>4</sup>

Communities can choose to undertake any or all of these activities.<sup>5</sup> Based on the number of credit points received for each activity, a community is ranked in one of ten CRS classes with Class 1 requiring the most credit points and giving the largest premium reduction.<sup>6</sup> Most communities regularly implement activities that will earn credit under the CRS.<sup>7</sup> In Florida, communities are automatically awarded CRS credit points for various activities due to the Florida Building Code, water quality, local drainage protection regulations, and additional credits based on water management district requirements.<sup>8</sup>

The Florida Division of Emergency Management (FDEM) is moving forward with the Florida CRS Initiative, designed to assist participating communities to better their CRS rating; and to

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<sup>1</sup> Federal Emergency Management Agency, *Definitions*, <http://www.fema.gov/national-flood-insurance-program/definitions> (last visited December 14, 2015).

<sup>2</sup> Florida Disaster, *What is CRS?*, <http://www.floridadisaster.org/mitigation/CRS/> (last visited November 18, 2015).

<sup>3</sup> *Id.*

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

<sup>5</sup> *Id.*

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

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

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

enlist as many eligible non-participating communities as possible.<sup>9</sup> Currently, the CRS is the only means for residents to receive a flood insurance premium reduction.<sup>10</sup>

## **Flood Insurance in Florida**

### ***NFIP Flood Insurance in Florida***

The NFIP was created by the passage of the National Flood Insurance Act of 1968.<sup>11</sup> The NFIP is administered by Federal Emergency Management Agency (FEMA) and provides property owners located in flood-prone areas the ability to purchase flood insurance protection from the federal government. Flood insurance through the NFIP is only available in communities that adopt and enforce federal floodplain management criteria.<sup>12</sup> Over two million NFIP policies are written on Florida properties, with approximately 268,500 policies receiving subsidized rates.<sup>13</sup> This accounts for approximately 37 percent of the total policies written by the NFIP.

Historically, properties insured in Florida have paid approximately \$3.60 in premium for NFIP flood coverage for every \$1 received in claims payments.<sup>14</sup> The rate impact of the Biggert-Waters Act on subsidized policies in Florida is approximately as follows:

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

### ***Private Market Flood Insurance in Florida***

Authorized insurers may sell five different types of flood insurance policies, contracts, or endorsements:

- Standard coverage, which covers only losses from the peril of flood, as defined in paragraph (b) of s. 627.715(1), F.S. The policy must be the same as coverage offered from the NFIP regarding the definition of flood, coverage, deductibles, and loss adjustment.<sup>15</sup>

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

<sup>10</sup> *Id.*

<sup>11</sup> National Emergency Management Agency, *National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973* <http://www.fema.gov/media-library/assets/documents/7277?id=2216> (last visited November 20, 2015).

<sup>12</sup> Federal Emergency Management Agency, *National Flood Insurance Program: Program Description*, pgs. 2-4., <http://www.fema.gov/media-library/assets/documents/1150?id=1480> (last visited November 20, 2015).

<sup>13</sup> Office of Insurance Regulation, *The Biggert-Waters Flood Insurance Reform Act of 2012*, (Presentation to the Florida Senate Banking and Insurance Committee on October 8, 2013) [http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket\\_2346.pdf](http://flsenate.gov/PublishedContent/Committees/2012-2014/BI/MeetingRecords/MeetingPacket_2346.pdf) (last visited November 18, 2015).

<sup>14</sup> Wharton Center for Risk Management and Decision Processes, *Who's Paying and Who's Benefiting Most From Flood Insurance Under the NFIP? A Financial Analysis of the U.S. National Flood Insurance Program (NFIP)*, (Issue Brief, Fall 2011).

<sup>15</sup> Section 627.715(1)(a)(1.), F.S.

- 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.<sup>16</sup>
- Customized coverage, which is coverage that is broader than standard flood coverage.<sup>17</sup>
- Flexible coverage, which is defined as coverage for the peril of flood that may include water intrusion coverage and differs from standard or preferred coverage by:
  - Being in an agreed upon amount between the insurer and policyholder.
  - Including a deductible as authorized in s. 627.701, F.S.
  - Being adjusted in accordance with s. 627.7011(3), F.S., or adjusted only on the basis of the actual cash value of the property.
  - Covering only the principal building, as defined in the policy.
  - Including or excluding coverage for additional living expenses.
  - Excluding coverage for personal property or contents.<sup>18</sup>
- 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.<sup>19</sup>

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

An insurer may establish flood rates through the standard process in s. 627.062, F.S.<sup>20</sup> 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).<sup>21</sup> Specifically, the flood rate is exempt from the “file and use” and “use and file” requirements of s. 627.062(2)(a), F.S.<sup>22</sup> 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 2 years after the effective date of the rate change.<sup>23</sup> 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.<sup>24</sup>

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<sup>16</sup> Section 627.715(1)(a)(2.), F.S.

<sup>17</sup> Section 627.715(1)(a)(3.), F.S.

<sup>18</sup> Section 627.715(1)(a)(4.), F.S.

<sup>19</sup> Section 627.715(1)(a)(5.), F.S.

<sup>20</sup> Section 627.715(3)(a), F.S.

<sup>21</sup> Section 627.715(3)(b), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

Insurers that seek to write flood coverage in Florida must notify the OIR at least 30 days before doing so and file a plan of operation, financial projections, and any such revisions with the OIR.<sup>25</sup> 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.<sup>26</sup>

### **Elevation Certificates**

An elevation certificate is the certificate used to demonstrate the elevation of property which has been developed by FEMA pursuant to federal floodplain management regulation and which is completed by a surveyor and mapper.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> The elevation certificate provides a way for a community to document compliance with the community's floodplain management ordinance. Surveyors and mappers are required to submit elevation certificates to the Division within 30 days of completion.<sup>31</sup>

### **Florida Communities Trust (FCT)**

The FCT was created in 1989 as a non-lapsing revolving fund to be used by local governments and nonprofit organizations for the acquisition of community based projects, urban open spaces, parks, and greenways.<sup>32</sup> The fund is held and administered by the Florida Communities Trust, which acts as a non-regulatory agency within the Department of Environmental Protection (DEP). The governing body of the FCT is the Secretary of Environmental Protection, and four members appointed by the Governor: a former elected official of county government, a former elected official of a municipal government, a representative of a nonprofit organization, and a representative of the development industry.<sup>33</sup>

The FCT is responsible for assisting local governments in implementing local comprehensive plans and bringing plans into compliance. The FCT is also tasked with responding to development patterns that degrade natural areas, enhancing resource values, restoring urban

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<sup>25</sup> Section 627.715(5), F.S.

<sup>26</sup> Section 627.715(4), F.S.

<sup>27</sup> Section 472.0366(1)(b), F.S.

<sup>28</sup> Federal Emergency Management Agency, *National Flood Insurance Program Elevation Certificate and Instructions*, <https://www.fema.gov/media-library/assets/documents/160> (last visited November 18, 2015).

<sup>29</sup> Federal Emergency Management Agency, *National Flood Insurance Program Elevation Certificate and Instructions Form 086-0-33* (2012).

<sup>30</sup> *Id.*

<sup>31</sup> Section 472.0366(2), F.S.

<sup>32</sup> Chapter 89-175, s. 28, Laws of Fla.

<sup>33</sup> Section 380.504, F.S.

waterfronts, preserving working waterfronts, reserving land for purchase at a later date, promoting innovative land acquisition methods, and providing public access to water fronts.<sup>34</sup>

The FCT receives approximately 21 percent of Florida Forever funds each year. Emphasis is placed on funding projects in low income or otherwise disadvantaged communities. A dollar for dollar local match is required for 75 percent of these funds. The local government match can consist of federal grants or funds, private donations, or environmental mitigation funds.<sup>35</sup> The FCT was last funded in 2011.

### III. Effect of Proposed Changes:

**Section 1** creates s. 252.64, F.S., to authorize the Division to administer a matching grant program, subject to appropriation, that provides up to \$50 million annually in technical and financial assistance to local governments to implement certain flood risk reduction policies and projects consistent with: the coastal management element of a local government comprehensive plan required under s. 163.3178, F.S.; an approved local hazard mitigation plan; or an adaptation action plan. Subject to appropriation, the Division may not spend more than 8 percent of funds appropriated for the matching grant program on administration. The bill requires the Division to rank applications submitted by local governments for assistance based on certain criteria and to give priority to:

- Projects providing the greatest scoring improvement within the NFIP's CRS;
- Acquisition of flood-prone property for conversion to open space in perpetuity, or the development of natural or grey infrastructure, to reduce the risk of flooding;
- Applications submitted by local governments that have encountered a significant increase in NFIP premiums during the preceding 5 years;
- Projects that will protect the greatest number of structures from frequent flooding;
- Applications that exceed the dollar-for-dollar matching funds threshold; and
- Local governments that participate in the NFIP's CRS.

The Division is also given authority to adopt rules to administer this section, and must consult with the state land planning agency in developing ranking criteria for project selection. Recipients of grant funds may not spend more than 8 percent of those funds on administration. The Division is also required to establish a monitoring system to ensure proper expenditure of grant funds and compliance with the recipient's contract.

**Section 2** redesignates paragraphs (c) through (g) as (d) through (h) in s. 380.507(2), F.S. This section also adds a new paragraph (c), which adds flood mitigation projects to the list of purposes of the FCT. The section also amends subsection (4) to include that the FCT can acquire and dispose of real and personal property or any interest therein when necessary or appropriate to reduce flood hazards.

**Section 3** redesignates paragraphs (c) through (f) as (d) through (g) in s. 380.508(4), F.S. This section also adds a new paragraph (c) which defines the purpose of acceptable flood mitigation

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<sup>34</sup> Section 380.502, F.S.

<sup>35</sup> Section 259.105(3)(c), F.S.

projects undertaken by the FCT. The purpose of such projects should serve to lower a community's rating under the NFIP's CRS, and to:

- Acquire interests in lands designated as severe repetitive loss properties within coastal high hazard areas<sup>36</sup> which are suitable for enhancing beach and coastal access for the public, creating public parks, and providing flood control; or
- Provide technical and financial assistance to local governments to implement flood risk reduction policies and projects consistent with the coastal element of the local government comprehensive plan required under s. 163.3178, F.S., an approved local hazard mitigation plan, or an adaptation action plan.

**Section 4** amends paragraph (d) of s. 380.510(3), F.S., to refer to the new paragraph numbering in s. 380.508(4), F.S. Specifically, it redesignates a reference from s. 380.508(4)(f), F.S., to s. 380.508(4)(g), F.S. A new paragraph (f) is added to this section and states that land acquired for flood mitigation projects must be maintained strictly for flood mitigation purposes or conservation purposes. Any conveyance to a private entity must contain conditions, covenants, restrictions, or other provisions that ensure that the land will be maintained for flood mitigation or conservation purposes.

**Section 5** authorizes the Division to contract with a third party to store elevation certificates received pursuant to s. 472.0366, F.S. The Division may also contract with a third party to maintain a centralized database allowing the public to access elevation certificates and the data contained within the certificates.

**Section 6** inserts the word “flexible” into s. 627.715, F.S., as a technical change. Flexible flood insurance is already a part of the statute, but is currently missing from the introductory paragraph that lists policy types. This section extends the informational filing of rates for flood coverage from October 1, 2019 to October 1, 2025. For rates filed before this date, the insurer may also establish and use such rates in accordance with the rates, rating schedules, or rating manuals filed by the insurer with the office which allow the insurer a reasonable rate of return on flood coverage. The bill also extends the expiration date of a provision which allows a surplus lines agent to obtain flood coverage through a surplus lines insurer without making a diligent effort to seek coverage from other authorized insurers from July 1, 2017 to July 1, 2025.

**Section 7** provides an effective date of July 1, 2016.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

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<sup>36</sup> See *supra*, note 1. “Coastal High Hazard Areas” are Special Flood Hazard Areas along the coasts that have additional hazards due to wind and wave action. These areas are identified on Flood Insurance Rate Maps as zones V, V1-V30 and VE.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the implementation of the flood mitigation matching grant program results in more communities participating in NFIP's CRS program and participating communities receiving more credits in the program, there may be a reduction in consumers' flood insurance premiums ranging from 5 to 45 percent.

This bill extends the informational filing of rates for flood coverage from October 1, 2019 to October 1, 2025. While the rate filings may be submitted as informational, the Office of Insurance Regulation (OIR) does have the ability to audit any of the admitted market information rate filings to ensure that the rates are not excessive, inadequate or unfairly discriminatory.<sup>37</sup> The informational rate filings may attract insurers to the private flood market, and consumers would still be protected by the ability of OIR to audit the rates.<sup>38</sup>

The bill also extends the expiration date of a provision which allows a surplus lines agent to obtain flood coverage through a surplus lines insurer without making a diligent effort to seek coverage from other authorized insurers from July 1, 2017 to July 1, 2025. This may attract surplus lines carriers to the private flood market and allow for more private flood policies to be written.<sup>39</sup> Rates and forms for surplus lines policies are not reviewed by the OIR and therefore it is unknown whether or not the rates would be actuarially sound and the coverage comparable to the NFIP.<sup>40</sup> However, the concern may be alleviated by the fact that due to competition in the market, it is unlikely that a surplus lines company would have higher rates or lower coverage than NFIP.<sup>41</sup>

C. Government Sector Impact:

If the Legislature provides an appropriation to create the matching grant program, the Division of Emergency Management would require seven additional full-time employees including a program administrator and six project managers. The estimated cost for personnel would be \$598,716 per year for salary, benefits, travel, and expenses. An additional \$500,000 in funding for program support and contractual services would be

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<sup>37</sup> Office of Insurance Regulation, *SB 584 Agency Bill Analysis* (November 16, 2015) (on file with the Senate Subcommittee on Transportation, Tourism, and Economic Development).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*



required in the first year, of which \$150,000 would be a recurring need.<sup>42</sup> Subject to appropriation, the Division may not spend more than 8 percent of funds appropriated for the matching grant program on administration.

If the Legislature provides an appropriation to create the matching grant program, there may be a positive fiscal impact to local governments who are awarded funds to implement flood reduction policies and projects. A local government may not spend more than 8 percent of funds awarded on administration.

The bill authorizes, but does not require, the Division to contract with third parties to store elevation certificates and maintain a centralized database that allows the public to access elevation certificates. According to the Division, the fiscal impact would be dependent on the type of system required to collect the elevation certificates for use by the public,<sup>43</sup> and is indeterminate at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 252.64 of the Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 380.507, 380.508, 380.510, 472.0366, and 627.715.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on December 1, 2015:**

Clarifies that the \$50 million matching grant program cap is annual, subject to appropriation; extends the 8 percent administration expense cap to the Division, where it was previously only extended to the localities receiving grant monies.

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<sup>42</sup> Division of Emergency Management, *SB 584 Agency Bill Analysis* (November 13, 2015) (on file with the Senate Subcommittee on Transportation, Tourism, and Economic Development).

<sup>43</sup> *Id.*

B. Amendments:

None.

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

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