

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1366

INTRODUCER: Banking and Insurance Committee and Senator DiCeglie

SUBJECT: My Safe Florida Condominium Pilot Program

DATE: February 21, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Thomas</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1366 creates the My Safe Florida Condominium Pilot Program (Program) within the Department of Financial Services (DFS), to provide hurricane mitigation inspections and hurricane mitigation grants to eligible condominium associations. Implementation of the Program is subject to annual legislative appropriations. Under the Program, the DFS must provide fiscal accountability, contract management, and strategic leadership for the Program.

The bill provides to condominium associations with 15 miles of the coastline a program similar to that of the My Safe Florida Home Program (MSFH) for owners of site-built, single-family, residential properties in regards to requirements for participation, hurricane mitigation inspectors and inspections, eligibility for mitigation grants, contract management by the DFS, and required annual reports.

Unless funded, the bill has no fiscal impact on state or local governments. *See* Section V, Fiscal Impact Statement.

The bill provides an effective date of July 1, 2024.

II. Present Situation:

My Safe Florida Home Program

Background

In 2006, the Legislature created the My Safe Florida Home Program (MSFH Program) within the Department of Financial Services (DFS).¹ The MSFH Program was created with the intent to provide trained and certified inspectors to perform mitigation inspections for owners of site-built, single-family, residential properties (mitigation inspections), and mitigation grants to eligible applicants, subject to the availability of funds.² The MSFH Program was to “develop and implement a comprehensive and coordinated approach for hurricane damage mitigation...”³

From its inception to January 30, 2009, the MSFH Program received approximately 425,193 applications, performed more than 391,000 inspections and awarded 39,000 grants. From July 2007 through January 2009, MSFH Program expenditures totaled approximately \$151.9 million.⁴ Funding for the MSFH Program ceased on June 30, 2009.

2022 Renewal and Funding of the MSFH Program

In May 2022, during Special Session 2022-D, the Legislature reestablished the MSFH Program within the DFS to provide financial incentives for Florida residential property owners to obtain free home inspections which identify mitigation measures and provide mitigation grants to retrofit such properties, thereby reducing their vulnerability to hurricane damage and helping decrease the cost of residential property insurance.⁵ The Legislature appropriated \$150 million in nonrecurring funds from the General Revenue Fund for the 2022-2023 fiscal year for mitigation grants and inspections.⁶ In the Fiscal Year 2023-2024 General Appropriations Act, ch. 2023-239, Laws of Florida, the Legislature appropriated \$100 million for mitigation grants.⁷ In November 2023, during Special Session 2023-C, the Legislature appropriated an additional \$176.2 million in nonrecurring funds from the General Revenue Fund to provide mitigation grants pursuant to s. 215.5586(2), F.S., for the 2023-2024 fiscal year.⁸

Hurricane Mitigation Inspections

The MSFH Program provides licensed inspectors to perform inspections for owners of site-built, single-family, residential properties, for which a homestead exemption has been granted, to determine what mitigation measures are needed, what insurance premium discounts may be available, and what improvements to existing residential properties are needed to reduce the

¹ The Legislature initially established the MSFH Program as the Florida Comprehensive Hurricane Damage Mitigation Program (ch. 2006-12, L.O.F.); however, the name was subsequently changed in 2007 (ch. 2007-126, L.O.F.).

² Section 215.5586, F.S.

³ *Id.*

⁴ Florida Auditor General, *Department of Financial Services, My Safe Florida Home Program, Operational Audit Report No. 2010-074* (Jan. 1010), available at https://flauditor.gov/pages/pdf_files/2010-074.pdf (last visited Feb. 16, 2024).

⁵ Section 3, ch. 2022-268, Laws of Fla.

⁶ Section 4, ch. 2022-268, Laws of Fla.

⁷ Chapter 239, Laws of Fla., available at <https://laws.flrules.org/2023/239> (last visited Feb. 16, 2024).

⁸ Section 6, ch. 2023-349, Laws of Fla.

property's vulnerability to hurricane damage. A townhouse as defined in s. 481.203, F.S.,⁹ for which a homestead exemption has been granted, may qualify to receive a mitigation inspection to determine if opening protection¹⁰ mitigation would provide improvements to mitigate hurricane damage. The mitigation inspections must include, at a minimum:

- A home inspection and report that summarizes the results and identifies recommended improvements a homeowner may take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Information regarding estimated premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.¹¹

The DFS is authorized to contract with "wind certification entities" as vendors to provide such inspections. Each wind certification entity must, at a minimum, meet the following requirements:

- Use hurricane mitigation inspectors who are licensed or certified as:
 - A building inspector under s. 468.607, F.S.;
 - A general, building, or residential contractor under s. 489.111, F.S.;
 - A professional engineer under s. 471.015, F.S.;
 - A professional architect under s. 481.213, F.S.; or
 - A home inspector under s. 468.8314 and who has completed at least three hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which training must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam;
- Use hurricane mitigation inspectors who have undergone drug testing and background screening; and
- Provide a quality assurance program that includes a reinspection component.¹²

Hurricane Mitigation Grants

The homeowner eligibility requirements for the mitigation grants are:

- The homeowner must have been granted a homestead exemption on the home;
- The home must be a dwelling with an insured value of \$700,000 or less. Low-income homeowners are exempt from this requirement;
- The home must have undergone an acceptable hurricane mitigation inspection;
- The building permit for the initial construction of the home must have been made before January 1, 2008; and
- The homeowner must agree to make the home available for inspection upon completion of the mitigation project.¹³

The MSFH Program grants must be matched on the basis of one dollar provided by the applicant for two dollars provided by the state, up to a maximum state contribution of \$10,000 toward the

⁹ "Townhouse" generally means "a single-family dwelling unit not exceeding three stories in height which is constructed in a series or group of attached units with property lines separating such units." Section 481.203(16), F.S.

¹⁰ Opening protection includes windows, exterior doors, and garage doors. See s. 215.5586(2)(e), F.S.

¹¹ Section 215.5586(1)(b), F.S.

¹² Section 215.5586(1)(c), F.S.

¹³ Section 215.5586(2)(a), F.S.

actual cost of the mitigation project.¹⁴ Low-income homeowners may receive up to \$10,000 in grant funds without providing matching dollars.¹⁵

Grants may be used for the following improvements recommended by a hurricane mitigation inspection:

- Opening protection;
- Exterior doors, including garage doors;
- Reinforcing roof-to-wall connections;
- Improving the strength of roof-deck attachments; and
- Secondary water barrier for roof.

Grants for townhouses may only be used for opening protection.

Results of the MSFH Program

Between November 2022, and December 2023, the MSFH Program has provided more than 94,000 homeowners with hurricane mitigation inspections and approved more than 23,000 grant applications. Over 73 percent of those homeowners who have completed participation in the grant component of the MSFH Program have seen their homeowners insurance premiums drop or stabilize, and many are paying premiums at or below the state average. According to the DFS, upon applying to the MSFH Program, the average premium of the applicants was 55.1 percent higher than the average Florida homeowner's premium. Based upon the decrease in premium following participation, the DFS has concluded that the MSFH Program participation is comprised of higher-than-average risk homeowners, which is consistent with the goal of helping those with homes at greatest risk.

Condominiums

A condominium is a “form of ownership of real property created under ch. 718, F.S.,”¹⁶ the “Condominium Act.” Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.¹⁷ For unit owners, membership in the association is an unalienable right and required condition of unit ownership.¹⁸ There are approximately 1,529,764 condominium units in Florida operated by 27,588 associations.¹⁹

A condominium association is administered by a board of directors referred to as a “board of administration.”²⁰ The board of administration is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and

¹⁴ Section 215.5586(2)(b), F.S.

¹⁵ Section 215.5586(2)(h), F.S.

¹⁶ Section 718.103(11), F.S.

¹⁷ See s. 718.103, F.S., for the terms used in the Condominium Act.

¹⁸ *Id.*

¹⁹ Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force (Task Force Report), p. 4, available at: <https://www-media.floridabar.org/uploads/2021/10/Condominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf> (last visited February 16, 2024).

²⁰ Section 718.103(4), F.S.

are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.²¹

A condominium association is required to use its best efforts to maintain insurance for the association, the association property, the common elements, and the condominium property.²² Insurance coverage for the association must insure the condominium property as originally installed and all alterations or additions made to the condominium property.²³ Any portion of the condominium property that must be insured by the association against property loss which is damaged by an insurable event, must be reconstructed, repaired, or replaced as necessary by the association as a common expense to the association.²⁴

While the current MSFH Program provides for the inspections of, and some mitigation projects to, townhouses, Florida law does not currently provide a program for condominium owners similar to the MSFH Program.

III. Effect of Proposed Changes:

Section 1 creates s. 215.5587, F.S., to establish the My Safe Florida Condominium Pilot Program (Program) within the Department of Financial Services (DFS), and implement pursuant to appropriations.

The bill provides to condominium associations within the prescribed service area a program similar to that of the MSFH Program in regards to requirements for participation, hurricane mitigation inspectors and inspections, eligibility for mitigation grants, contract management by DFS, and required annual reports. Implementation of the Program is subject to annual legislative appropriations and is intended to provide licensed inspectors to perform inspections for and grants to eligible associations as funding allows.

The bill limits the Program to associations located in the “service area.” The “service area” is the area of the state within 15 miles inward of a coastline as defined in s. 376.031, F.S.²⁵ The bill provides that the terms “association,”²⁶ “board of administration,”²⁷ “condominium,”²⁸ “unit,”²⁹

²¹ Section 718.103(2), F.S.

²² Section 718.111(11), F.S.

²³ Section 718.111(11)(f), F.S.

²⁴ Section 718.111(11)(j), F.S.

²⁵ “‘Coastline’ means the line of mean low water along the portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters, as determined under the Convention on Territorial Seas and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606.” Section 376.031(4), F.S.

²⁶ “‘Association’ means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership. Section 718.103(3), F.S.

²⁷ “‘Board of administration’ or ‘board’ means the board of directors or other representative body which is responsible for administration of the association. Section 718.103(5), F.S.

²⁸ “‘Condominium’ means that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements. Section 718.103(12), F.S.

²⁹ “‘Unit’ means a part of the condominium property which is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in the declaration. Section 718.103(29), F.S.

and “unit owner”³⁰ have the same meaning as those terms are defined in s. 718.103, F.S. The bill provides additional definitions, as follows:

- “Association property,” means property, whether real or personal, which is owned or leased by, or dedicated by a recorded plat to, the association for the use and benefit of its members and which is located in the service area;
- “Condominium property,” means the lands, leaseholds, and personal property that are subject to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium and that are located in the service area;
- “Property” means association property and condominium property, as applicable, located in the service area; and
- “Rebuild” means property under construction to replace a structure that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority.

In order for a condominium association to apply for an inspection or a grant under the Program, the association must receive approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association. In order to apply for a grant the association must also receive approval by a unanimous vote of all unit owners within the structure or building that is the subject of the mitigation grant.

Hurricane Mitigation Inspections

Inspections of the property to determine the mitigation measures that are needed, the insurance premium discounts that may be available, and the improvements to existing properties of the association that are needed to reduce a property’s vulnerability to hurricane damage must be performed by licensed inspectors. The DFS must contract with wind certification entities to provide the inspections. Eligible wind certification entities must, at a minimum:

- Use inspectors who are licensed or certified as:
 - A building inspector under s. 468.607, F.S.;
 - A general, building, or residential contractor under s. 489.111, F.S.;
 - A professional engineer under s. 471.015, F.S.;
 - A professional architect under s. 481.213, F.S.; or
 - A home inspector under s. 468.8314, F.S., who has completed at least three hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam;
- Use inspectors who have undergone drug testing and a background screening that includes submission and processing of fingerprints; and
- Provide a quality assurance program, including a reinspection component.

Such inspections must, at a minimum, include:

- An inspection of the property, and a report that summarizes the results and identifies recommended improvements the association may take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Information regarding estimated insurance premium discounts.

³⁰ “Unit owner” or “owner of a unit” means a record owner of legal title to a condominium parcel. Section 718.103(30), F.S.

An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains. An association may apply for and receive an inspection without also applying for a grant.

Hurricane Mitigation Grants

Financial grants may be used to encourage associations to retrofit the property the association operates and maintains in order to make such property less vulnerable to hurricane damage. An application for a grant must:

- Contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains;
- Include a notarized statement from the president of the board of administration containing the name and license number of the contractor it intends to use for the mitigation project; and
- Include a notarized statement from the president of the board of administration which commits to the DFS that the association will complete the mitigation improvements. If the grant will be used to improve units, the application must also include an acknowledged statement from each unit owner who is required to provide approval for a grant.

An association may select its own contractor for the mitigation project so long as the contractor meets all qualification, certification, or licensing requirements in general law. A mitigation project must be performed by a properly licensed contractor who has secured all required local permits necessary for the project. The DFS must electronically verify that the contractor's state license number is accurate and up to date before approving a grant application.

All grants must be matched on the basis of one dollar provided by the association for two dollars provided by the state up to a maximum contribution as provided in the General Appropriations Act. An association awarded a grant must complete the entire mitigation project in order to receive the final grant award and must agree to make the property available for a final inspection once the mitigation project is finished. The association must submit a request to the DFS for a final inspection, or request an extension of time, within one year after receiving grant approval; otherwise the application is deemed abandoned and the grant money reverts back to the DFS.

When recommended by a hurricane mitigation inspection report, grants may be used for the following improvements:

- Opening protection;
- Exterior doors, including garage doors;
- Reinforcing roof-to-wall connections;
- Improving the strength of roof-deck attachments; and
- Secondary water barrier for roof.

Grants may be used for a previously inspected existing structure on the property or for a rebuild. If improvements to protect the property which complied with the current applicable building code at the time have been previously installed, the association must use a mitigation grant to install improvements that do both of the following:

- Comply with or exceed the applicable building code in effect at the time the association applied for the grant; and
- Provide more protection than the improvements that the association previously installed.

The association may not use a mitigation grant to:

- Install the same type of improvements that were previously installed; or
- Pay a deductible for a pending insurance claim for damage that is part of the property for which grant funds are being received.

This section does not create an entitlement for associations or unit owners or obligate the state in any way to fund the inspection or retrofitting of condominiums in the state.

The DFS must provide fiscal accountability, contract management, and strategic leadership for the Program. The DFS must develop a process that ensures the most efficient means to collect and verify grant applications to determine eligibility and may direct hurricane mitigation inspectors to collect and verify grant application information or use the Internet or other electronic means to collect information and determine eligibility. The DFS may contract for grant management, inspection services, contractor services, information technology, educational outreach, and auditing services. Such contracts are considered direct costs of the Program and are not subject to administrative cost limits. Such contracts must be with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and must ensure the highest accountability for use of state funds.

The DFS is required to implement a quality assurance and reinspection program that determines whether initial inspections and mitigation improvements are completed in a manner consistent with the intent of the Program. The DFS may use a valid random sampling in order to perform the quality assurance portion of the Program.

By February 1 of each year, the DFS must submit a report to the President of the Senate and the Speaker of the House of Representatives on the activities of the Program and the use of state funds. The report must include:

- The number of inspections requested;
- The number of inspections performed;
- The number of grant applications received;
- The number of grants approved and the monetary value of each grant;
- The estimated average annual amount of insurance premium discounts each association received and the total estimated annual amount of insurance premium discounts received by all associations participating in the Program; and
- The estimated average annual amount of insurance premium discounts each unit owner received as a result of the improvements to the building or structure.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Should the grant or inspection application process include detailed descriptions and pictures of the inside and outside of the condominium association's (association) property or specific units within the association's property to include private areas, points of entry and other vulnerabilities, the public availability of this information may increase the risk of criminal or harmful activity. A public records exemption may be required to protect any vulnerable information contained within the association's application for a hurricane mitigation inspection or mitigation grant. Such exemption is subject to the provisions of Article 1, s. 24(c) of the State Constitution.

Similarly, a public records exemption is contemplated for the My Safe Florida Home Program under SB 988 (2024).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

If funded, the My Safe Florida Condominium Program (Program) will provide opportunities for certain condominium associations to receive mitigation credits or premium discounts under their property insurance policies and be less exposed to risk. Hurricane mitigation inspectors and contractors may also see an increase in activity.

Wind certification entities (entities) must meet certain requirements when providing hurricane mitigation inspectors (inspectors). Along with professional licensing requirements, the inspectors are required to have undergone drug testing and a background screening as part of the qualification process. Wind certification entities or even individual mitigation inspectors may be required to pay out of pocket expenses for the required background screening and drug testing.

The cost of pre-employment drug testing varies across the state and depends on which screening panel is selected. Drug testing costs around the state range from a low of \$50 to a high of \$650.³¹

The total fiscal impact for a state and national criminal history record check is \$37.25. Of this total amount, the cost for the national portion of the criminal history record check is \$13.25 and the cost for the state portion is \$24. Vendors performing fingerprint scans may assess additional processing fees.

C. Government Sector Impact:

The bill may have a significant impact on state revenues or expenditures.

House Bill 1029, similar to SB 1366, establishes the My Safe Florida Condominium Program (Program) and specifies it will be implemented subject to funding in the General Appropriations Act (GAA). Currently HB 5001 appropriates \$25 million for grants, \$1.4 million for administrative costs, and \$600,000 for inspections and provides proviso language establishing the Program; SB 2500 does not appropriate funding to the Program. Should the Program become a Conference Committee issue, funding and proviso language would be decided under Conference rules.

If funded, the bill requires the Department of Financial Services (DFS) to implement various provisions within the bill and to submit an annual report, but does not provide an appropriation. The DFS has not provided an estimate of costs associated with implementing the Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the DFS to contract with wind certification entities (entities) to provide hurricane mitigation inspections; however, the bill does not specifically provide whether such contractors are only those inspectors who are currently authorized to conduct hurricane mitigation inspections under s. 215.5586(6), F.S.,³² subject to the procurement and contracting provisions within ch. 287, F.S., or subject to some other selection process.

VIII. Statutes Affected:

This bill creates section 215.5587 of the Florida Statutes.

³¹ CostHelper.com, Drug or Alcohol Testing Cost, *How Much Does Drug or Alcohol Testing Cost?* <https://health.costhelper.com/drug-alcohol-test.html> (last visited Feb. 16, 2024). See also, RequestATest.com, *Pre-Employment Drug Test in Tallahassee, Florida*, <https://requestatest.com/pre-employment-drug-test--tallahassee-florida-545-john-knox-rd-ste-103-32303> (last visited Feb. 16, 2024).

³² Section 215.5586(6), F.S. The DFS is required to develop and maintain as a public record a current list of hurricane mitigation inspectors authorized to conduct hurricane mitigation inspections pursuant to s. 215.5586, F.S.

IX. Additional Information:

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

CS by Banking and Insurance Committee on February 6, 2024:

The committee substitute:

- Limits the application of the Program to the area of the state within 15 miles inward of the coastline; and
- Clarifies the fingerprinting requirement to comport with a recommendation by the FDLE.

- B. **Amendments:**

None.