

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 Environment and Natural Resources

BILL: SB 1766

INTRODUCER: Senator Rodriguez

SUBJECT: Flood Damage Prevention

DATE: January 29, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Barriero</u>	<u>Rogers</u>	<u>EN</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1766, cited as the Flood Damage Prevention Act of 2024, provides that voluntary freeboard may not be used in the calculation of the maximum allowable height in the applicable zoning district for certain new and substantially improved structures. The bill provides that in all areas including coastal high-hazard areas, the maximum voluntary freeboard is 10 feet. Freeboard generally refers to elevating a building’s lowest floor above the Base Flood Elevation (BFE) and is usually expressed in terms of feet. The BFE is how high floodwater is likely to rise during a 1-percent-annual-chance flood event (“base flood”) and represents the minimum elevation of construction allowed.

The bill authorizes a local government to adopt by ordinance minimum freeboard requirements or a maximum voluntary freeboard that exceeds the requirements in the bill or the Florida Building Code.

In addition, the bill directs the Florida Building Commission to develop and adopt minimum freeboard requirements by November 1, 2024, and incorporate such requirements into the next edition of the Florida Building Code. Beginning January 2029, and every five years thereafter, the commission must review the freeboard requirements in the Florida Building Code and make recommendations to the Legislature regarding any necessary revisions to such requirements.

II. Present Situation:

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met.¹ Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.²

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Building Code, and that first edition replaced all local codes on March 1, 2002.³

The Building Code is updated every three years.⁴ The current edition of the Building Code is the eighth edition, which is referred to as the 2023 Florida Building Code.⁵

Chapter 553, part IV, F.S., is known as the Florida Building Codes Act. The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.⁶

Local governments may, not more than once every 6 months, adopt amendments to the technical provisions of the Building Code that apply solely within the jurisdiction of such government and that provide for more stringent requirements than those specified in the Building Code.⁷ A local government must determine there is a need to strengthen the requirements of the Building Code based on a review of local conditions.⁸ Such amendments may not introduce a new subject not addressed in the Building Code.⁹ Most technical amendments sunset upon adoption of the newest edition of the Building Code, unless adopted into the Building Code.¹⁰

¹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan. 17, 2024).

² *Id.*

³ *Id.*; Dep't of Business and Professional Regulation, *Building Code Information System*, available at: <https://floridabuilding.org/c/default.aspx#> (last visited Jan. 17, 2024).

⁴ See Florida Building Commission, *Florida Building Codes and Effective Dates*, available at https://www.floridabuilding.org/fbc/Publications/2023_Effective_Dates.pdf.

⁵ See Florida Building Code, *2023 Florida Building Code: 8th Edition*, available at <https://codes.iccsafe.org/content/FLBC2023P1>.

⁶ Section 553.72(1), F.S.

⁷ Section 553.73 (4)(b), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 553.73(4)(e), F.S.

The Florida Building Commission was statutorily created to implement the Building Code. The commission, which is housed within the Department of Business and Professional Regulation, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The commission reviews International Codes published by the International Code Council,¹¹ the National Electric Code, and other nationally adopted model codes during its triennial update of the Building Code.¹²

Local Enforcement of the Florida Building Code

Local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.¹³ Every local government must enforce the Building Code and issue building permits.¹⁴ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.¹⁵

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code, including certain building, electrical, plumbing, mechanical, and gas inspections.¹⁶ Construction work may not be done beyond a certain point until it passes an inspection.¹⁷

National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by the passage of the National Flood Insurance Act of 1968.¹⁸ The NFIP is administered by the Federal Emergency Management Agency (FEMA) and provides homeowners, business owners, and renters in flood-prone areas the ability to purchase flood insurance protection from the federal government.¹⁹ The general purpose of the NFIP is both to offer primary flood insurance to properties with significant flood risk and to reduce flood risk through the adoption of floodplain management standards. Participation in the NFIP is voluntary.²⁰ Within participating communities, the federal

¹¹ The International Code Council is an association that develops model codes and standards used in the design, building, and compliance process to “construct safe, sustainable, affordable and resilient structures.” International Code Council, *About the ICC*, available at <https://www.iccsafe.org/about/who-we-are/> (last visited Jan. 17, 2024).

¹² Sections 553.73 and 553.74, F.S.

¹³ Section 553.72, F.S.

¹⁴ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

¹⁵ Sections 125.56(4)(a) and 553.79(1), F.S.

¹⁶ Florida Building Code, *2023 Florida Building Code: 8th Edition*, s. 110, available at https://codes.iccsafe.org/content/FLBC2023P1/chapter-1-scope-and-administration#FLBC2023P1_Ch01_SubCh02_Sec110.

¹⁷ *Id.*

¹⁸ FEMA, *50 Years of the NFIP*, available at https://www.fema.gov/sites/default/files/2020-05/NFIP_50th_Final_8.5x11_Regional_Printable.pdf (last visited Jan. 17, 2024).

¹⁹ Benefits.gov, *National Flood Insurance Program (NFIP)*, available at <https://www.benefits.gov/benefit/435> (last visited Jan. 17, 2024).

²⁰ FEMA, *Participation in the NFIP*, <https://www.fema.gov/glossary/participation-nfip#:~:text=Participation%20in%20the%20National%20Flood%20Insurance%20Program%20%28NFIP%29,of%20intent%20to%20participate%20and%20cooperate%20with%20FEMA%3B> (last visited Mar. 21, 2023).

government makes flood insurance available throughout the community.²¹ To join, a community must:

- Complete an application;
- Adopt a resolution of intent to participate and cooperate with FEMA; and
- Adopt and submit a floodplain management ordinance that meets or exceeds the minimum NFIP criteria.²²

FEMA collaborates with participating communities to develop flood maps called Flood Insurance Rate Maps (FIRMs) that depict the community's flood risk and floodplain.²³ While FEMA is largely responsible for the creation of the FIRM, the community itself must pass the map into its local regulations in order for the map to be effective.²⁴ An area of specific focus on the FIRM is the Special Flood Hazard Area (SFHA).²⁵ The SFHA is intended to distinguish the flood risk zones that have a chance of flooding during a 1-in-100 year flood or greater frequency. This means that properties in the SFHA have a risk of 1 percent or greater risk of flooding every year²⁶ and a one-in-four chance of flooding during a 30-year mortgage.²⁷ In a community that participates in the NFIP, owners of properties in the mapped SFHA are required to purchase flood insurance as a condition of receiving a federally backed mortgage.²⁸

Key conditions of the NFIP minimum floodplain management standards include, among many other conditions, that communities:

- Require permits for development in the SFHA;
- Require elevation of the lowest floor of all new residential buildings in the SFHA to or above the Base Flood Elevation;
- Restrict development in floodways to prevent increasing the risk of flooding; and
- Require certain construction materials and methods that minimize future flood damage.²⁹

Base Flood Elevation and Freeboard

A base flood is a flood that has a one percent chance of occurring during any given year.³⁰ The Base Flood Elevation (BFE) is how high floodwater is likely to rise during a 1-percent-annual-chance flood event (base flood).³¹ BFEs are measured from a reference point called

²¹ *Id.*

²² *Id.*

²³ See Congressional Research Service, *Introduction to the National Flood Insurance Program*, 3 (2023), available at <https://crsreports.congress.gov/product/pdf/R/R44593>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, available at https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

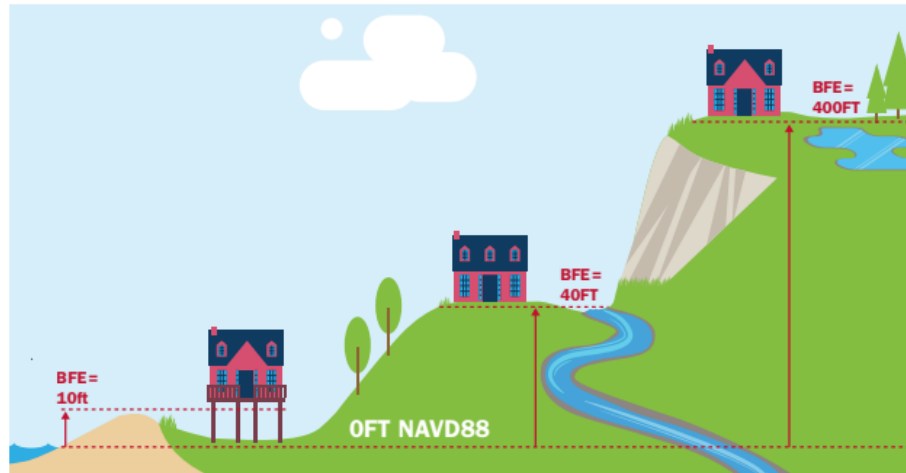
²⁸ Such lenders include federal agency lenders, such as the Department of Veterans Affairs, government-sponsored enterprises Fannie Mae, Freddie Mac, and federally regulated lending institutions, such as banks covered by the Federal Deposit Insurance Corporation (FDIC) or the Office of the Comptroller of the Currency (OCC).

²⁹ Congressional Research Service, *Introduction to the National Flood Insurance Program* (Updated Dec. 20, 2023), p. 6, available at <https://crsreports.congress.gov/product/pdf/R/R44593>.

³⁰ FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, available at https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf.

³¹ *Id.*

NAVD88, which is approximately equal to sea level, and vary widely across geographies.³² The BFE represents the minimum elevation of construction allowed by the NFIP.³³



Freeboard

Freeboard is an additional amount of height above the BFE used as a factor of safety in determining the level at which a structure's lowest floor must be elevated or floodproofed to be in accordance with state or community floodplain management regulations.³⁴ Freeboard is usually expressed in feet above flood level and helps compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed. Freeboard is not required by NFIP standards, but FEMA encourages communities to adopt at least one foot of freeboard. Freeboard results in significantly lower flood insurance rates due to lower flood risk.³⁵ Typically, two feet of freeboard will save a homeowner more than 40 percent off flood insurance through the NFIP.³⁶

The Building Code requires all buildings located in a flood hazard area to be built an additional one foot higher.³⁷ However, many Florida communities adopt requirements for additional elevation above the minimum in the Building Code, ranging from two to five feet above the BFE. Local freeboard requirements are incorporated via technical amendments to the Building

³² *Id.*

³³ See generally FEMA, *Residential Buildings with Basements*, <https://www.fema.gov/floodplain-management/manage-risk/residential-buildings-basements#:~:text=Since%201971%2C%20the%20National%20Flood%20Insurance%20Program%20%28NFIP%29,Zones%20only%29%20to%20the%20Base%20Flood%20Elevation%20%28BFE%29> (last visited Mar. 21, 2023). FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide* at 6 (depicting BFE graphic).

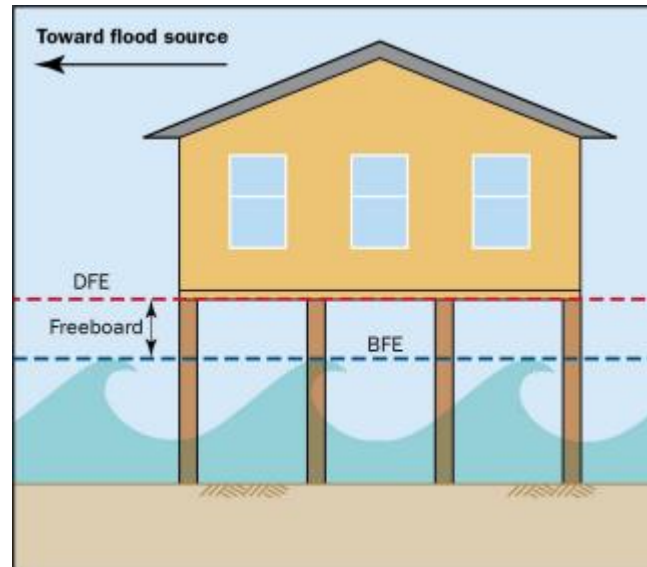
³⁴ FEMA, *Freeboard*, <https://www.fema.gov/glossary/freeboard> (last visited Jan. 17, 2024).

³⁵ *Id.*

³⁶ FEMA, *Local Government Officials - Floodplain Management Resources*, <https://www.fema.gov/floodplain-management/manage-risk/local> (last visited Jan. 24, 2024).

³⁷ Florida Building Code, *2023 Florida Building Code: Eighth Edition, Residential*, s. R322.2.1, available at https://codes.iccsafe.org/content/FLRC2023P1/chapter-3-building-planning#FLRC2023P1_Pt03_Ch03_SecR322.2.1; Florida Building Code-Building, Table 2-1 Elevation Requirements.

Code.³⁸ Florida Statutes specifically authorizes counties and municipalities to adopt administrative or technical amendment to the Building Code relating to flood resistance in order to implement the NFIP or other incentives.³⁹ Flood-related local amendments that require a design flood elevation above the BFE are not subject to sunset upon adoption of the newest edition of the Building Code.⁴⁰



Following Hurricane Ian, FEMA published a Mitigation Assessment Team Report to assess the performance of buildings and building-related damage from the hurricane.⁴¹ The report concluded, among other things, that incorporating additional freeboard into the minimum building elevation helped mitigate flood damage.⁴²

III. Effect of Proposed Changes:

Section 1 provides that this act may be cited as the “Flood Damage Prevention Act of 2024.”

Section 2 creates s. 553.845, F.S., regarding flood damage prevention. The bill includes the following findings:

- The state is vulnerable to the adverse effects of flooding resulting from the frequency and intensity of rainfall and an increase in storm surge and sea level rise. These adverse effects pose a significant risk to existing and future structures in the state.
- Public and private investments in our communities are important for economic growth, and protecting all structures from flooding is essential to maintaining resilient communities.

³⁸ Wilton Manors, FL. Ordinance No, 2020-004 § 2, 5-26-20, City of Miami Beach Flood Plain Management, Sec. 54-35.

³⁹ Section 553.73(5) F.S.

⁴⁰ *Id.* FEMA, *Designing for Flood Levels Above the Minimum Required Elevation After Hurricane Ian*, 456 (2023), available at https://www.fema.gov/sites/default/files/documents/fema_rm-hurricane-ian-mat-report-12-2023.pdf (depicting graphic of freeboard). “DFE” means Design Flood Elevation, or the minimum building elevation. *Id.* at 455.

⁴¹ FEMA, *Mitigation Assessment Team Report: Hurricane Ian in Florida*, 7 (2023), available at https://www.fema.gov/sites/default/files/documents/fema_rm-hurricane-ian-mat-report-12-2023.pdf.

⁴² *Id.* at 335, 422.

- The mitigation of property damage constitutes a valid and recognized objective of the Florida Building Code.
- It is important to develop a consistent, statewide approach to minimizing flooding in the state to mitigate property damage and encourage continued investment in our communities.
- Minimum freeboard requirements are critical to addressing the devastating effects of flooding, and delaying the adoption and implementation of such requirements constitutes a threat to the health, safety, and welfare of the state.

The bill provides that the maximum voluntary freeboard for all new construction and substantial improvements to existing construction, whether residential, commercial, industrial, or nonresidential, is ten feet including within a coastal high-hazard area. The bill defines “coastal high-hazard area” as a special flood hazard area (SFHA) along the coast, as delineated by a flood insurance rate map (FIRM) issued by the Federal Emergency Management Agency (FEMA), which has additional hazards due to wind and wave action.

The bill defines “freeboard” as the additional height, usually expressed as a factor of safety in feet, above the base flood elevation (BFE) in determining the level at which a structure’s lowest floor or the bottom of the lowest horizontal structural member must be elevated in accordance with floodplain management regulations and the Florida Building Code. If a BFE is not determined for a structure that is not located in a SFHA as designated by a FIRM issued by FEMA, the term “freeboard” means the highest adjacent grade at the foundation of a structure.

The bill defines “voluntary freeboard” as the additional height above the freeboard required by floodplain management regulations and the Florida Building Code. If freeboard is not required by floodplain management regulations and the Florida Building Code, the term “voluntary freeboard” means the additional height above the highest adjacent grade at the foundation of a structure.

The bill provides that for all new construction of a residential structure and “substantial improvements”⁴³ to an existing residential structure, including a manufactured home, or an existing commercial, industrial, or nonresidential structure, voluntary freeboard may not be used in the calculation of the “maximum allowable height” for the structure. The bill defines “maximum allowable height” as the maximum height allowed for a structure in the applicable zoning district.

The bill authorizes a local government to adopt by ordinance a minimum freeboard requirement or a maximum voluntary freeboard that exceeds the requirements in the Florida Building Code or established in the bill.

The bill directs the Florida Building Commission to develop and adopt by rule minimum freeboard requirements by November 1, 2024, which must take immediate effect, and incorporate such requirements into the next edition of the Florida Building Code. The bill also

⁴³ “Substantial improvement” means any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of the improvement or repair of the structure to its pre-damage condition equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. *See* section 161.54(12) F.S.

provides that, beginning in January 2029, and every five years thereafter, the commission must review the freeboard requirements in the Florida Building Code and make recommendations to the Legislature regarding any necessary revisions to such requirements.

Section 3 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Building owners who incorporate voluntary freeboard may receive flood insurance discounts and reduce their exposure to flood events.

C. Government Sector Impact:

The Florida Building Commission may incur costs to develop and adopt new freeboard requirements. However, these costs can likely be absorbed with existing resources.

VI. Technical Deficiencies:

The bill's requirements for maximum voluntary freeboard are the same for coastal high-hazard areas and all other areas. Therefore, staff recommends combining the provisions in subsections (3)(a) and (b).

VII. Related Issues:

The bill provides that, for all new construction of residential structures and substantial improvements to certain existing structures, voluntary freeboard may not be used in the calculation of the maximum allowable height for the structure. However, this provision would be inapplicable to new commercial, industrial, and nonresidential structures.

VIII. Statutes Affected:

This bill creates section 553.845 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.