

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 Community Affairs

BILL: CS/SB 1326

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Brandes

SUBJECT: Emergency Management

DATE: March 31, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hoagland</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1326 amends the Bert J. Harris, Jr., Private Property Rights Protection Act to provide that no cause of action may be predicated upon an act of a governmental entity if such act is for the purpose of participating in the National Flood Insurance Program (NFIP). However, there is an exception to this provision if a governmental entity's action incorrectly applies any aspect of the Flood Insurance Map to a property.

The bill also directs the Division of Emergency Management (DEM) to contract for an analysis of Florida's flood risk as it relates to flood insurance premiums and underwriting capacity. The DEM must maintain and make the risk analysis available to the public. The DEM is also directed to provide assistance to local governments participating in the NFIP Community Rating System (CRS).

Further, the bill provides an exception to state employee travel reimbursement limits when an employee is traveling under the Emergency Management Assistance Compact.

The bill appropriates \$127,368 to the DEM from recurring General Revenue funds for assistance to local governments participating in the CRS. The bill also appropriates \$500,000 in nonrecurring General Revenue funds for fiscal year 2014-2015 to the DEM to complete the state flood risk analysis required by the bill.

II. Present Situation:

Bert J. Harris, Jr., Private Property Rights Protection Act

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

The Act provides that actions of the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority are not subject to the Act.³ For example, the delegation of authority from the United States Environmental Protection Agency to the Florida Department of Environmental Protection to issue National Pollutant Discharge Elimination System permits under Clean Water Act on its behalf would not be subject to the Act.⁴

National Flood Insurance Program

The NFIP was created by the passage of the National Flood Insurance Act of 1968.⁵ The NFIP is administered by the 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.⁶

In 1973⁷ the U.S. Congress passed the Flood Disaster Protection Act. The 1973 Act required property owners with mortgages issued by federally regulated or insured lenders to purchase flood insurance if their properties are located in Special Flood Hazard Areas. 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.⁸

¹ Section 70.001(1) and (9), F.S.

² Section 70.001(2)-(3)(a), F.S.

³ Section 70.001(3)(c), F.S.

⁴ Thomas Ruppert, Esq., Coastal Planning Specialist, Florida Sea Grant College Program and Michael Candiotti, J.D., *Analysis and 2011 Update on the Bert J. Harris, Jr., Private Property Rights Protection Act*, available at https://www.flseagrant.org/wp-content/uploads/2012/01/BertHarrisAct_analysis_FSG-web_1.11.pdf (last visited March 12, 2014) (citing The Clean Water Act, 33 U.S.C. § 1342(b) (2010); see Ronald L. Weaver, *1997 Update on the Bert Harris Private Property Protection Act*, 9 FLA. BAR. J 70, n. 3 (1997)).

⁵ <http://www.fema.gov/media-library/assets/documents/7277?id=2216> (last visited March 17, 2014).

⁶ *National Flood Insurance Program: Program Description*, pgs. 2-4., Federal Emergency Management Agency/Federal Insurance and Mitigation Administration (August 1, 2002) <http://www.fema.gov/media-library/assets/documents/1150?id=1480> (last visited March 17, 2014).

⁷ http://www.fema.gov/media-library-data/20130726-1545-20490-9247/frm_acts.pdf (last visited March 17, 2014).

⁸ http://www.floodsmart.gov/floodsmart/pages/flooding_flood_risks/defining_flood_risks.jsp (last visited March 17, 2014).

The National Flood Insurance Reform Act of 1994⁹ (1994 Reform Act) required federal financial regulatory agencies¹⁰ 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 U.S. Department of Veterans Affairs. Lending institutions regulated by federal agencies are prohibited from offering loans on properties located in a Special Flood Hazard Area (SFHA) of a community participating in the NFIP unless the property is covered by flood insurance.¹¹ 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 amount¹² available under the NFIP, whichever is less.

Flood Insurance Rate Maps

A Flood Insurance Rate Map (FIRM), is the most common map produced by FEMA. At a minimum, flood maps show flood risk zones and their boundaries, and may also show floodways and base flood elevations.¹³

National Flood Insurance Program Community Rating System

The NFIP Community Rating System (CRS) is a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum NFIP requirements. In participating communities, flood insurance premium rates are discounted to reflect reduced flood risk resulting from community actions meeting the three goals of the CRS:

- Reduce flood damage to insurable property;
- Strengthen and support the insurance aspects of the NFIP; and
- Encourage a comprehensive approach to floodplain management.¹⁴

Communities in the CRS are rated on a scale from 10 to 1. A community that does not apply for the CRS or that does not maintain the minimum number of credit points would be considered a Class 10 community. Most communities enter the program at a Class 9 rating, which entitles residents in SFHAs to a 5 percent discount on their flood insurance premiums. As a community implements additional mitigation activities, its residents become eligible for increased NFIP policy premium discounts. Each CRS class improvement produces a 5 percent greater discount

⁹ 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).

¹⁰ Office of Comptroller of Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Farm Credit Administration and Federal Reserve.

¹¹ *FDIC Compliance Manual*, V – 6.1. <http://www.fdic.gov/regulations/compliance/manual/index.html> (last visited March 17, 2014).

¹² Building coverage is limited to \$250,000 for residential dwellings and \$500,000 for non-residential buildings. Contents coverage is available for up to \$100,000 for a residence and \$500,000 for a business.

<https://www.fema.gov/pdf/fima/FEMA511-12-Chapter11.pdf> (last visited March 17, 2014).

¹³ <http://www.fema.gov/floodplain-management/flood-map> (last visited March 12, 2014).

¹⁴ <http://www.fema.gov/national-flood-insurance-program-community-rating-system> (last visited March 12, 2014).

on flood insurance premiums for properties in the SFHA, with a Class 1 community receiving the maximum 45 percent premium reduction.¹⁵

A community can improve its CRS class rating by implementing activities that relate to public information, mapping and regulations, flood damage reduction, and flood preparation. Activities within these categories are assigned points that relate to improved Class ratings for the community.¹⁶ As of October 2012, local governments in Florida are rated from Class 10 to Class 5.¹⁷ Class 5 provides a 25 percent discount for SFHA properties and a 10 percent discount for non-SFHA properties. No discounts are provided for communities with Class 10 ratings.¹⁸

The Biggert-Waters Flood Insurance Reform Act and the Homeowner Flood Insurance Affordability Act

In 2012 the United States Congress passed the Biggert-Waters Flood Insurance Reform Act (Biggert-Waters Act).¹⁹ The Biggert-Waters Act reauthorized the NFIP for five years. Key provisions of the legislation require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how Flood Insurance Rate Map (FIRM) updates impact policyholders. These changes by Congress would have resulted in premium rate increases for approximately 20 percent of NFIP policyholders nationwide.

The Biggert-Waters Act increased flood insurance premiums purchased through the program for second homes, business properties, severe repetitive loss properties, and substantially improved damaged properties by requiring premium increases of 25 percent per year until premiums meet the full actuarial cost of flood coverage. Most residences would immediately lose their subsidized²⁰ rates if the property is sold, the policy lapses, repeated and severe flood losses occur, or a new policy is purchased. Policyholders whose communities adopt a new, updated FIRM that results in higher rates would have experienced a five-year phase in of rate increases to achieve rates that incorporate the full actuarial cost of coverage.

However, on March 21, 2014, President Obama signed the Homeowner Flood Insurance Affordability Act, which reverses some of the changes in the Biggert-Waters Flood Insurance Reform Act of 2012.²¹ The act contains provisions that:

- Prevent FEMA from raising rates on individual policies above 18 percent per year.

¹⁵ http://www.fema.gov/media-library-data/20130726-1605-20490-8915/nfip_crs_fact_sheet_sept_2012.txt (last visited March 12, 2014).

¹⁶ *Id.*

¹⁷ http://www.fema.gov/media-library-data/45d30e14bdec841d92462f9424567b73/19_crs_508_oct2013.pdf (last visited March 12, 2014).

¹⁸ *Id.*

¹⁹ <http://www.fema.gov/flood-insurance-reform-act-2012> (last visited March 17, 2014).

²⁰ A subsidized policy is one that does not pay the full actuarial rate and is not reflective of the true risk of flood to that property. Homes located in a high-risk flood zone and built before the first flood insurance rate map became effective, and that have not been substantially damaged or improved, may currently be receiving subsidized flood insurance premium rates. <http://www.fema.gov/region-vi/national-flood-insurance-program-reform-frequently-asked-questions> (last visited March 17, 2014).

²¹ Bruce Alpert, *President Obama Signs Flood Insurance Bill Into Law*, The New Orleans Times-Picayune, Mar. 21, 2014, available at, http://www.nola.com/politics/index.ssf/2014/03/do_not_run_president_obama_sig.html (last visited March 28, 2014).

- Repeal the provision in Biggert-Waters that requires homebuyers to pay a full-risk rate at the time of purchase.
- Repeal the provision in Biggert-Waters that required full-risk rate if a property owner voluntarily purchases a new policy.
- Establish a Flood Insurance Advocate within FEMA to answer current and prospective policyholder questions about the flood mapping process and flood insurance rates.
- Require FEMA to clearly communicate full flood risk determinations to policyholders even if their premium rates are less than full risk.
- Require FEMA to certify its mapping process is technologically advanced and to notify and justify to communities that the mapping model it plans to use to create the community's new flood map is appropriate.
- Require FEMA, at least 6 months prior to implementation of rate increases as a result of this Act to make publicly available the rate tables and underwriting guidelines that provide the basis for the change, providing consumers with greater transparency.

NFIP Flood Insurance in Florida

Over 2 million NFIP policies are written on Florida properties, with approximately 268,500 policies receiving subsidized rates.²² Florida policies account for approximately 37 percent of the total policies written by the NFIP.²³

Historically, properties insured in Florida have paid approximately \$3.60 in premiums for NFIP flood coverage for every \$1 received in claims payments.²⁴ 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 reflect the full risk of the properties.
- 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.

Florida Division of Emergency Management

The Division of Emergency Management (DEM), established in the Executive Office of the Governor,²⁵ is the state's emergency management agency. The duties of the DEM are provided in part I of ch. 252, F.S., known as the State Emergency Management Act.²⁶

²² 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 (last visited March 17, 2014).

²³ <http://bsa.nfipstat.fema.gov/reports/1011.htm> (last visited March 17, 2014).

²⁴ 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).

²⁵ Section 14.2016, F.S.

²⁶ Section 252.31, F.S.

Section 252.35, F.S., provides the duties of the DEM, including:²⁷

- The state comprehensive emergency management plan;
- County emergency management plan oversight and assistance;
- Cooperation with federal entities and other states on emergency management issues;
- Recommended regulations and other safety measures designed to eliminate emergencies or reduce their impact;
- Statewide public awareness programs and other education and information dissemination;
- Training programs for state and local emergency management personnel;
- Review of emergency operating procedures of state agencies;
- Surveys of public and private industries, resources, and facilities; and
- Equipment review and inventories of generators.

The DEM's Bureau of Mitigation houses the State Floodplain Management Office. Floodplain Management Specialists work with Florida's communities, assisting them to manage development in their floodplains, as well as monitoring these efforts to assure compliance with the NFIP. The State Floodplain Management Office also coordinates and/or collaborates on the following activities statewide:²⁸

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

The implementation of pre-disaster mitigation incentives, such as the NFIP CRS and federal flood mitigation grant programs,²⁹ serve Florida's residents and businesses that continue to experience high growth and development.³⁰

Emergency Management Assistance Compact

The Emergency Management Assistance Compact (Compact) is a national interstate mutual aid agreement that enables states to share resources during times of disaster. Ratified by Congress,³¹

²⁷ Subsections 252.35(2)(a)-(y), F.S.

²⁸ <http://www.floridadisaster.org/Mitigation/SFMP/Index.htm> (last visited March 13, 2014).

²⁹ Such as the Flood Mitigation Assistance Program, the Severe Repetitive Loss Program, and the Repetitive Flood Claims Program.

³⁰ See *supra* note, 27.

³¹ PL-104-321.

the Compact serves as the nation's system for providing relief to states requesting assistance from assisting member states. The Compact can be used either in lieu of federal assistance or in conjunction with federal assistance. The 13 articles of the Compact that set the foundation for sharing resources from state to state have been adopted by all 50 states, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.³²

Article IX of the Compact provides that any state that renders aid to another state is reimbursed by the state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; a state providing aid may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving state without charge or cost. Any two or more states can enter into supplementary agreements establishing a different allocation of costs among those states.³³

Public Employee Per Diem and Travel Expenses

Section 112.061, F.S., establishes standard travel reimbursement rates applicable to all public officers, employees and authorized persons whose travel is authorized and paid by a public agency.³⁴ In order for an exemption to the provisions of s. 112.061, F.S., to apply, the exemption must include a specific reference to s. 112.061, F.S., and may only apply to the extent of the exemption.³⁵

In Florida, public employees that are deployed to assist during a disaster through the Compact are reimbursed for travel per diem under s. 112.061, F.S. Per diem rates in states requesting assistance may be higher than the Florida allowance causing a hardship for employees supporting these states.³⁶

In 2006, the Legislature set the reimbursement rates for travelers as follows:³⁷

- The per diem rate is \$80.³⁸
- The breakfast rate is \$6.
- The lunch rate is \$11.
- The dinner rate is \$19.
- The per mile rate for a privately owned vehicle is 44.5 cents per mile.

III. Effect of Proposed Changes:

Section 1 amends s. 70.001, F.S., relating to private property rights protections, to provide that a cause of action does not exist for administrative actions taken or ordinances adopted by a

³² <http://www.fema.gov/pdf/emergency/nrf/EMACoverviewForNRF.pdf> (last visited March 12, 2014).

³³ *Id.*

³⁴ Subsection 112.016(1), F.S.

³⁵ *Id.*

³⁶ Florida Division of Emergency Management, SB 1326 Agency Bill Analysis, March 5, 2014.

³⁷ Subsection 112.061(6), F.S.

³⁸ If actual expenses exceed \$80, an employee may be reimbursed for actual expenses for lodging in addition to the statutory rates for meals as provided in s. 112.061(6), F.S.

governmental entity,³⁹ such as a county or municipality, to implement a FIRM issued by the FEMA if such action or ordinance is for the purpose of participating in the NFIP. However, this provision's protection of a governmental entity's action does not apply if the administrative action or ordinance incorrectly applies any aspect of the FIRM to a property such as, but not limited to, incorrectly assessing the elevation of the property.

Section 2 amends s. 252.34, F.S., relating to definitions, to define "state flood risk analysis" to mean the most recent updated flood risk analysis issued by the DEM pursuant to s. 252.441, F.S.

Section 3 amends s. 252.35, F.S., relating to duties of the DEM, to include responsibility for maintaining an updated state flood risk analysis. Such report must be available to the public and is subject to funding by the Legislature. The bill also directs the DEM to provide assistance to local governments participating in the NFIP CRS.

Section 4 creates s. 252.441, F.S., to provide for a state flood risk analysis initiative.

The bill provides legislative findings that the passage by Congress of the Biggert-Waters Act requires a complete and specific analysis of flood risk to Florida property owners to ensure the continued availability of affordable flood insurance. The findings also call for the analysis to provide important data and insights supporting the entry of private insurance companies into the flood insurance market.

The bill requires the DEM to contract, through the competitive bid procedures required by ch. 287, F.S., for a state flood risk analysis to evaluate the state's flood risk. The contract must be awarded to a firm that has experience in natural catastrophe risk modeling, rate analysis consultation services, and transactional services.

The risk analysis must consider existing vendor models recognized by the insurance industry, the FIRMSs, and SFHAs designated by the NFIP. The analysis must include, at a minimum:

- Determining the extent that flood insurance premium rates reasonably reflect the risk of loss to insurers.
- Identifying the likelihood of differentiated premium rates based on property location, value, and vulnerability to flood damage.
- Identifying policies to strengthen and support the investment of new private market underwriting capacity in Florida's flood insurance market.
- Review of the appropriateness of publicly available premium rate factor analyses and commentary as related to latest available data on property vulnerability, flood risk, and cost of repair or rebuilding.
- Pilot studies of at least three sample inventory coastal regions, representing urban, suburban and rural areas in Florida. The pilot studies will include assessment of the building stock and

³⁹ Subsection 70.001, F.S., defines the term "governmental entity" as an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. The term does not include the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority.

quantitative catastrophic storm surge modeling to assess if current insurance premiums are sufficient for long-term, sustainable and affordable flood insurance.

- A comparison of the models' technical pricing of risks with those required by the NFIP and other insurers. The comparison must also consider commentary on potential reasons for any differences and recommended action to resolve those differences.

The DEM must submit a comprehensive report on the results of the risk analysis to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2015.

The Legislature may authorize annual updates to the risk analysis, subject to specific funding in the General Appropriations Act.

Section 5 creates s. 252.9335, F.S., to provide an exception to the travel expense reimbursement limits provided in s. 112.061, F.S., for employees of the state traveling under the Compact. This exception applies when such travel expenses are reimbursed based on the amount agreed upon in an interstate mutual aid request for assistance.

Section 6 appropriates funds to the DEM for assistance to local governments and to complete the state flood risk analysis. See V. Fiscal Statement.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent the state flood risk analysis and the assistance to communities result in factors considered by flood insurance providers, Florida property owners may see increased discounts on National Flood Insurance policies and private insurers may provide competition in the marketplace.

C. Government Sector Impact:

The bill appropriates \$127,368 to the DEM from recurring General Revenue for the DEM to provide assistance to local governments participating in the NFIP CRS.

It also appropriates \$500,000 to the DEM from nonrecurring General Revenue for the 2014-2015 fiscal year to complete the state flood risk analysis required in the bill.

Government workers who are reimbursed by an entity other than the State of Florida when operating under the Compact, may receive travel reimbursements that exceed the maximum rates provided in s. 112.061, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 70.001, 252.34, and 252.35

This bill creates the following sections of the Florida Statutes: 252.441 and 252.9335

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 Military and Veterans Affairs, Space and Domestic Security on March 19, 2014:**

- Broadens the effect of the private property rights protections portion of the bill related to participation in the NFIP to include other governmental entities, such as municipalities and counties;
- Requires the DEM to consult with the Office of Insurance Regulation and the Florida Commission on Hurricane Loss Projection Methodology when contracting for the state flood risk analysis;
- Clarifies that the pilot studies are to be conducted as part of the state flood risk analysis; and
- Removes a provision that states completion of the state flood risk analysis is subject to appropriations.

B. Amendments:

None.

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