

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 Banking and Insurance

BILL: SB 1094

INTRODUCER: Senator Brandes

SUBJECT: Peril of Flood

DATE: March 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow/Knudson	Knudson	BI	Pre-meeting
2.	_____	_____	CA	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1094 requires coastal management plans to include the reduction of flood risks and losses, creates new requirements related to flood elevation certificates, and revises requirements related to flood insurance.

The bill requires local governments when drafting their comprehensive coastal management plan must include development and redevelopment principles, strategies, and engineering solutions that reduce flood risks and losses within coastal areas.

Elevation certificates developed by the Federal Emergency Management Agency (FEMA) will be required to be completed by a licensed surveyor and mapper in accordance with the checklist that has been adopted by the Division of Emergency Management (DEM). A surveyor and mapper who completes an elevation certificate must, within 30 days of completion, submit a copy of the certificate to the property appraiser office in the county in which the property that was evaluated resides. The bill requires DEM to establish a schedule in which property appraisers are required to regularly submit copies of the elevation certificates they have received from licensed surveyors and mappers.

The bill revises the requirements for customized flood insurance by eliminating the requirement that such coverage be broader than standard or preferred flood coverage. Customized coverage instead is defined as coverage for the peril of flood that 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.

The bill removes current law prohibiting a supplemental flood insurance policy from being used for excess coverage over any other insurance policy covering the peril of flood. The bill clarifies that the declarations or face page a flood insurance policy must promptly note the deductibles and coverage limits of the policy.

The bill requires all licensed insurance agents must quote a flood insurance policy when quoting an insurance policy for a residential structure located within a Special Flood Hazard Area. The bill also allows an insurer to request from the Office of Insurance Regulation (OIR) a certification that acknowledges that the insurer provides a flood policy, contract, or endorsement that equals or exceeds flood coverage by the National Flood Insurance Program.

II. Present Situation:

National Flood Insurance Program

The NFIP was created by the passage of the National Flood Insurance Act of 1968.¹ 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.²

Standard NFIP Flood Insurance

The standard flood insurance policy dwelling form offered by the NFIP³ is a single peril flood policy that pays for direct physical damage to the insured residential property up to the replacement cost⁴ (RCV) or actual cash value (ACV) or the policy limit.⁵ The maximum coverage limit for a NFIP standard flood insurance policy is \$250,000. The NFIP also offers up to \$100,000 in personal property (contents) coverage, which is always valued at ACV.⁶ Most NFIP policies also include Increased Cost of Compliance (ICC) coverage of up to \$30,000 of the cost to comply with state or community floodplain management laws or ordinances after a flood

¹ <http://www.fema.gov/media-library/assets/documents/7277?id=2216> (Last accessed by staff on January 2, 2014)

² *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 accessed by staff on January 7, 2014).

³ The standard form insures one-to-four family residential buildings and single-family dwelling units in a condominium building. The NFIP also offers (a) a general property form that is used to insure five-or-more-family residential buildings and non-residential buildings and (b) a residential condominium building association policy form that insures residential condominium association buildings.

⁴ To obtain RCV coverage under the NFIP dwelling form, the building must be a single-family dwelling, be the principal residence of the insured at the time of loss (the insured lives there at least 80 percent of the year), and the building coverage of at least 80 percent of the full replacement cost of the building or its the maximum available for the property under the NFIP.

⁵ *National Flood Insurance Program: Summary of Coverage*, Federal Emergency Management Agency (FEMA F-679/November 2012) http://www.fema.gov/media-library-data/20130726-1620-20490-4648/f_679_summaryofcoverage_11_2012.pdf (Last accessed by staff on January 7, 2014).

⁶ See footnote 4.

in which a building has been declared substantially damaged or repetitively damaged.⁷ The maximum coverage available to a condominium association is \$250,000 per unit multiplied by the total number of units.⁸ The limits of coverage for NFIP flood insurance on non-residential buildings are \$500,000 in coverage to the building and \$500,000 in contents coverage.⁹

Flood is defined in the standard 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.¹⁰

The minimum deductibles for NFIP flood coverage are:

- For properties built before the effective date of the first Flood Insurance Rate Map¹¹ (FIRM) for a community, the minimum deductible is:
 - \$1,500 if the property is insured for \$100,000 or less.
 - \$2,000 if the property is insured for over \$100,000.
- For properties built after the effective date of the first Flood Insurance Rate Map (FIRM) for a community, the minimum deductible is:
 - \$1,000 if the property is insured for \$100,000 or less.
 - \$1,250 if the property is insured for over \$100,000.

Federal Requirements to Obtain Flood Insurance

The U.S. Congress passed the Flood Disaster Protection Act in 1973.¹² The Act mandated property owners with mortgages issued by federally regulated or insured lenders must 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 one in four chance of flooding during a 30-year mortgage.¹³

⁷ The total amount of a building claim and ICC claim cannot exceed the maximum limit for building property coverage. For a single-family home, this is the \$250,000 maximum limit on coverage to the building. See footnote 4 and footnote 5 at page 26.

⁸ *FDIC Compliance Manual*, V – 6.8. <http://www.fdic.gov/regulations/compliance/manual/index.html> (Last accessed by staff on January 7, 2014).

⁹ *Reducing Damage from Localized Flooding: A Guide for Communities*, 11-2. <http://www.fema.gov/media-library/assets/documents/1012> (Last accessed by staff on January 7, 2014).

¹⁰ <http://www.fema.gov/national-flood-insurance-program/definitions> (Last accessed by staff on January 2, 2014)

¹¹ The effective date of the first FIRM for Florida communities can be found at <http://www.fema.gov/cis/FL.pdf> (Last accessed by staff on January 10, 2014).

¹² http://www.fema.gov/media-library-data/20130726-1545-20490-9247/frm_acts.pdf (Last accessed by staff on January 2, 2014).

¹³ http://www.floodsmart.gov/floodsmart/pages/flooding_flood_risks/defining_flood_risks.jsp (Last accessed by staff on January 2, 2014).

The National Flood Insurance Reform Act of 1994¹⁴ (1994 Reform Act) required federal financial regulatory agencies¹⁵ to revise their flood insurance regulations. The 1994 Reform Act applied flood insurance requirements to loans purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) and to agencies that provide government insurance or guarantees such as the Small Business Administration, the Federal Housing Administration, and the Veterans Administration. 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.¹⁶ The amount of flood insurance required by lending institutions must be at least equal to the outstanding principal balance of the loan, or the maximum amount available under the NFIP, whichever is less.

The Biggert-Waters Flood Insurance Reform Act

In 2012¹⁷ the United States Congress passed the Biggert-Waters Flood Insurance Reform Act (Biggert-Waters Act). The Biggert-Waters Act reauthorized the National Flood Insurance Program for 5 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 updates impact policyholders. These changes by Congress have resulted in premium rate increases for approximately 20 percent of NFIP policyholders nationwide.

The Biggert-Waters Act increases 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 immediately lose their subsidized 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 Flood Insurance Rate Map (FIRM) that results in higher rates will experience a 5-year phase in of rate increases to achieve rates that incorporate the full actuarial cost of coverage.

2014 Federal Flood Reform Bills

The Consolidated Appropriations Act of 2014 and the Homeowner Flood Insurance Affordability Act of 2014 repealed or modified some provisions of the Biggert-Waters Act. The new law reduced the rate mandatory rate increases for subsidized properties from 25 percent annually to no less than 5 percent, generally not to increase more than 18 percent annually.¹⁸ Properties that remain subject to the 25 percent annual increase include older business properties, older non-primary residences, severe repetitive loss properties, and pre-FIRM properties. The 20 percent annual phase in of premium increases after adoption of a new or updated flood insurance rate map was reduced to a maximum of no more than an 18 percent annual premium increase.

¹⁴ 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).

¹⁵ Office of Comptroller of Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Farm Credit Administration and Federal Reserve.

¹⁶ *FDIC Compliance Manual*, V – 6.1. <http://www.fdic.gov/regulations/compliance/manual/index.html> (Last accessed by staff on January 7, 2014).

¹⁷ <http://www.fema.gov/flood-insurance-reform-act-2012> (Last accessed by staff on January 2, 2014).

¹⁸ Federal Emergency Management Agency, Homeowner Flood Insurance Affordability Act Overview (April 3, 2014). (Last accessed by staff on March 9, 2015).

The Policyholder refunds were provided to policyholders whose rate increases were revised by the 2014 changes. Additional revisions included increasing the maximum flood insurance deductibles, directing FEMA to consider property specific flood mitigation in determining a full-risk rate, and creating the position of a Flood Insurance Advocate.

Flood Insurance in Florida

NFIP Flood Insurance in Florida

Over two million NFIP policies are written on Florida properties, with approximately 268,500 policies receiving subsidized rates.¹⁹ 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.²⁰ 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

The 2014 Legislature enacted CS/CS/CS/SB 542, governing the sale of personal lines, residential flood insurance. Authorized insurers may sell four different types of flood insurance products:

- Standard coverage, which covers only losses from the peril of flood as defined in the bill, which is the definition used by the National Flood Insurance Program (NFIP). The policy must be the same as coverage offered from the NFIP regarding the definition of flood, coverage, deductibles, and loss adjustment.
- 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.
- Customized coverage, which is coverage that is broader than standard flood coverage.
- 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.

¹⁹ 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.

²⁰ 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).

Insurers must provide prominent notice on the policy declarations 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. 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). Specifically, the flood rate is exempt from the “file and use” and “use and file” requirements of s. 627.062(2)(a), F.S. 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. 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. The bill allows projected flood losses for personal residential property insurance to be a rating factor. Flood losses may be estimated using a model or straight average of models found reliable by the Florida Commission on Hurricane Loss Projection Methodology.

Insurers that write flood coverage must notify the OIR at least 30 days before doing so in this state and file a plan of operation, financial projections, and any such revisions with the OIR. 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. Citizens Property Insurance Corporation is prohibited from providing flood insurance and the Florida Hurricane Catastrophe Fund is prohibited from reimbursing flood losses.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3178(2)(f), F.S., to require local governments when drafting their comprehensive coastal management plans to:

- Include development and redevelopment principles, strategies, and engineering solutions that reduce the flood risk in coastal areas which results from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea-level rise.
- Encourage the use of best practices development and redevelopment principles, strategies, and engineering solutions that will result in the removal of coastal real property from flood zone designations established by the Federal Emergency Management Agency.
- Identify site development techniques and best practices that may reduce losses due to flooding and claims made under flood insurance policies issued in this state.

Section 2 creates s. 195.088, F.S., to require county property appraisers to submit elevation certificates to the Division of Emergency Management. The bill requires elevation certificates developed by FEMA to be completed by a licensed surveyor and mapper in accordance with the checklist adopted by DEM. A surveyor and mapper who completes an elevation certificate must, within 30 days of completion, submit a copy of the certificate to the property appraiser office in the county in which the property that was evaluated resides. The DEM must establish a schedule

that requires property appraisers to regularly submit copies of the elevation certificates they have received from licensed surveyors and mappers.

Section 3 amends s. 627.715, F.S., to revise the requirements for customized flood insurance by eliminating the requirement that such coverage be broader than standard or preferred flood coverage. Customized coverage instead is defined as coverage for the peril of flood that 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.

The section removes language in statute that specifies a supplemental flood insurance policy does not include flood coverage for the purpose of excess coverage over any other insurance policy covering the peril of flood. Removing this language from law could allow a supplemental flood insurance policy to provide coverage in excess of other coverage that is insuring for the peril of flood.

The section clarifies that deductibles for flood coverage and flood insurance policy limits must be promptly noted on a policy's declarations page or face page.

The section requires all licensed insurance agents to quote a flood insurance policy when quoting an insurance policy for a residential structure located within a Special Flood Hazard Area designated by FEMA. If the property owner declines to obtain flood insurance coverage, the agent must maintain a record of that declination for 36 months. The bill also clarifies the signed acknowledgement that a licensed insurance agent must obtain notifying the applicant that discontinuing coverage from the National Flood Insurance Program (NFIP). The notice is revised to specify that it is policyholders who might lose subsidies are those who have subsidized NFIP policies.

Lastly, the section allows an insurer to request from the Office of Insurance Regulation a certification that acknowledges that the insurer provides a policy, contract, or endorsement for the flood insurance that provides coverage equaling or exceeding the flood coverage offered by the NFIP. An insurer or its agent may reference or include such certification in advertising and communications with an agent, a lending institution, an insured, and a potential insured. The authorized insurer may also include a statement that notifies an insured of the certification on the declarations page or other policy documentation related to flood coverage.

Section 4 the effective date of the bill is July 1, 2015.

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:

Policyholders will have greater flexibility when purchasing flood insurance.

C. Government Sector Impact:

Local governments must include flood risks within their coastal management plan. There could be added costs to local governments for the added development of the plan and its enforcement.

Local county property appraisers will be required to receive flood elevation certificates from licensed surveyors and mappers and must regularly submit the certificates to the Department of Emergency Management. The Department of Emergency Management must establish the schedule for which local county property appraisers are to regularly submit elevation certificates they have received. The added cost to the counties and department is unknown.

The Office of Insurance Regulations must establish a flood certification that is to be issued to companies that sell private flood insurance policies that are equal to or greater than the coverages in a policy sold by the National Flood Insurance Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3178, 627.715.

This bill creates section 195.088 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.

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