



Government Operations Appropriations Subcommittee

**Monday, March 24, 2014
3:00 PM – 5:00 PM
Morris Hall (17 HOB)**

MEETING PACKET

**Will Weatherford
Speaker**

**Clay Ingram
Chair**



The Florida House of Representatives
Appropriations Committee
Government Operations Appropriations Subcommittee

Will Weatherford
Speaker

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March 24, 2014

AGENDA
3:00 PM – 5:00 PM
Morris Hall

- I. Call to Order/Roll Call
- II. Consideration of Bills
 - CS/HB 391 Florida Hurricane Catastrophe Fund by Rep. Hager
 - CS/HB 879 Flood Insurance by Rep. Hooper
 - HB 953 State Contracting by Rep. Peters
- III. Closing Remarks/Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 391 Florida Hurricane Catastrophe Fund
SPONSOR(S): Insurance & Banking Subcommittee; Hager
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee		Keith AK	Topp BT
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers. For solvency reasons, property insurers are required by the Office of Insurance Regulation (OIR) to purchase a certain amount of reinsurance. The amount of reinsurance purchased varies from insurer to insurer and is based on an insurer's financial situation and exposure.

The FHCF sells reinsurance to property insurance companies significantly cheaper than reinsurance sold by private reinsurance companies. Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF. The Fund, which is administered by the State Board of Administration, reimburses insurers for a portion of their hurricane losses to residential property above the insurer's retention (deductible). The deductible on reinsurance sold by the Fund is set by statute and the maximum amount the Fund reinsures (the Fund coverage) is also set by statute.

Starting June 1, 2015, the bill restructures the FHCF to reduce the exposure of the Fund by reducing the maximum coverage of the FHCF from \$17 billion to \$14 billion. However, each year, the bill gives insurers the option to buy a maximum of \$3 billion in additional coverage from the Fund, in \$1 billion increments, above the \$14 billion maximum coverage level. The \$3 billion in additional coverage is the aggregate amount of additional coverage available and each insurer purchasing additional coverage can purchase its share of the coverage. The amount of the insurer's share of the additional coverage is determined the same way as their share of the mandatory coverage is determined.

Whether the changes to the FHCF made by the bill increase property insurance rates depends on how much of the additional \$3 billion in FHCF coverage is purchased. Property insurance rate increases occur if not all of the \$3 billion optional coverage is purchased because reinsurance purchased from the FHCF costs one-fourth to one-third less than reinsurance purchased from private reinsurance companies. Insurers who choose not to buy any of the additional \$3 billion in FHCF coverage, or who buy only part of the \$3 billion, will replace the optional FHCF reinsurance with more expensive reinsurance bought from private reinsurers and the insurer's increased reinsurance costs will be passed through to homeowners in rates.

The estimated rate impact of the bill is: 0% rate increase if all (\$3 billion) of the optional \$3 billion is bought by insurers, 0.8% rate increase if \$2 billion is bought, 1.6% rate increase if \$1 billion is bought, and 2.4% rate increase if none (\$0 billion) is bought.

The bill has no fiscal impact on state or local governments.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on the Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF or Fund) is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers.¹ The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

The FHCF sells reinsurance to property insurance companies significantly cheaper than reinsurance sold by private reinsurance companies. It is estimated that coverage purchased through the FHCF costs insurers one-fourth to one-third what it would cost in the private reinsurance market.² There are several reasons for these cost savings:³

1. The FHCF operating cost is less than 1% of the annual premium collected, whereas, the operating costs for private reinsurance can range from 10% to 15% of the premium collected.
2. The FHCF does not pay reinsurance brokerage commissions.
3. The FHCF has no underwriting costs.
4. The FHCF is a tax-exempt entity that does not pay federal income taxes or state taxes.
5. The FHCF has the ability to issue tax-exempt debt which results in lower financing costs should it become necessary to finance losses with revenue bonds.
6. The FHCF does not include a factor for profit for reinsurance sold by the FHCF.
7. The FHCF does not include a risk load for reinsurance sold by the FHCF.

Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must participate in the FHCF. (s. 215.555(4)(a), F.S. and s. 215.555(2)(c), F.S.). Residential property is defined in s. 627.4025(1), F.S., to include personal lines and commercial lines residential coverage. This coverage includes the following insurance policies: homeowner's, mobile homeowner's, dwelling, tenant's, condominium unit owner's, condominium association, cooperative association, and apartment building.

The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage (45, 75, or 90%) of hurricane losses to residential property above the insurer's retention (deductible).⁴ The amount of hurricane losses the FHCF will not reimburse (45, 25, or 10%) is the insurer's co-pay for FHCF reinsurance. Insurers finance the co-pay with funds from insurance premiums paid by homeowners or with private reinsurance. Most property insurers select the 90% coverage level, meaning the FHCF will reimburse the insurer 90% of the insurer's specified hurricane losses with the insurer paying the remaining co-pay of 10% from other sources.

A reimbursement contract between the FHCF and the property insurer governs an insurer's participation in the FHCF and the percentage of the insurer's reimbursement. Reimbursement contracts run from June 1st–May 30th. The current contract year (2013-2014 contract year) runs from June 1, 2013–May 30, 2014.

¹ s. 215.555, F.S. The FHCF was created after Hurricane Andrew in 1992.

² Annual Report of the Florida Hurricane Catastrophe Fund Fiscal Year 2011-2012, p. 16, available at <http://www.sbafla.com/fhcf/Home/FHCFReports/tabid/315/Default.aspx> (last viewed December 20, 2013).

³ Annual Report of the Florida Hurricane Catastrophe Fund Fiscal Year 2011-2012, p. 16, available at <http://www.sbafla.com/fhcf/Home/FHCFReports/tabid/315/Default.aspx> (last viewed December 20, 2013).

⁴ Retention is defined to mean the amount of losses below which an insurer is not entitled to reimbursement from the Fund. A retention is calculated for each insurer based on its proportionate share of Fund premiums.

The FHCF must offer two options for reinsurance coverage for all residential property insurers. One of the two options is mandatory and thus must be purchased by all insurers on their residential property exposure. The voluntary coverage option, Temporary Increase In Coverage Limit Options (TICL), offers reinsurance to insurers above the mandatory coverage.

For the mandatory coverage, the FHCF charges insurers the "actuarially indicated" premium for the coverage provided by the FHCF, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. Each insurer's premium amount for mandatory coverage is different because the premium is based on the insured value of the residential property the insurer insures, the location of the property insured, the construction type of the property insured, the deductible amounts for the property insured, and other factors. The premium for mandatory coverage also includes a cash build-up factor which is charged on top of the actuarially indicated premium. For the 2013-2014 contract year, the cash build-up factor is 25%, meaning an insurer's premium is 25% greater than the actuarially indicated premium. By law, the cash build-up factor will remain at 25% for all future years.

Florida law sets the maximum amount the FHCF reimburses insurers each year for the mandatory coverage.⁵ This is the FHCF's capacity. Under current law, the FHCF's capacity is \$17 billion for each contract year. The capacity does not increase until the FHCF's cash and bonding ability exceeds \$34 billion. This allows the FHCF to accumulate funds to pay the maximum mandatory coverage FHCF obligations (\$17 billion a year) for claims resulting from hurricanes in back-to-back seasons.⁶ Once a \$34 billion funding level is reached by the FHCF, the FHCF's capacity will increase. The method for calculating the Fund's capacity under current law allows the FHCF's cash balance to grow in years where there are no hurricanes while keeping the FHCF's exposure (capacity) frozen so that the FHCF is less reliant on bonding to meet its mandatory coverage obligations. For the current contract year, the insurance industry as a whole is covered for losses up to \$17 billion by the mandatory coverage.

Before FHCF monies are available to pay claims each insurer must meet a retention/deductible. The retention amount for each insurer is different because the amount is based on the amount of premium the insurer pays to the FHCF. For the 2013-2014 contract year, the insurance industry as a whole has an aggregate retention of \$7.213 billion for mandatory coverage, meaning the total of all individual insurer retentions/deductibles will total \$7.213 billion per hurricane event if all participating insurers reached their retention. Although the insurance industry's aggregate deductible/retention totals \$7.213 billion, insurers can obtain reimbursement from the FHCF before the insurance industry losses total \$7.213 billion because loss recovery from the FHCF is based on an individual insurer meeting its own retention for mandatory coverage prior to losses being reimbursed.

The TICL options were added to the FHCF in 2007.⁷ The purchase of these options is voluntary and, if purchased, provides the insurer a share of additional coverage above the mandatory FHCF coverage in \$1 billion increments. When the TICL options were created in 2007, \$12 billion of additional FHCF coverage was available for purchase. However, due to statutory reductions in TICL options available, for the 2013-2014 Fund contract year, the last year TICL coverage is available, only \$2 billion is available for purchase.⁸ Of the \$2 billion available in TICL coverage, \$207,280 was purchased by insurance companies.

⁵ s. 215.555(4)(c)1., F.S.

⁶ The funds may be accumulated from premiums and bonding.

⁷ Ch. 2007-1, L.O.F.

⁸ Under current law, the maximum amount of TICL coverage offered for purchase by the FHCF decreases by \$2 billion each contract year.

For the 2013-14 contract year (June 1, 2013–May 31, 2014), the maximum amount the FHCF would have to reimburse insurers is \$17.0002 billion, allocated as follows:

- \$17 billion for the mandatory coverage.
- \$207,208 for the TICL coverage option.⁹

To fund its obligations of \$17.0002 billion the FHCF has \$9.764 billion in cash.

Because the obligations of the FHCF exceed its cash on hand by approximately \$7.24 billion, if the FHCF had to pay its maximum actual obligations of \$17.0002 billion this contract year, it would have to bond for \$7.24 billion to have enough money to pay claims. The Fund already has \$2 billion in pre-event bonds that will be used to pay claims during this contract year. After accounting for these bonds, the Fund must bond for \$5.24 billion this year. In October 2013, the Fund estimated it could borrow \$6.1 billion through bonding, which is more than the \$5.24 billion needed.¹⁰ Thus, it is anticipated that the Fund has sufficient resources from cash and bonding to pay its obligations in the current contract year.

Revenue bonds issued by the FHCF to pay claims when the FHCF's funds are inadequate are funded by emergency assessments on property and casualty policyholders.¹¹ The FHCF is authorized to levy emergency assessments against all property and casualty insurance premiums paid by policyholders (other than workers' compensation, accident and health, federal flood and, until May 31, 2016, medical malpractice), including surplus lines policyholders, when reimbursement premiums and other FHCF resources are insufficient to cover the FHCF's obligations.¹² Annual assessments are capped at 6% of premium with respect to losses from any one year and a maximum of 10% of premium to fund hurricane losses from multiple years.¹³ Revenue bonds issued by the FHCF may be amortized over a term up to 30 years. Thus, the FHCF may levy assessments for as long as 30 years.

Currently, the FHCF is levying an assessment of 1.3% of premium against all property and casualty insurance policyholders subject to the assessment.¹⁴ Typically, insurers pass this assessment directly to policyholders. The current FHCF assessment is due to a deficit in the Fund associated with the 2005 hurricanes. This is the first assessment the FHCF has had to levy to cover a deficit since its creation in 1993. The current assessment of 1.3% will be levied until December 31, 2016.

Effect of Proposed Changes

The bill restructures the FHCF. Starting June 1, 2015, the bill reduces the limit of the FHCF mandatory coverage from the current \$17 billion to \$14 billion, but gives insurers the option to purchase their share of additional coverage above the mandatory coverage limit of \$14 billion in \$1 billion increments up to \$17 billion. The optional \$3 billion coverage created by the bill is called "CLIO," Coverage Limit Increase Option and must be offered by the Fund each year.

The price of the additional \$3 billion in coverage sold above the \$14 billion mandatory coverage is the same as the actuarially indicated premium for the reinsurance sold for the mandatory coverage. Insurers have the same co-pay options (45%, 25%, or 10%) for the additional coverage that they have for the mandatory coverage.

⁹ Report of Claims-Paying Capacity Estimates dated October 15, 2013, available at <http://www.sbafla.com/fhcf/BondingProgram/BondingCapacityAnalysisReports/tabid/318/Default.aspx> (last accessed December 20, 2013).

¹⁰ https://www.flrules.org/Gateway/View_notice.asp?id=13718436 (last accessed November 18, 2013).

¹¹ s. 215.555(6)(a)1., F.S.; s. 215.555(6)(b)1., F.S.

¹² s. 215.555(6)(b)1., F.S.; s. 215.555(6)(b)(10), F.S.

¹³ s. 215.555(6)(b)2., F.S.

¹⁴ A 1% assessment was levied and paid by insurers from January 1, 2007–December 31, 2010. The 1% assessment was increased to 1.3% on January 1, 2011 due to increasing losses from the 2005 hurricanes.

Providing additional FHCF coverage above the mandatory coverage in \$1 billion increments is similar to the TICL option created in 2007 that expires on May 31, 2014. However, the price of the additional coverage created by the bill is significantly cheaper than the price of TICL coverage which increased each year from 2009 to 2013 and ended in 2013 with TICL costing six times what the FHCF mandatory coverage cost.¹⁵

Current law allowing the FHCF limit to increase to more than \$17 billion only if the FHCF has enough funding to fully fund a \$17 billion single season and a \$17 billion second season capacity (a total of \$34 billion in funding) is amended by the bill to conform to the reduction of the limit to \$14 billion. Thus, the FHCF limit can increase to more than \$14 billion only if the FHCF has enough funding to fully fund a \$14 billion single season and a \$14 billion second season capacity (a total of \$28 billion in funding).

The bill also repeals current law authorizing the TICL option because that option expires by operation of law on May 31, 2014 and contracts between the Fund and insurers purchasing the TICL option until May 31, 2014 have already been executed.

B. SECTION DIRECTORY:

Section 1: Effective June 1, 2015, amends s. 215.555, F.S., relating to the Florida Hurricane Catastrophe Fund.

Section 2: Effective June 1, 2015, amends s. 627.0629, F.S., relating to Residential property insurance rate filings.

Section 3: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Reducing the mandatory coverage of the FHCF by \$3 billion and providing insurers the option to buy back that \$3 billion in reinsurance from the FHCF can result in increased property insurance rates for homeowners, if all other costs to the insurer factored into rates are static.

For solvency reasons, property insurers are required by the OIR to purchase reinsurance.¹⁶ The amount of reinsurance to be purchased varies from insurer to insurer and is based on an insurer's financial situation and exposure. Reinsurance purchased from the FHCF is considerably cheaper than reinsurance purchased from private reinsurance companies. It is estimated that coverage purchased through the FHCF costs insurers between one-fourth to one-third what it would cost in the private reinsurance market.¹⁷ Reducing the mandatory coverage layer of the FHCF from \$17 billion to \$14 billion requires those property insurers that do not buy their full share of the \$3 billion in optional FHCF reinsurance to replace that share with more expensive reinsurance bought from private reinsurers. The increased reinsurance costs will be passed through to homeowners in rates.¹⁸

According to the OIR, the rate impact of the bill is as follows:

- \$3 billion of the optional \$3 billion is bought by insurers: 0.0% rate increase
- \$2 billion of the optional \$3 billion is bought by insurers: 0.8% rate increase
- \$1 billion of the optional \$3 billion is bought by insurers: 1.6% rate increase
- \$0 billion of the optional \$3 billion is bought by insurers: 2.4% rate increase

The reason there is no rate impact if all insurers bought an additional \$3 billion in FHCF coverage is because that selection would essentially make the maximum coverage for the FHCF \$17 billion, which is the current coverage limit.

Reducing the size of the FHCF could increase the likelihood homeowners will have their property insurance claims paid in a timely manner following a hurricane. If the FHCF has a bonding shortfall after a hurricane, then the FHCF may have to reimburse insurers at a slower pace while the Fund seeks additional funds to reimburse insurers through bonding. If this happens, property insurers may take longer to pay policyholders' claims as some of the funds they likely rely on to pay these claims are derived from their receipt of reimbursements from the FHCF. The Fund does not project a bonding shortfall for the 2014 hurricane season, so this impact is unlikely this year.

If not all of the \$3 billion in optional coverage is purchased, the total potential obligations of the Fund are reduced. Reduction of the potential obligations of the Fund also reduces the likelihood and amount of a deficit in the Fund which, in turn, reduces the likelihood and amount of assessments that the Fund could levy on property and casualty policyholders.

D. FISCAL COMMENTS:

The bill has no fiscal impact on state or local governments.

¹⁶ The amount of reinsurance required to be purchased varies from insurer to insurer and is based, in part, on the insurer's exposure and funds on hand to pay claims.

¹⁷ Annual Report of the Florida Hurricane Catastrophe Fund Fiscal Year 2011-2012, p. 16, available at <http://www.sbafla.com/fhcf/Home/FHCFReports/tabid/315/Default.aspx> (last viewed December 20, 2013).

¹⁸ Section 627.062(2)(b), F.S. requires the OIR to consider reinsurance costs when reviewing a rate filing for approval. Section 627.062(2)(k), F.S., allows insurers to make an expedited rate filing in order to change rates based solely on reinsurance costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute.

The proposed committee substitute made the following changes to the filed version of the bill:

- Reduced the limit of the FHCF mandatory coverage from the current \$17 billion to \$14 billion starting June 1, 2015, but gave insurers the option to purchase their share of additional coverage above the mandatory coverage limit of \$14 billion in \$1 billion increments up to \$17 billion. The filed bill reduced the limit by \$1 billion a year for three years starting June 1, 2015 and did not provide optional coverage up to \$17 billion.
- Removed the provision in the filed bill allowing certain reinsurance costs related to the FHCF to be included in rate filings.

The staff analysis was updated to reflect the committee substitute.

1 A bill to be entitled

2 An act relating to the Florida Hurricane Catastrophe
 3 Fund; amending s. 215.555, F.S.; reducing the coverage
 4 limits for the fund's mandatory coverage; creating a
 5 coverage limit increase option ("CLIO"); requiring the
 6 offer of specified optional coverage limits; providing
 7 definitions; specifying the terms of the CLIO options
 8 addendum to the reimbursement contract; providing for
 9 determination of a CLIO premium formula and CLIO
 10 premiums; specifying impact on the claims paying
 11 capacity of the fund; deleting expired provisions
 12 relating to the temporary increase in coverage limits
 13 option; amending s. 627.0629, F.S.; deleting
 14 provisions authorizing an insurer to include certain
 15 costs in its rates; providing effective dates.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Effective June 1, 2015, paragraph (c) of
 20 subsection (4) and subsection (16) of section 215.555, Florida
 21 Statutes, are amended to read:

22 215.555 Florida Hurricane Catastrophe Fund.—

23 (4) REIMBURSEMENT CONTRACTS.—

24 (c)1. The contract shall also provide that the obligation
 25 of the board with respect to all contracts covering a particular
 26 contract year shall not exceed the actual claims-paying capacity

27 of the fund up to a limit of \$14 ~~\$17~~ billion for that contract
 28 year, unless the board determines that there is sufficient
 29 estimated claims-paying capacity to provide \$14 ~~\$17~~ billion of
 30 capacity for the current contract year and an additional \$14 ~~\$17~~
 31 billion of capacity for subsequent contract years. If the board
 32 makes such a determination, the estimated claims-paying capacity
 33 for the particular contract year shall be determined by adding
 34 to the \$14 ~~\$17~~ billion limit one-half of the fund's estimated
 35 claims-paying capacity in excess of \$28 ~~\$34~~ billion. However,
 36 the dollar growth in the limit may not increase in any year by
 37 an amount greater than the dollar growth of the balance of the
 38 fund as of December 31, less any premiums or interest
 39 attributable to optional coverage, as defined by rule, which
 40 occurred over the prior calendar year.

41 2. In May and October of the contract year, the board
 42 shall publish in the Florida Administrative Register a statement
 43 of the fund's estimated borrowing capacity, the fund's estimated
 44 claims-paying capacity, and the projected balance of the fund as
 45 of December 31. After the end of each calendar year, the board
 46 shall notify insurers of the estimated borrowing capacity,
 47 estimated claims-paying capacity, and the balance of the fund as
 48 of December 31 to provide insurers with data necessary to assist
 49 them in determining their retention and projected payout from
 50 the fund for loss reimbursement purposes. In conjunction with
 51 the development of the premium formula, as provided ~~for~~ in
 52 subsection (5), the board shall publish factors or multiples

53 that assist insurers in determining their retention and
 54 projected payout for the next contract year. For all regulatory
 55 and reinsurance purposes, an insurer may calculate its projected
 56 payout from the fund as its share of the total fund premium for
 57 the current contract year multiplied by the sum of the projected
 58 balance of the fund as of December 31 and the estimated
 59 borrowing capacity for that contract year as reported under this
 60 subparagraph.

61 (16) COVERAGE LIMIT INCREASE OPTION ~~TEMPORARY INCREASE IN~~
 62 ~~COVERAGE LIMIT OPTIONS.~~—

63 (a) Findings and intent.—

64 1. The Legislature finds that growth in the capital
 65 available for private catastrophe reinsurance and reinsurance
 66 alternatives such as catastrophe bonds has created an
 67 opportunity to transfer additional hurricane risk to the private
 68 sector and to reduce the share of Florida hurricane risk borne
 69 by the public without destabilizing the residential property
 70 insurance market. However, the Legislature also recognizes the
 71 benefit of continuing to make current levels of Florida
 72 Hurricane Catastrophe Fund coverage available as a transitional
 73 option that can minimize market disruptions while additional
 74 hurricane risk is transferred from the public sector to the
 75 private sector.

76 2. The coverage limit increase option created under this
 77 subsection is intended to balance the opportunity for greater
 78 risk transfer with the continuing need to maintain a stable and

79 ongoing source of reimbursement as described in subsection (1).+

80 ~~a. Because of temporary disruptions in the market for~~

81 ~~catastrophic reinsurance, many property insurers were unable to~~

82 ~~procure sufficient amounts of reinsurance for the 2006 hurricane~~

83 ~~season or were able to procure such reinsurance only by~~

84 ~~incurring substantially higher costs than in prior years.~~

85 ~~b. The reinsurance market problems were responsible, at~~

86 ~~least in part, for substantial premium increases to many~~

87 ~~consumers and increases in the number of policies issued by~~

88 ~~Citizens Property Insurance Corporation.~~

89 ~~c. It is likely that the reinsurance market disruptions~~

90 ~~will not significantly abate prior to the 2007 hurricane season.~~

91 ~~2. It is the intent of the Legislature to create options~~

92 ~~for insurers to purchase a temporary increased coverage limit~~

93 ~~above the statutorily determined limit in subparagraph (4)(c)1.,~~

94 ~~applicable for the 2007, 2008, 2009, 2010, 2011, 2012, and 2013~~

95 ~~hurricane seasons, to address market disruptions and enable~~

96 ~~insurers, at their option, to procure additional coverage from~~

97 ~~the Florida Hurricane Catastrophe Fund.~~

98 (b) Applicability of other provisions of this section.—All

99 provisions of this section and the rules adopted under this

100 section apply to the coverage created by this subsection unless

101 specifically superseded by provisions in this subsection.

102 (c) Optional coverage.—~~For the 2009-2010, 2010-2011, 2011-~~

103 ~~2012, 2012-2013, and 2013-2014 contract years, The board must~~

104 ~~shall offer, for each of such years, the optional coverage~~

105 limits as provided in this subsection each year, and the insurer
 106 must make its selections of optional coverage, if any, by
 107 executing the CLIO addendum at the same time as it executes the
 108 reimbursement contract as required by paragraph (17) (c).

109 (d) Additional definitions.—As used in this subsection,
 110 the term:

111 1. "CLIO" means the coverage limit increase option.
 112 2. "CLIO coverage" means the coverage for an insurer's
 113 losses above the insurer's statutorily determined claims-paying
 114 capacity based on the claims-paying limit in subparagraph
 115 (4) (c)1., which an insurer selects as its increase in coverage
 116 from the fund under the CLIO options selected. A CLIO insurer's
 117 increased coverage limit options shall be calculated as follows:

118 a. The board shall calculate and report to each CLIO
 119 insurer the CLIO coverage multiples based on three options for
 120 increasing the insurer's FHCF coverage limit. The CLIO coverage
 121 multiple shall be calculated by dividing \$1 billion, \$2 billion,
 122 or \$3 billion by the total estimated aggregate FHCF
 123 reimbursement premiums for the relevant contract year.

124 b. The amount by which the CLIO insurer's limit is
 125 increased over the limit calculated under paragraph (4) (d)
 126 equals the FHCF reimbursement premium multiplied by the CLIO
 127 coverage multiple.

128 c. In order to determine the CLIO insurer's limit of
 129 coverage, the CLIO insurer shall add its CLIO coverage multiple
 130 to its payout multiple. The sum of the multiples is the number

131 that, when multiplied by the insurer's FHCF reimbursement
 132 premium as calculated under subsection (5), defines the CLIO
 133 insurer's limit of FHCF reimbursement coverage for that
 134 reimbursement contract year.

135 3. "CLIO coverage multiple" means the coverage multiple
 136 when multiplied by an insurer's reimbursement premium that
 137 defines the increase in coverage limit.

138 4. "CLIO insurer" means an insurer that has opted to
 139 obtain coverage under the CLIO options addendum in addition to
 140 the coverage provided to the insurer under its FHCF
 141 reimbursement contract.

142 5. "CLIO options" means the options for increased coverage
 143 limits created under this subsection.

144 6. "CLIO options addendum" means an addendum to the
 145 reimbursement contract reflecting the obligations of the fund
 146 and insurers selecting an option to increase an insurer's FHCF
 147 coverage limit.

148 7. "CLIO reimbursement premium" means the premium charged
 149 by the fund for coverage provided under the CLIO option.

150 8. "FHCF" means the Florida Hurricane Catastrophe Fund.

151 9. "FHCF reimbursement premium" means the premium paid by
 152 an insurer for its coverage as a mandatory participant in the
 153 FHCF but does not include additional premiums for optional
 154 coverages.

155 10. "Payout multiple" means the number or multiple created
 156 by dividing the statutorily defined claims-paying capacity as

157 determined in subparagraph (4)(c)1. by the aggregate
 158 reimbursement premiums paid by all insurers estimated or
 159 projected as of calendar year-end.

160 1. ~~"FHCF" means Florida Hurricane Catastrophe Fund.~~

161 2. ~~"FHCF reimbursement premium" means the premium paid by~~
 162 ~~an insurer for its coverage as a mandatory participant in the~~
 163 ~~FHCF, but does not include additional premiums for optional~~
 164 ~~coverages.~~

165 3. ~~"Payout multiple" means the number or multiple created~~
 166 ~~by dividing the statutorily defined claims-paying capacity as~~
 167 ~~determined in subparagraph (4)(c)1. by the aggregate~~
 168 ~~reimbursement premiums paid by all insurers estimated or~~
 169 ~~projected as of calendar year-end.~~

170 4. ~~"TICL" means the temporary increase in coverage limit.~~

171 5. ~~"TICL options" means the temporary increase in coverage~~
 172 ~~options created under this subsection.~~

173 6. ~~"TICL insurer" means an insurer that has opted to~~
 174 ~~obtain coverage under the TICL options addendum in addition to~~
 175 ~~the coverage provided to the insurer under its FHCF~~
 176 ~~reimbursement contract.~~

177 7. ~~"TICL reimbursement premium" means the premium charged~~
 178 ~~by the fund for coverage provided under the TICL option.~~

179 8. ~~"TICL coverage multiple" means the coverage multiple~~
 180 ~~when multiplied by an insurer's reimbursement premium that~~
 181 ~~defines the temporary increase in coverage limit.~~

182 9. ~~"TICL coverage" means the coverage for an insurer's~~

183 ~~losses above the insurer's statutorily determined claims paying~~
 184 ~~capacity based on the claims paying limit in subparagraph~~
 185 ~~(4)(c)1., which an insurer selects as its temporary increase in~~
 186 ~~coverage from the fund under the TICL options selected. A TICL~~
 187 ~~insurer's increased coverage limit options shall be calculated~~
 188 ~~as follows:~~

189 ~~a. The board shall calculate and report to each TICL~~
 190 ~~insurer the TICL coverage multiples based on 12 options for~~
 191 ~~increasing the insurer's FHCF coverage limit. Each TICL coverage~~
 192 ~~multiple shall be calculated by dividing \$1 billion, \$2 billion,~~
 193 ~~\$3 billion, \$4 billion, \$5 billion, \$6 billion, \$7 billion, \$8~~
 194 ~~billion, \$9 billion, \$10 billion, \$11 billion, or \$12 billion by~~
 195 ~~the total estimated aggregate FHCF reimbursement premiums for~~
 196 ~~the 2007-2008 contract year, and the 2008-2009 contract year.~~

197 ~~b. For the 2009-2010 contract year, the board shall~~
 198 ~~calculate and report to each TICL insurer the TICL coverage~~
 199 ~~multiples based on 10 options for increasing the insurer's FHCF~~
 200 ~~coverage limit. Each TICL coverage multiple shall be calculated~~
 201 ~~by dividing \$1 billion, \$2 billion, \$3 billion, \$4 billion, \$5~~
 202 ~~billion, \$6 billion, \$7 billion, \$8 billion, \$9 billion, and \$10~~
 203 ~~billion by the total estimated aggregate FHCF reimbursement~~
 204 ~~premiums for the 2009-2010 contract year.~~

205 ~~c. For the 2010-2011 contract year, the board shall~~
 206 ~~calculate and report to each TICL insurer the TICL coverage~~
 207 ~~multiples based on eight options for increasing the insurer's~~
 208 ~~FHCF coverage limit. Each TICL coverage multiple shall be~~

209 ~~calculated by dividing \$1 billion, \$2 billion, \$3 billion, \$4~~
 210 ~~billion, \$5 billion, \$6 billion, \$7 billion, and \$8 billion by~~
 211 ~~the total estimated aggregate FHCF reimbursement premiums for~~
 212 ~~the contract year.~~

213 ~~d. For the 2011-2012 contract year, the board shall~~
 214 ~~calculate and report to each TICL insurer the TICL coverage~~
 215 ~~multiples based on six options for increasing the insurer's FHCF~~
 216 ~~coverage limit. Each TICL coverage multiple shall be calculated~~
 217 ~~by dividing \$1 billion, \$2 billion, \$3 billion, \$4 billion, \$5~~
 218 ~~billion, and \$6 billion by the total estimated aggregate FHCF~~
 219 ~~reimbursement premiums for the 2011-2012 contract year.~~

220 ~~e. For the 2012-2013 contract year, the board shall~~
 221 ~~calculate and report to each TICL insurer the TICL coverage~~
 222 ~~multiples based on four options for increasing the insurer's~~
 223 ~~FHCF coverage limit. Each TICL coverage multiple shall be~~
 224 ~~calculated by dividing \$1 billion, \$2 billion, \$3 billion, and~~
 225 ~~\$4 billion by the total estimated aggregate FHCF reimbursement~~
 226 ~~premiums for the 2012-2013 contract year.~~

227 ~~f. For the 2013-2014 contract year, the board shall~~
 228 ~~calculate and report to each TICL insurer the TICL coverage~~
 229 ~~multiples based on two options for increasing the insurer's FHCF~~
 230 ~~coverage limit. Each TICL coverage multiple shall be calculated~~
 231 ~~by dividing \$1 billion and \$2 billion by the total estimated~~
 232 ~~aggregate FHCF reimbursement premiums for the 2013-2014 contract~~
 233 ~~year.~~

234 ~~g. The TICL insurer's increased coverage shall be the FHCF~~

235 ~~reimbursement premium multiplied by the TICL coverage multiple.~~
 236 ~~In order to determine an insurer's total limit of coverage, an~~
 237 ~~insurer shall add its TICL coverage multiple to its payout~~
 238 ~~multiple. The total shall represent a number that, when~~
 239 ~~multiplied by an insurer's FHCF reimbursement premium for a~~
 240 ~~given reimbursement contract year, defines an insurer's total~~
 241 ~~limit of FHCF reimbursement coverage for that reimbursement~~
 242 ~~contract year.~~

243 ~~10. "TICL options addendum" means an addendum to the~~
 244 ~~reimbursement contract reflecting the obligations of the fund~~
 245 ~~and insurers selecting an option to increase an insurer's FHCF~~
 246 ~~coverage limit.~~

247 (e) CLIO ~~TICL~~ options addendum.—

248 1. The CLIO ~~TICL~~ options addendum shall provide for
 249 reimbursement of CLIO ~~TICL~~ insurers for covered events occurring
 250 during the relevant ~~2009-2010, 2010-2011, 2011-2012, 2012-2013,~~
 251 ~~and 2013-2014~~ contract year ~~years~~ in exchange for the CLIO ~~TICL~~
 252 reimbursement premium paid into the fund under paragraph (f)
 253 ~~based on the TICL coverage available and selected for each~~
 254 ~~respective contract year. Any insurer writing covered policies~~
 255 ~~has the option of selecting an increased limit of coverage under~~
 256 ~~the TICL options addendum and shall select such coverage at the~~
 257 ~~time that it executes the FHCF reimbursement contract.~~

258 2. The CLIO ~~TICL~~ addendum shall contain a promise by the
 259 board to reimburse the CLIO ~~TICL~~ insurer for 45 percent, 75
 260 percent, or 90 percent of its losses from each covered event in

261 excess of the insurer's retention, plus 5 percent of the
 262 reimbursed losses to cover loss adjustment expenses. The
 263 percentage shall be the same as the coverage level selected by
 264 the insurer under paragraph (4) (b).

265 3. The CLIO ~~TICL~~ addendum shall provide that reimbursement
 266 amounts shall not be reduced by reinsurance paid or payable to
 267 the insurer from other sources.

268 4. The priorities, schedule, and method of reimbursements
 269 under the CLIO ~~TICL~~ addendum shall be the same as provided under
 270 subsection (4).

271 (f) CLIO ~~TICL~~ reimbursement premiums. Subject to all
 272 requirements, standards, and procedures of paragraph (5) (b), the
 273 board shall adopt a separate CLIO premium formula for the
 274 optional coverage limits provided under this subsection. Each
 275 CLIO ~~TICL~~ insurer shall pay to the fund, in the manner and at
 276 the time provided in the reimbursement contract for payment of
 277 reimbursement premiums, a CLIO reimbursement premium as
 278 determined under this paragraph ~~TICL reimbursement premium~~
 279 ~~determined as specified in subsection (5), except that a cash~~
 280 ~~build up factor does not apply to the TICL reimbursement~~
 281 ~~premiums. However, the TICL reimbursement premium shall be~~
 282 ~~increased in the 2009-2010 contract year by a factor of two, in~~
 283 ~~the 2010-2011 contract year by a factor of three, in the 2011-~~
 284 ~~2012 contract year by a factor of four, in the 2012-2013~~
 285 ~~contract year by a factor of five, and in the 2013-2014 contract~~
 286 ~~year by a factor of six.~~

287 (g) Effect on claims-paying capacity of the fund.—The CLIO
 288 optional coverage ~~For the 2009-2010, 2010-2011, 2011-2012, 2012-~~
 289 ~~2013, and 2013-2014 contract years,~~ the program created by this
 290 subsection shall increase the claims-paying capacity of the fund
 291 as provided in subparagraph (4)(c)1. by an amount not to exceed
 292 \$3 ~~\$12~~ billion and shall depend on the CLIO ~~TICL~~ coverage
 293 options available and selected for the specified contract year
 294 and the number of insurers that select the CLIO ~~TICL~~ optional
 295 coverage. The additional capacity shall apply only to the
 296 additional coverage provided under the CLIO ~~TICL~~ options and
 297 shall not otherwise affect any insurer's reimbursement from the
 298 fund if the insurer chooses not to select the ~~temporary~~ option
 299 to increase its limit of coverage under the FHCF.

300 Section 2. Effective June 1, 2015, subsection (5) of
 301 section 627.0629, Florida Statutes, is amended to read:

302 627.0629 Residential property insurance; rate filings.—

303 (5) In order to provide an appropriate transition period,
 304 an insurer may implement an approved rate filing for residential
 305 property insurance over a period of years. Such insurer must
 306 provide an informational notice to the office setting out its
 307 schedule for implementation of the phased-in rate filing. ~~The~~
 308 ~~insurer may include in its rate the actual cost of private~~
 309 ~~market reinsurance that corresponds to available coverage of the~~
 310 ~~Temporary Increase in Coverage Limits, TICL, from the Florida~~
 311 ~~Hurricane Catastrophe Fund. The insurer may also include the~~
 312 ~~cost of reinsurance to replace the TICL reduction implemented~~

CS/HB 391


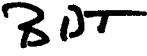
2014

313 ~~pursuant to s. 215.555(16)(d)9. However, this cost for~~
314 ~~reinsurance may not include any expense or profit load or result~~
315 ~~in a total annual base rate increase in excess of 10 percent.~~

316 Section 3. Except as otherwise expressly provided in this
317 act, this act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 879 Flood Insurance
SPONSOR(S): Insurance & Banking Subcommittee; Hooper
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee		Keith 	Topp 
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The National Flood Insurance Program (NFIP) is a federal program that offers federally-subsidized flood insurance to property owners and promotes land-use controls in floodplains. The Federal Emergency Management Agency (FEMA) administers the NFIP. The Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12) made major changes to the NFIP, including an increase in rates charged by the NFIP for flood insurance, starting in 2013. Under BW-12, policyholders with subsidized flood policies for non-primary residences, businesses, and severe repetitive loss properties have a phased in rate increase of 25 percent a year until full-risk rates are achieved. However, starting October 1, 2013, some NFIP policies that were subsidized moved directly to full-risk rates. Subsidized rate policies first in effect on or after July 6, 2012 moved directly to full-risk rates at policy renewal after October 1, 2013. Subsidized rate policies on homes purchased on or after July 6, 2012 moved directly to full-risk rates. And, lapsed subsidized rate policies that were reinstated on or after October 4, 2012 moved directly to full-risk rates at policy renewal after October 1, 2013. Thirteen percent of Florida NFIP policies (268,500 policies) have subsidized rates and are impacted by the rate increases required by BW-12.

The bill creates laws governing the sale of insurance policies, contracts, or endorsements providing flood coverage. The laws created only apply to personal lines residential coverage for flood written by insurers outside of the NFIP. The bill allows insurers to write only two types of flood insurance: standard flood insurance and preferred flood insurance. Standard flood insurance provides the same coverage as standard flood insurance under the NFIP. Preferred flood insurance, however, provides additional coverage than standard NFIP coverage in three areas: the definition of "flood," additional living expenses, and replacement cost for personal property. The bill allows insurers to develop rates for flood coverage two ways: use the rate after filing with and approval by the OIR or until October 1, 2019, use the rate without filing with or approval by the OIR. The Florida Commission on Hurricane Loss Methodology (Commission) is required to adopt, by July 1, 2016, actuarial methods, principles, standards, models, or output ranges for flood loss to be used in setting rates for personal lines residential flood coverage.

The bill allows primary flood coverage for personal lines residential property to be written by a surplus lines insurer without the agent obtaining three declinations for insurance from Florida licensed flood insurers only if the premium for the insurance written by the surplus lines insurer is at least ten percent less than the flood insurance premium charged by a Florida licensed insurer. The bill requires insurers taking policies out of the NFIP to notify the consumer that if the policy returns to the NFIP, a full-risk rate could be charged. The bill also puts additional regulatory requirements on insurers who want to write flood insurance.

It is anticipated that the implementation of the bill will result in additional insurers offering flood coverage in the private market which may increase competition in the marketplace and provide consumers with more coverage options. However, the rate for the coverage is unknown.

The bill has a fiscal impact on the Florida Commission on Hurricane Loss Methodology of approximately \$350,000 to develop standards for review of flood models. The Commission's cost related to the bill will be funded from the Florida Hurricane Catastrophe Fund with the other administrative operating costs of the commission. The bill has an indeterminate fiscal impact on the Department of Financial Services (see fiscal section).

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

National Flood Insurance Program (NFIP)

The National Flood Insurance Program (NFIP or program) is a federal program created in 1968 to offer federally-subsidized flood insurance to property owners and to promote land-use controls in floodplains. The Federal Emergency Management Agency (FEMA) administers the NFIP. If a community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains, the federal government will make flood insurance available within the community.¹ Community participation in the NFIP is voluntary. As of February 17, 2014, Florida has 462 communities participating in the NFIP and 13 communities not participating.²

In 2012, nationwide, the NFIP provided flood insurance coverage for 5.6 million properties and insured more than \$1 trillion in assets.³ About \$3.6 billion was paid to the program in total premium in 2012.

Under the program, the NFIP does not charge risk-based premiums (full-risk rate) for all properties. Flood policies on buildings constructed on or before December 31, 1974 or before the effective date of the initial flood insurance rate map for the community, whichever is later, receive subsidized rates for flood insurance.⁴ Approximately 20 percent of the policies in the NFIP have subsidized rates. The remaining 80 percent have full-risk rates.

Federal Requirements to Obtain Flood Insurance

In 1973 the U.S. Congress passed the Flood Disaster Protection Act.⁵ The Act required property owners with mortgages issued by federally regulated or insured lenders to purchase flood insurance if their property was located in a Special Flood Hazard Area. 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.

The National Flood Insurance Reform Act of 1994⁶ (1994 Reform Act) required federal financial regulatory agencies⁷ 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.⁸ Under the 1994 Reform Act, lending institutions regulated by federal agencies cannot offer loans on properties located in a Special Flood Hazard Area of a community participating in the NFIP unless the property is covered by flood insurance.⁹ 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.

¹ *National Flood Insurance Program, Program Description*, dated August 1, 2002, prepared by FEMA. <https://www.fema.gov/media-library/assets/documents/1150?id=1480> (last viewed December 26, 2013).

² List of participating communities for Florida and nationwide. <http://www.fema.gov/national-flood-insurance-program/national-flood-insurance-program-community-status-book> (last viewed February 19, 2014).

³ All 2012 NFIP statistics are available at <http://www.fema.gov/statistics-calendar-year> (last viewed December 23, 2013).

⁴ *National Flood Insurance Program, Program Description*, dated August 1, 2002, prepared by FEMA. <https://www.fema.gov/media-library/assets/documents/1150?id=1480> (last viewed December 26, 2013).

⁵ http://www.fema.gov/media-library-data/20130726-1545-20490-9247/firm_acts.pdf (last viewed January 23, 2014).

⁶ 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). <http://www.fema.gov/media-library/assets/documents/7281?id=2217> (last viewed January 23, 2013).

⁷ Office of Comptroller of Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Farm Credit Administration and Federal Reserve.

⁸ *FDIC Compliance Manual*, V – 6.1. <http://www.fdic.gov/regulations/compliance/manual/index.html> (last viewed January 23, 2014).

⁹ *FDIC Compliance Manual*, V – 6.1. <http://www.fdic.gov/regulations/compliance/manual/index.html> (last viewed January 23, 2014).

For property located outside Special Flood Hazard Areas, lenders on their own initiative may require flood insurance to be purchased to protect their investment.

Standard NFIP Flood Insurance Policy

The standard flood insurance policy dwelling form offered by the NFIP¹⁰ is a single peril flood policy that pays for direct physical damage to the insured residential property up to the replacement cost¹¹ (RCV) or actual cash value (ACV) or the policy limit.¹² The maximum coverage limit for a NFIP standard residential flood insurance policy is \$250,000.¹³ The NFIP also offers up to \$100,000 in personal property (contents) coverage for residential property, which is always paid at ACV.¹⁴

The maximum coverage available to a condominium association purchased to cover the condominium building, the common and individually owned building elements within the condominium units, improvements within the units, and contents owned in common is \$250,000 per unit multiplied by the total number of units, or the replacement cost of the condominium building, whichever is less.¹⁵ Individual condominium unit owners can purchase flood insurance through the NFIP to insure contents in their condominium unit with a separate dwelling form policy. The NFIP flood insurance coverage limits on non-residential buildings are \$500,000 in coverage to the building and \$500,000 in contents coverage.¹⁶

Properties that cannot obtain flood insurance through the NFIP or need more coverage (called excess coverage) than that provided by the NFIP can purchase flood insurance from licensed Florida insurers in the admitted market or surplus lines insurers,¹⁷ although availability may be limited.

Most NFIP policies also include increased cost of compliance coverage of up to \$30,000 per building for the increased cost to elevate, demolish, or relocate a building to comply with state or community floodplain management laws or ordinances after a flood which substantially damages or repetitively damages the building.¹⁸

¹⁰ 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. *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 viewed January 23, 2014)..

¹¹ 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.

¹² *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 viewed January 23, 2014).

¹³ *National Flood Insurance Program Flood Insurance Manual, RATE 1*, Federal Emergency Management Agency (Revised October 2013) <http://www.fema.gov/media-library/assets/documents/34745> (last viewed February 19, 2014).

¹⁴ *National Flood Insurance Program Flood Insurance Manual, RATE 1*, Federal Emergency Management Agency (Revised October 2013) <http://www.fema.gov/media-library/assets/documents/34745> (last viewed February 19, 2014).

¹⁵ *FDIC Compliance Manual, V – 6.8*. <http://www.fdic.gov/regulations/compliance/manual/index.html> (last viewed January 23, 2014); www.fema.gov/pdf/nfip/.../06condo.pdf. Residential condominium buildings can be insured up to RCV, but those not insured to 80% of replacement cost will have reduced claim payments.

¹⁶ *Reducing Damage from Localized Flooding: A Guide for Communities*, 11-7. <http://www.fema.gov/media-library/assets/documents/1012> (last viewed January 23, 2014).

¹⁷ Unlike insurers in the admitted market, surplus lines insurers are not licensed insurers, do not have their rates regulated by the Office of Insurance Regulation, and do not participate in the Florida Insurance Guaranty Association.

¹⁸ The total amount of a building claim and an increased cost of coverage claim cannot exceed the maximum limit for building property coverage. For a single-family home, this is \$250,000. The limit is \$500,000 for non-residential structures. See *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 viewed January 23, 2014).

NFIP flood policies have separate deductibles for building and personal property (contents) coverage, so a policyholder could pay two deductibles if a loss occurs. Generally, for most properties built before the effective date of the first flood insurance rate map¹⁹ for a community, the minimum deductible²⁰ is:

- \$1,000 if the property is located in certain flood zones.²¹
- \$2,000 if the property is located in other flood zones.²²

For most properties built after the effective date of the first flood insurance rate map for a community, the minimum deductible is \$1,000 if the property is insured in any flood zone.²³

Generally, deductibles for most NFIP residential policies can increase in \$1,000 increments from the required minimum, with the maximum deductible being \$5,000 for building coverage and \$5,000 for contents coverage.²⁴

Community Rating System (CRS)

The NFIP Community Rating System (CRS) was implemented in 1990 as a voluntary program to recognize and encourage community floodplain management activities exceeding the NFIP's minimum standards. Any community fully complying with the NFIP's minimum floodplain management requirements may apply to join the CRS. Participation in the CRS may lower the flood insurance premium for property owners in the participating community. Under the CRS, discounts are provided on flood insurance insured by the NFIP if the community takes specified actions that:

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

Nationwide, 1,211 of the over 21,000 communities participating in the NFIP also participate in the CRS. Thus, the almost 3.8 million NFIP policyholders living in those communities benefit from discounted flood insurance premiums due to their community's CRS participation. Community CRS participation percentage nationwide is six percent. In comparison, Florida has a much higher CRS participation percentage. Forty seven percent of Florida's 461 NFIP communities participate in the CRS program.²⁵

¹⁹ The effective date of the first flood insurance rate map (FIRM) for Florida communities can be found at <http://www.fema.gov/cis/FL.pdf> (last viewed January 23, 2014); *National Flood Insurance Program Flood Insurance Manual*, RATE 16, Federal Emergency Management Agency (Revised October 2013), <http://www.fema.gov/media-library/assets/documents/34745> (last viewed February 19, 2014).

²⁰ The minimum deductible for properties located in any flood zone in the NFIP emergency program is \$2,000. The minimum deductible for pre-FIRM properties with optional post-FIRM elevation ratings in any flood zone is \$1,000. See *National Flood Insurance Program Flood Insurance Manual*, RATE 14, Federal Emergency Management Agency (Revised October 2013). <http://www.fema.gov/media-library/assets/documents/34745> (last viewed February 19, 2014).

²¹ Flood zones B, C, X, A99, and D. Flood hazard areas or flood zones identified on the Flood Insurance Rate Map are identified as a Special Flood Hazard Area (SFHA). SFHA are defined as the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. The 1-percent annual chance flood is also referred to as the base flood or 100-year flood. SFHAs are labeled as Zone A, Zone AO, Zone AH, Zones A1-A30, Zone AE, Zone A99, Zone AR, Zone AR/AE, Zone AR/AO, Zone AR/A1-A30, Zone AR/A, Zone V, Zone VE, and Zones V1-V30. Moderate flood hazard areas, labeled Zone B or Zone X are also shown on the FIRM, and are the areas between the limits of the base flood and the 0.2-percent-annual-chance (or 500-year) flood. The areas of minimal flood hazard, which are the areas outside the SFHA and higher than the elevation of the 0.2-percent-annual-chance flood, are labeled Zone C or Zone X. See <http://www.fema.gov/floodplain-management/flood-zones> and <https://msc.fema.gov/webapp/wcs/stores/servlet/info?storeId=10001&catalogId=10001&langId=-1&content=floodZones&title=FEMA%2520Flood%2520Zone%2520Designations> (last viewed February 20, 2014) for more information on flood zones.

²² Flood zones A, AO, AH, A1-A30, AE, V1-V30, VE, V, AR, AR/AE, AR/AH, AR/AO, AR/A1-A30, AR/A.

²³ *National Flood Insurance Program Flood Insurance Manual*, RATE 14, Federal Emergency Management Agency (Revised October 2013). <http://www.fema.gov/media-library/assets/documents/34745> (last viewed February 19, 2014).

²⁴ For a full listing of NFIP deductible options, see *National Flood Insurance Program Flood Insurance Manual*, RATE 14-RATE 15, Federal Emergency Management Agency (Revised October 2013). <http://www.fema.gov/media-library/assets/documents/34745> (last viewed February 19, 2014). Deductibles for non-residential flood policies can increase to \$50,000 for building and \$50,000 for contents coverage.

²⁵ Information obtained from the Florida Division of Emergency Management on file with the Insurance & Banking Subcommittee. Further information detailing Florida community participation in CRS is available at <http://www.fema.gov/media-library/assets/documents/27808?id=6202> (last viewed on February 19, 2014). Information available includes a list of Florida community CRS participation ranked by flood insurance policy count and includes a community's CRS Class as of 2012.

The CRS uses a rating system, differentiated by ten class levels, to determine how much of a flood insurance premium discount all property owners of the CRS rated community will receive. A Class 1 community receives the greatest flood insurance discount (45 percent maximum discount) and a Class 10 community receives no discount. A community receives a five percent greater discount on flood insurance premiums for its property owners each time it moves to a lower CRS class. The city of Roseville, California is the only Class 1 community in the nation. Property owners in that community receive a 45 percent flood insurance discount.²⁶

FEMA determines a community's class, after a verification visit to the community, based on points earned by the community from 18 creditable activities in the areas of public information, mapping and regulations, flood damage reduction, and flood preparedness.²⁷ The *National Flood Insurance Program Community Rating System Coordinator's Manual*²⁸ specifies the creditable activities and the maximum number of points that can be earned for the activity. A community can improve its class rating by undertaking new mitigation and floodplain management activities that earn more points. Each year, in order to maintain its class rating, a community participating in the CRS must verify to FEMA that it is continuing to perform the creditable activities that resulted in its rating²⁹ and a full review is done every five years.

Florida does not have any communities lower than Class 5, so the highest flood insurance discount any Florida property owner currently receives is 25 percent. Florida has 17 Class 5 communities and property owners in these 17 communities receive a maximum 25 percent flood insurance discount.³⁰ Florida has 12 Class 10 communities and property owners in these 12 communities receive no flood insurance discount under CRS. According to the Florida Division of Emergency Management, Florida saves over \$191.6 million annually on insurance premiums due to the CRS.³¹

The Biggert-Waters Flood Insurance Reform Act of 2012

The NFIP remained financially solvent until the 2005 hurricane season when flood losses from Hurricanes Katrina, Rita, and Wilma caused the program to borrow \$21 billion from the U.S. Treasury. In addition, flood losses from Superstorm Sandy in 2012 increased the program's deficit. Although Congress enacted several extensions of the program after the 2005 hurricane season, major reform of the NFIP was not enacted until the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12 or Reform Act). The Reform Act, passed by Congress on June 29, 2012 and signed into law by President Obama on July 6, 2012, reauthorized the NFIP for five years (through September 30, 2017) and made significant reforms to make the program more financially and structurally sound.

One of the biggest areas of reform provided by BW-12 is increased rates charged by the NFIP for flood insurance, starting in 2013.³² However, the rate increases provided in BW-12 will primarily affect only the 20 percent of flood insurance policyholders paying subsidized rates. Thus, 80 percent of policyholders will not likely be affected unless there is a triggering event such as a policy lapse, purchase of a new policy, or sale of the property. But, twenty percent annual rate increases associated with remapping could affect these policyholders, as discussed below.

²⁶ *Community Rating System Fact Sheet*, Federal Emergency Management Agency, November 8, 2012. <http://www.fema.gov/media-library/assets/documents/9998> (last viewed February 19, 2014).

²⁷ Credits are awarded for each creditable activity. A community must earn a minimum of 500 points to qualify as a Class 9 community and earn a 5% premium reduction. A community that earns 4,500 points or more qualifies as a Class 1 community and earns a 45% premium reduction. <http://www.fema.gov/national-flood-insurance-program-community-rating-system> (last viewed February 19, 2014).

²⁸ *Coordinator's Manual*. <http://www.fema.gov/media-library/assets/documents/8768?id=2434> (last viewed February 19, 2014).

²⁹ *Community Rating System Fact Sheet*, Federal Emergency Management Agency, November 8, 2012. <http://www.fema.gov/media-library/assets/documents/9998> (last viewed February 19, 2014).

³⁰ Based on 2012 data. <http://www.fema.gov/media-library/assets/documents/27808?id=6202> (last viewed February 19, 2014).

³¹ Information received from the Florida Division of Emergency Management on file with the Insurance & Banking Subcommittee.

³² Rate increase information obtained from the brochure "Changing Risks Changing Rates" published by FEMA on October 2, 2013. <http://www.fema.gov/media-library/assets/documents/84512> (last viewed December 26, 2013).

Policyholders with subsidized flood policies for non-primary residences, businesses, and severe repetitive loss properties have a phased in rate increase of 25 percent a year under BW-12 until full-risk rates are achieved. However, starting October 1, 2013, some NFIP policies that were subsidized moved directly to full-risk rates (i.e., without a phased in rate increase). Subsidized rate policies first in effect on or after July 6, 2012 (the date BW-12 was signed by the President) moved to full-risk rates at policy renewal after October 1, 2013. Subsidized rate policies on homes purchased on or after July 6, 2012 moved to full-risk rates. In addition, lapsed subsidized rate policies that were reinstated on or after October 4, 2012 moved to full-risk rates at policy renewal after October 1, 2013. Thus, in these three instances, flood insurance premiums could dramatically increase from the premium that has historically been paid on the property.

The Reform Act also requires most NFIP policyholders to pay a 5 percent assessment on their policy to create a reserve fund for catastrophic losses.³³ Additional changes to premium rates, including those paid by the 80 percent of NFIP policyholders with non-subsidized rates, can occur upon remapping. Some flood maps used by FEMA have not been updated since the 1980's. Rate changes due to remapping are not implemented until late 2014 and are phased in over a five year period at a rate of 20 percent per year until full-risk rates are charged. Current law limits rate increases due to remapping to 10 percent per year, so BW-12 allows a larger annual rate increase for remapped properties. However, federal action in the 2014 federal omnibus spending bill has likely delayed rate increases associated with remapping for 12-18 months, as described below.

2014 Federal Response to Biggert-Waters Flood Insurance Reform Act

Flood insurance rate increases of up to 20 percent per year due to remapping, which were to be implemented in late 2014, have been delayed by Congress. The 2014 federal omnibus spending bill, which was signed by President Obama on January 17, 2014, contains a provision preventing use of any funds contained in the spending bill to be used to implement, carry out, administer, or enforce the remapping requirements in BW-12.³⁴ Accordingly, FEMA is prevented from spending funds on remapping for flood insurance purposes through September 31, 2014, the end of the 2014 fiscal year. Even if Congress restores funding for the planning and development of remapping required by BW-12 for the next fiscal year, it will likely take an additional 12-18 months after the funding is restored for the rate increases associated with remapping to take effect.³⁵

According to the Florida Division of Emergency Management, 31 of the 67 counties in Florida are planning to remap and 36 counties do not plan to remap.³⁶ Thus, the rate increase delay should apply to flood insurance policies in those Florida counties planning to remap.

Flood Insurance in Florida from the NFIP

Florida has just over 2 million policies in the NFIP, representing 37 percent of the total policies in the program.³⁷ Eighty seven percent of the 2 million Florida policies (1.78 million policies) have nonsubsidized rates, so will not be subject to the 25 percent annual rate increases under BW-12. These policies, however, may see routine annual rate increases and rate increases of up to 20 percent per year due to re-mapping after FEMA is allowed to spend funds on remapping.

³³ For those NFIP policies with a 25% rate increase, the 5% assessment is not on top of the 25% rate increase. In other words, 5% of the 25% increase will be allocated to the Reserve Fund.

³⁴ Sec 572, Pub. L. 113-76. <http://beta.congress.gov/bill/113th-congress/house-bill/3547> (last viewed January 24, 2014).

³⁵ Memorandum for Write Your Own (WYO) Principal Coordinators and the National Flood Insurance Program (NFIP) Servicing Agent dated February 5, 2014, issued by the FEMA, on file with the Insurance & Banking Subcommittee. See also, Simpson, Andrew. "Flood Insurance Premium Hikes from New Maps Could be Delayed until 2015." *Insurance Journal* 10 February 2014. <http://www.insurancejournal.com/news/national/2014/02/10/319954.htm>. (last viewed February 14, 2014).

³⁶ Meeting materials presented by Florida Division of Emergency Management at Senate Banking and Insurance Committee meeting on October 8, 2013. <http://flsenate.gov/Committees/Show/BI/> (last viewed January 29, 2014).

³⁷ Florida NFIP statistics contained in this and the following paragraphs are from the House Insurance & Banking Subcommittee meeting materials for the September 25, 2013 meeting.

Florida has more subsidized flood policies than any other state.³⁸ Thirteen percent of Florida NFIP policies (268,500 policies) have subsidized rates and are impacted by BW-12. The impact on these policies is as follows:³⁹

- 50,500 secondary residences, businesses, or severe repetitive loss properties will have a 25 percent per year rate increase until full-risk rate is implemented.⁴⁰
- 103,000 primary residences will have no immediate rate change under BW-12, but will lose their subsidized rate if the property is sold (full-risk rate charged to the next owner), the policy lapses, the property suffers severe and repeated flood losses or a new policy is purchased.
- 115,000 policies insuring condominiums or non-condominium multifamily properties will have no rate change until FEMA develops guidelines for removing the subsidy on these properties.

Pinellas County has more subsidized policies than any other Florida county. Thirty five percent of the flood policies in Pinellas County (50,255 out of 141,764 policies) are subsidized. Miami-Dade County ranks second in terms of the number of subsidized policies, with 47,442 out of 366,376 policies, or 13 percent of its policies, being subsidized.

Additionally, currently Florida pays more in premium to the NFIP than it receives in claim payments. From 1978-2008, for Florida policies, the NFIP collected \$3.60 in premium for every \$1 paid in claims.⁴¹ Other states, such as Louisiana and Texas, pay less in premium than they receive in claim payments.

Flood Insurance in Florida outside of the NFIP

According to the Office of Insurance Regulation (OIR), there are currently six Florida-licensed insurance companies writing flood insurance outside of the NFIP, ten insurers writing excess flood coverage (insurance over the coverage limit of NFIP), and one surplus lines insurer writing flood insurance.⁴²

Some of these insurers, however, write only a limited number of flood policies or only certain types of flood policies, such as for high value homes.

On October 28, 2013, Florida's Insurance Commissioner issued an Informational Memorandum to all property insurers relating to flood insurance.⁴³ Although current law allows insurers to write primary flood insurance, because it is currently written so infrequently, the Memorandum provided suggestions and guidance relating to flood insurance forms and rates to facilitate the regulatory review and approval process for insurers wanting to start writing flood insurance.

Effect of Proposed Changes

The bill creates laws governing the sale of insurance policies, contracts, or endorsements providing flood coverage. Because current law allows insurers to write flood insurance, but does not contain provisions specific to this type of insurance, the bill creates specific laws for flood insurance and also provides that the flood insurance laws created by the bill supersede any other conflicting law in the Florida Insurance Code.⁴⁴

³⁸ <http://www.arcgis.com/home/webmap/viewer.html?webmap=e0208985e8e64d44bca999325254ff5b&extent=-106.6909,33.1708,-76.9399,43.9898> (last viewed December 26, 2013).

³⁹ The numbers are approximations.

⁴⁰ Rate increases for secondary residences were effective January 1, 2013 and for businesses and severe repetitive loss properties on October 1, 2013.

⁴¹ Wharton Center for Risk Management and Decision Processes, Issue Brief, Fall 2011 – “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).”

opim.wharton.upenn.edu/risk/library/WRCib2011b-nfip-who-pays.pdf (last viewed December 23, 2013).

⁴² A list of these insurers is available at <http://www.flair.com/Sections/PandC/FloodInsurance/FloodInsuranceWritersFL.aspx> (last viewed February 20, 2014).

⁴³ <http://www.flair.com/Sections/PandC/FloodInsurance/FloodInsuranceResources.aspx> (last viewed February 20, 2014).

⁴⁴ The Florida Insurance Code is chapters 624-632, chapters 634-636, chapters 641-642, chapter 648, and chapter 651. (s. 624.01, F.S.)

The laws for flood insurance created by the bill only apply to personal lines residential coverage for flood written by insurers outside of the NFIP. Flood coverage outside of the NFIP written as commercial lines residential and commercial lines nonresidential coverage is not governed by the bill. Likewise, excess flood coverage is not governed by the bill. In addition, the bill specifically prohibits Citizens Property Insurance Corporation⁴⁵ (Citizens) from writing flood insurance and provides the Florida Hurricane Catastrophe Fund will not pay for flood losses, which is consistent with current law governing the Fund.⁴⁶

Flood Insurance Coverage

The bill allows insurers providing personal lines residential coverage for flood outside of the NFIP to write only two types of flood insurance:

1. Standard flood insurance.
2. Preferred flood insurance.

Standard flood insurance under the bill provides the same coverage as standard flood insurance under the NFIP. Thus, standard flood insurance created by the bill has the same coverage limits, building and contents deductibles, RCV and ACV loss payment parameters, and cost of compliance coverage as a standard flood policy issued under the NFIP and outlined previously in the analysis. The definition of "flood" used in the standard flood policy created by the bill is also the same definition that is used in the NFIP, so both standard policies will cover the same losses.

Preferred flood insurance under the bill, however, provides additional coverage than standard NFIP coverage in three areas: the definition of "flood," additional living expenses, and replacement cost for personal property. The preferred policy created by the bill has an expanded definition of "flood" so that losses from water intrusion originating outside a structure that are not considered a flood loss under a standard flood policy under the NFIP or the bill are considered a covered flood loss under the preferred policy created by the bill.

In addition, additional living expenses⁴⁷ are required to be covered under the preferred policy created by the bill. These expenses are not covered under an NFIP standard flood policy or a standard flood policy created by the bill. Finally, the preferred flood policy under the bill pays replacement cost for personal property or contents losses caused by a flood, whereas a standard flood policy under the NFIP or the bill pays only actual cash value for such losses.

Flood Insurance Rates

The bill allows insurers providing personal lines residential coverage for flood to develop rates for the coverage two ways:

1. Use the rate after filing with and approval by the OIR.
2. Use the rate without filing with or approval by the OIR.

Insurers can only use the second way to develop flood insurance rates until October 1, 2019. After this date, all insurers must use the first option which requires a full rate review and approval by the OIR before a flood insurance rate can be used. The allowable rating methods apply to both the standard and preferred flood insurance coverage created by the bill.

⁴⁵ Citizens Property Insurance Corporation is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market in Florida. It is not a private insurance company, but is the largest property insurer in Florida.

⁴⁶ See s. 215.555(2)(d), (3), and (4)(b), F.S.

⁴⁷ Although not defined in the law, additional living expenses are extra charges covered by an insurance policy (usually a property insurance policy) above the policyholder's customary living expenses and are paid by the insurer when the policyholder is temporarily displaced from their place of residence due to damage to the residence by a covered peril making the residence temporarily uninhabitable. The coverage limit for additional living expenses is usually a stated percentage of the dwelling limit for a homeowner's policy or personal property limit for a tenant's policy.

Use the Rate after Filing with and Approval by the OIR

Rates for property, casualty, and surety insurance cannot be excessive, inadequate, or unfairly discriminatory.⁴⁸ When an insurer submits a rate to the OIR for a full rate review, the OIR uses statutory factors and rate standards found in s. 627.062(2), F.S., to determine if a rate is excessive, inadequate, or unfairly discriminatory. If a flood insurer opts to file its flood insurance rates with the OIR for approval before using the rates, the rates cannot be excessive, inadequate, or unfairly discriminatory. To make this determination, the OIR will use the same statutory factors and rate standards that it uses for rates for property, casualty, and surety insurance.

Use the Rate without Filing with or Approval by the OIR

Although the bill allows insurers to use a rate for flood coverage without filing it or obtaining approval of it from the OIR, a rate set this way still cannot be excessive, inadequate, or unfairly discriminatory, the same rate requirement for rates filed with and approved by the OIR. The insurer writing the flood insurance is responsible for ensuring the rate charged meets this requirement.

The bill allows the OIR to examine an insurer's documentation supporting a rate to verify the rate meets the requirement with the insurer paying for the examination. During an examination, the OIR uses the rate factors and standards in current law that apply to property, casualty and surety insurance rates filed with the OIR to determine whether the flood insurance rate charged is excessive, inadequate, or unfairly discriminatory. Additionally, the insurer must notify the OIR within 30 days of a rate change for flood insurance that was originally set by this method. Setting flood rates using this method is similar to what is allowed in current law for rates for certain types of commercial lines risks under s. 627.062(3)(d), F.S.

Use of Flood Models to Set Flood Rates

To support a flood insurance rate for those filed with and approved by the OIR before use, the bill allows flood losses to be projected by a flood model found acceptable or reliable by the Florida Commission on Hurricane Loss Projection (Commission). For flood rates not filed with or approved by the OIR, if the OIR examines the rate after use, it will consider whether the insurer's flood rates were set based on flood losses projected by a Commission approved model.

In 1995 the Legislature established the Commission to serve as an independent body within the State Board of Administration.⁴⁹ The Commission is comprised of 12 members. Members include experts in insurance finance, statistics, computer system design, structural engineering, and meteorology who are full-time faculty members in the State University System, three actuaries, the Executive Director of Citizens, the senior employee responsible for Florida Hurricane Catastrophe Fund operations, the Insurance Consumer Advocate, and the Director of Emergency Management. The Commission sets standards for hurricane loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting property insurance rates to determine whether they meet the Commission's standards.

The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Only hurricane loss models or methods the Commission deems accurate or reliable can be used by insurers in rate filings to estimate hurricane losses used to set property insurance rates.

The duties of the Commission are expanded by the bill to require the Commission to adopt, by July 1, 2016, actuarial methods, principles, standards, models, or output ranges for flood loss to be used in setting rates for personal lines residential flood coverage. This is consistent with the Commission's duties relating to hurricane loss. The bill further requires the OIR to consider projected flood losses from models or methods found to be acceptable or reliable by the Commission or a straight average of the model results for a rate filing that includes flood coverage.

⁴⁸ s. 627.062(1), F.S.

⁴⁹ The Commission is created in s. 627.0628, F.S. This statute also provides the composition and duties of the Commission.

There are two primary differences between current law for rate filings for hurricane loss and the proposed law for flood loss. First, current law does not allow insurers to average hurricane model results, and the bill allows insurers to use a straight average of flood model results. Second, the current law requires hurricane losses used to support a rate filing to be estimated by a Commission approved hurricane model, whereas the bill allows, but does not require, flood losses to be estimated by a Commission approved flood model. Thus, insurers are given the flexibility to use other means to estimate flood losses, especially since the Commission has not yet approved any flood models.

Consumer Notification

The bill requires an agent taking a flood insurance policy out of the NFIP and putting it into the admitted market to obtain an acknowledgment, signed by the property owner, notifying the owner that if flood insurance is later obtained from the NFIP, a full risk rate for flood insurance could be charged by the NFIP.

Flood Insurance in the Surplus Lines Market

The bill allows primary flood coverage for personal lines residential property to be written by a surplus lines insurer without the agent obtaining three declinations for insurance from Florida licensed flood insurers only if the premium for the insurance written by the surplus lines insurer is at least ten percent less than the flood insurance premium charged by a Florida licensed insurer.

The bill also requires an agent taking a flood insurance policy out of the NFIP and putting it into the surplus lines market to obtain an acknowledgment, signed by the property owner, notifying the owner that if flood insurance is later obtained from the NFIP, a full risk rate for flood insurance could be charged by the NFIP. This notification requirement is the same for flood insurance policies taken out of the NFIP and put into the admitted market.

Additional Insurer Regulatory Requirements Relating to Flood Insurance

The bill puts additional regulatory requirements on insurers wanting to write primary flood insurance in Florida for personal lines residential property. The insurer must notify the OIR at least 30 days before it begins to write flood insurance and file a plan of operation and financial projection with the OIR relating to its flood insurance writings. However, insurers having at least \$35 million in surplus and that are writing flood insurance as an endorsement to a property insurance policy, instead of a stand-alone policy, do not have to file a plan of operation or financial projection with the OIR. These insurers must still notify the OIR 30 days before they begin to write flood insurance.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.062, F.S., relating rate standards.

Section 2: Amends s. 627.0628, F.S., relating to Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.

Section 3: Creates s. 627.715, F.S., relating to flood insurance.

Section 4: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the Department of Financial Services (DFS), there could be a positive, yet indeterminate impact to revenues deposited into the Insurance Regulatory Trust Fund within the DFS. Provisions of the bill will allow disputed flood claims issued by property insurers to be eligible for participation in the residential property mediation program administered by the Division of Consumer Services (Division). The current cost for mediation is \$350, and is borne by the insurer. The mediation fee is divided between the mediator and the Division; \$300 is paid to the mediator and a \$50 administrative fee is paid to the Division. However, the DFS indicates that a revenue projection cannot be made at this time due to uncertain number of requests for potential flood mediation that could be submitted in the upcoming fiscal years.⁵⁰

2. Expenditures:

The bill requires the Florida Commission on Hurricane Loss Methodology (Commission) to develop standards for review of flood models. This entails additional Commission meetings, research, workshops, consultants, and possible meetings at each flood modeler's location, costing an estimated \$350,000. The Commission is funded by the Florida Hurricane Catastrophe Fund (Fund) so the additional costs will be paid from the Fund. The Fund is a tax-exempt trust fund created in 1993 as a form of reinsurance for residential property insurers. Each insurance company writing insurance policies covering residential property or any policy covering a residential structure or its contents must buy specified reinsurance coverage from the Fund and pays a premium to the fund for the reinsurance purchased. The Fund does not receive any state funding (from the General Revenue Fund or other state trust funds) and receives its funding from the reinsurance premium it charges insurers and investment income from investing the reinsurance premium received. According to the Commission, the estimated 2014 year-end balance of the Fund will be approximately \$11 billion.⁵¹

The bill has an indeterminate fiscal impact on expenditures of the Department of Financial Services⁵². According to the DFS, it is presumed that the bill will allow disputed flood claims issued by property insurers to be eligible for participation in the residential property mediation program⁵³ administered by the Division of Consumer Services. The DFS indicates a potential fiscal impact on the Division of Consumer Services if requests are forthcoming by insurers or the insured for participation in the residential property mediation program. However, the exact amount of workload is unknown at this time due to the uncertainty of the number of potential requests for mediation as a result of the bill. Based on current staffing within the Division of Consumer Services any workload associated with the bill can likely be absorbed within current resources until the exact workload, if any, can be identified by the DFS.

⁵⁰ Department of Financial Services bill analysis (March 12, 2014) on file with the Government Operations Appropriations Subcommittee.

⁵¹ Email correspondence with the Florida Commission on Hurricane Loss Methodology (March 12, 2014) on file with the Government Operations Appropriations Subcommittee.

⁵² Department of Financial Services bill analysis (February 14, 2014) on file with the Government Operations Appropriations Subcommittee.

⁵³ s. 627.7015, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is anticipated that the implementation of the bill will result in additional insurers offering flood coverage in the private market which may increase competition in the marketplace and provide consumers with more coverage options. It is unknown what the rate for the flood coverage created by the bill will be.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute.

The proposed committee substitute made the following major changes to the filed version of the bill:

- Maintained the same number of members of the Commission as under current law instead of increasing membership by two members with conforming changes.
- Extended the date by which the Commission must adopt information relating to flood loss models.
- Removed language requiring a flood deductible based on a stated dollar amount or percentage of coverage.
- Removed language requiring flood losses to be adjusted on an actual cash value or replacement cost basis.
- Removed language allowing a flood insurance policy to be for an agreed-upon amount.
- Removed authority for insurers to rate flood insurance on an individually rated risk basis or consent to rate basis.
- Allowed pooled insurer surplus or intercompany reinsurance to be used in determining whether an insurer must file a plan of operation and financial projections about flood insurance writings with the OIR.
- Prohibited Citizens from writing flood insurance.
- Prohibited the Florida Hurricane Catastrophe Fund from reimbursing insurers for flood losses.

The staff analysis was updated to reflect the committee substitute.

1 A bill to be entitled
2 An act relating to flood insurance; amending s.
3 627.062, F.S.; adding projected flood losses to the
4 factors that must be considered by the Office of
5 Insurance Regulation in reviewing certain rate
6 filings; amending s. 627.0628, F.S.; requiring the
7 Florida Commission on Hurricane Loss Projection
8 Methodology to adopt standards and guidelines relating
9 to personal lines residential flood loss by a certain
10 date; creating s. 627.715, F.S.; authorizing certain
11 insurers to offer flood insurance in this state;
12 providing standard and preferred coverage
13 requirements; defining the term "flood"; requiring
14 that certain limitations be noted on the policy
15 declarations or face page; providing the insurer with
16 rate options; authorizing a surplus lines agent to
17 export a contract or endorsement for flood coverage to
18 a surplus lines insurer without meeting certain
19 requirements under certain circumstances; requiring
20 the insurer to notify the office before writing flood
21 insurance and to file a plan of operation with the
22 office; providing an exception; prohibiting Citizens
23 Property Insurance Corporation from providing flood
24 insurance; prohibiting the Florida Hurricane
25 Catastrophe Fund from reimbursing losses caused by
26 flooding; requiring certain agents to obtain an

27 acknowledgment of certain disclosures signed by the
 28 applicant; providing construction; providing an
 29 effective date.

31 Be It Enacted by the Legislature of the State of Florida:

32
 33 Section 1. Paragraph (b) of subsection (2) of section
 34 627.062, Florida Statutes, is amended to read:

35 627.062 Rate standards.—

36 (2) As to all such classes of insurance:

37 (b) Upon receiving a rate filing, the office shall review
 38 the filing to determine if a rate is excessive, inadequate, or
 39 unfairly discriminatory. In making that determination, the
 40 office shall, in accordance with generally accepted and
 41 reasonable actuarial techniques, consider the following factors:

42 1. Past and prospective loss experience within and without
 43 this state.

44 2. Past and prospective expenses.

45 3. The degree of competition among insurers for the risk
 46 insured.

47 4. Investment income reasonably expected by the insurer,
 48 consistent with the insurer's investment practices, from
 49 investable premiums anticipated in the filing, plus any other
 50 expected income from currently invested assets representing the
 51 amount expected on unearned premium reserves and loss reserves.

52 The commission may adopt rules using reasonable techniques of

53 actuarial science and economics to specify the manner in which
 54 insurers calculate investment income attributable to classes of
 55 insurance written in this state and the manner in which
 56 investment income is used to calculate insurance rates. Such
 57 manner must contemplate allowances for an underwriting profit
 58 factor and full consideration of investment income that produces
 59 ~~which produce~~ a reasonable rate of return; however, investment
 60 income from invested surplus may not be considered.

61 5. The reasonableness of the judgment reflected in the
 62 filing.

63 6. Dividends, savings, or unabsorbed premium deposits
 64 allowed or returned to ~~Florida~~ policyholders, members, or
 65 subscribers in this state.

66 7. The adequacy of loss reserves.

67 8. The cost of reinsurance. The office may not disapprove
 68 a rate as excessive solely due to the insurer having obtained
 69 catastrophic reinsurance to cover the insurer's estimated 250-
 70 year probable maximum loss or any lower level of loss.

71 9. Trend factors, including trends in actual losses per
 72 insured unit for the insurer making the filing.

73 10. Conflagration and catastrophe hazards, if applicable.

74 11. Projected hurricane losses, if applicable, which must
 75 be estimated using a model or method found to be acceptable or
 76 reliable by the Florida Commission on Hurricane Loss Projection
 77 Methodology, and as further provided in s. 627.0628.

78 12. Projected flood losses for personal residential

79 property insurance, if applicable, which may be estimated using
 80 a model or method, or a straight average of model results or
 81 output ranges, independently found to be acceptable or reliable
 82 by the Florida Commission on Hurricane Loss Projection
 83 Methodology and as further provided in s. 627.0628.

84 ~~13.12.~~ A reasonable margin for underwriting profit and
 85 contingencies.

86 ~~14.13.~~ The cost of medical services, if applicable.

87 ~~15.14.~~ Other relevant factors that affect the frequency or
 88 severity of claims or expenses.

89

90 The provisions of this subsection do not apply to workers'
 91 compensation, employer's liability insurance, and motor vehicle
 92 insurance.

93 Section 2. Subsection (3) of section 627.0628, Florida
 94 Statutes, is amended to read:

95 627.0628 Florida Commission on Hurricane Loss Projection
 96 Methodology; public records exemption; public meetings
 97 exemption.—

98 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

99 (a) The commission shall consider any actuarial methods,
 100 principles, standards, models, or output ranges that have the
 101 potential for improving the accuracy of or reliability of the
 102 hurricane loss projections used in residential property
 103 insurance rate filings and flood loss projections used in rate
 104 filings for personal lines residential flood insurance coverage.

105 The commission shall, from time to time, adopt findings as to
 106 the accuracy or reliability of particular methods, principles,
 107 standards, models, or output ranges.

108 (b) The commission shall consider any actuarial methods,
 109 principles, standards, or models that have the potential for
 110 improving the accuracy of or reliability of projecting probable
 111 maximum loss levels. The commission shall adopt findings as to
 112 the accuracy or reliability of particular methods, principles,
 113 standards, or models related to probable maximum loss
 114 calculations.

115 (c) In establishing reimbursement premiums for the Florida
 116 Hurricane Catastrophe Fund, the State Board of Administration
 117 must, to the extent feasible, employ actuarial methods,
 118 principles, standards, models, or output ranges found by the
 119 commission to be accurate or reliable.

120 (d) With respect to a rate filing under s. 627.062, an
 121 insurer shall employ and may not modify or adjust actuarial
 122 methods, principles, standards, models, or output ranges found
 123 by the commission to be accurate or reliable in determining
 124 hurricane loss factors for use in a rate filing under s.
 125 627.062. An insurer shall employ and may not modify or adjust
 126 models found by the commission to be accurate or reliable in
 127 determining probable maximum loss levels pursuant to paragraph
 128 (b) with respect to a rate filing under s. 627.062 made more
 129 than 60 days after the commission has made such findings. This
 130 paragraph does not prohibit an insurer from using a straight

131 average of model results or output ranges for the purposes of a
 132 rate filing for personal lines residential flood insurance
 133 coverage under s. 627.062.

134 (e) The commission shall adopt actuarial methods,
 135 principles, standards, models, or output ranges for personal
 136 lines residential flood loss no later than July 1, 2016.

137 (f)~~(e)~~ The commission shall revise ~~adopt revisions to~~
 138 previously adopted actuarial methods, principles, standards,
 139 models, or output ranges every odd-numbered ~~odd~~ year.

140 (g)~~(f)~~1. A trade secret, as defined in s. 688.002, that is
 141 used in designing and constructing a hurricane loss model and
 142 that is provided pursuant to this section, by a private company,
 143 to the commission, office, or consumer advocate appointed
 144 pursuant to s. 627.0613, is confidential and exempt from s.
 145 119.07(1) and s. 24(a), Art. I of the State Constitution.

146 2.a. That portion of a meeting of the commission or of a
 147 rate proceeding on an insurer's rate filing at which a trade
 148 secret made confidential and exempt by this paragraph is
 149 discussed is exempt from s. 286.011 and s. 24(b), Art. I of the
 150 State Constitution. The closed meeting must be recorded, and no
 151 portion of the closed meeting may be off the record.

152 b. The recording of a closed portion of a meeting is
 153 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 154 Constitution.

155 c. This subparagraph is subject to the Open Government
 156 Sunset Review Act in accordance with s. 119.15 and shall stand

157 repealed on October 2, 2015, unless reviewed and saved from
 158 repeal through reenactment by the Legislature.

159 Section 3. Section 627.715, Florida Statutes, is created
 160 to read:

161 627.715 Flood insurance.—An authorized insurer may issue
 162 an insurance policy, contract, or endorsement providing personal
 163 lines residential coverage for the peril of flood on any
 164 structure or the contents of personal property contained
 165 therein, subject to this section. This section does not apply to
 166 commercial lines residential or commercial lines nonresidential
 167 coverage for the peril of flood. This section also does not
 168 apply to coverage for the peril of flood that is excess coverage
 169 over any other insurance covering the peril of flood. An insurer
 170 may issue flood insurance policies, contracts, or endorsements
 171 on a standard or preferred basis.

172 (1)(a)1. Standard flood insurance must cover only losses
 173 from the peril of flood, as defined in paragraph (b), equivalent
 174 to that provided under a standard flood insurance policy under
 175 the National Flood Insurance Program. Standard flood insurance
 176 issued under this section must provide the same coverage,
 177 including deductibles and adjustment of losses, as that provided
 178 under a standard flood insurance policy under the National Flood
 179 Insurance Program.

180 2. Preferred flood insurance must include the same
 181 coverage as standard flood insurance but:

182 a. Include, within the definition of "flood," losses from

183 water intrusion originating from outside the structure that are
 184 not otherwise covered under the definition of "flood" provided
 185 in paragraph (b).

186 b. Include coverage for additional living expenses.

187 c. Require that any loss under personal property or
 188 contents coverage that is repaired or replaced be adjusted only
 189 on the basis of replacement costs up to the policy limits.

190 (b) "Flood" means a general and temporary condition of
 191 partial or complete inundation of two or more acres of normally
 192 dry land area or of two or more properties, at least one of
 193 which is the policyholder's property, from:

194 1. Overflow of inland or tidal waters;

195 2. Unusual and rapid accumulation or runoff of surface
 196 waters from any source;

197 3. Mudflow; or

198 4. Collapse or subsidence of land along the shore of a
 199 lake or similar body of water as a result of erosion or
 200 undermining caused by waves or currents of water exceeding
 201 anticipated cyclical levels that result in a flood as defined in
 202 this paragraph.

203 (2) Any limitations on flood coverage or policy limits
 204 pursuant to this section, including, but not limited to,
 205 deductibles, must be prominently noted on the policy
 206 declarations page or face page.

207 (3) (a) An insurer may establish and use flood coverage
 208 rates in accordance with the rate standards provided in s.

209 | 627.062.
 210 | (b) For flood coverage rates filed with the office before
 211 | October 1, 2019, the insurer may also establish and use such
 212 | rates in accordance with the rates, rating schedules, or rating
 213 | manuals filed by the insurer with the office which allow the
 214 | insurer a reasonable rate of return on flood coverage written in
 215 | this state. Flood coverage rates established pursuant to this
 216 | paragraph are not subject to s. 627.062(2)(a) and (f). An
 217 | insurer shall notify the office of any change to such rates
 218 | within 30 days after the effective date of the change. The
 219 | notice must include the name of the insurer and the average
 220 | statewide percentage change in rates. Actuarial data with regard
 221 | to such rates for flood coverage must be maintained by the
 222 | insurer for 2 years after the effective date of such rate change
 223 | and is subject to examination by the office. The office may
 224 | require the insurer to incur the costs associated with an
 225 | examination. Upon examination, the office, in accordance with
 226 | generally accepted and reasonable actuarial techniques, shall
 227 | consider the rate factors in s. 627.062(2)(b), (c), and (d), and
 228 | the standards in s. 627.062(2)(e), to determine if the rate is
 229 | excessive, inadequate, or unfairly discriminatory.
 230 | (4) A surplus lines agent may export a contract or
 231 | endorsement providing flood coverage to an eligible surplus
 232 | lines insurer without making a diligent effort to seek such
 233 | coverage from three or more authorized insurers under s.
 234 | 626.916(1)(a) only if the premium for the coverage from the

235 surplus lines insurer is at least 10 percent less than the
 236 premium for comparable coverage from an authorized insurer.

237 (5) In addition to any other applicable requirements, an
 238 insurer providing flood coverage in this state must:

239 (a) Notify the office at least 30 days before writing
 240 flood insurance in this state; and

241 (b) File a plan of operation and financial projections or
 242 revisions to such plan, as applicable, with the office unless
 243 the insurer maintains at least \$35 million in surplus. For
 244 purposes of this paragraph, an insurer may demonstrate such
 245 surplus if the insurer group surplus is used to support covered
 246 flood insurance risks through a pooling arrangement or
 247 intercompany reinsurance.

248 (6) Citizens Property Insurance Corporation may not
 249 provide insurance for the peril of flood.

250 (7) The Florida Hurricane Catastrophe Fund may not provide
 251 reimbursement for losses proximately caused by the peril of
 252 flood, including losses that occur during a covered event as
 253 defined in s. 215.555(2)(b).

254 (8) An agent obtaining an application for flood coverage
 255 from an authorized or surplus lines insurer for a property
 256 receiving flood insurance under the National Flood Insurance
 257 Program must obtain an acknowledgment signed by the applicant
 258 before placing the coverage with the authorized or surplus lines
 259 insurer. The acknowledgment must notify the applicant that the
 260 full risk rate for flood insurance may apply to the property if

261 such insurance is later obtained under the National Flood
 262 Insurance Program.

263 (9) With respect to the regulation of flood coverage
 264 written in this state by private insurers, this section
 265 supersedes any other provision in the Florida Insurance Code in
 266 the event of a conflict.

267 Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 953 State Contracting
SPONSOR(S): Peters
TIED BILLS: IDEN./SIM. **BILLS:** SB 914

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	9 Y, 0 N	Harrington	Williamson
2) Government Operations Appropriations Subcommittee		White <i>CCW</i>	Topp <i>BDT</i>
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law requires agencies to utilize a competitive solicitation process for contracts for commodities or services in excess of \$35,000. Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which may include a request for proposal or invitation to negotiate. The agency must consider certain criteria when evaluating the proposal or reply before selecting a vendor.

The bill requires state agencies to consider the prior relevant experience of a vendor when evaluating the responses to a request for proposal or invitation to negotiate. Currently, agencies may consider such prior relevant experience, but agencies are not required to do so.

The bill does not have a fiscal impact on state or local government.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency¹ procurement of personal property and services. The Department of Management Services (department) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.² The department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.³

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:⁴

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposal, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process;⁵ however, certain contractual services and commodities are exempt from this requirement.⁶ Section 287.012(6), F.S., provides that competitive solicitation means "the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement."

Evaluation Criteria

Prior to contracting, an agency must determine the integrity, reliability, and qualifications it will require in a vendor with regard to the capability of the vendor to fully perform the contract requirements.⁷

Depending on the type of competitive solicitation utilized, an agency must consider certain criteria; however, agencies are not limited in what they may consider prior to contract.

If an agency utilizes a request for proposal, the agency must award the contract to the responsible and responsive vendor whose proposal is determined to be the most advantageous to the state after evaluating:

- Price;

¹ Section 287.012(1), F.S., defines agency as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges."

² See ss. 287.032 and 287.042, F.S.

³ *Id.*

⁴ See ss. 287.012(6) and 287.057, F.S.

⁵ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

⁶ See s. 287.057(3), F.S.

⁷ Chapter 60A-1.006, F.A.C.

- Renewal price, if renewal is contemplated; and
- Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor.⁸

For purposes of an invitation to negotiate, the criteria used to determine the acceptability of the reply, and for purposes of guiding the selection of the vendors with which the agency will negotiate, must be specified in the invitation to negotiate. The agency must evaluate the replies received against the evaluation criteria established in the invitation to negotiate in order to establish a competitive range of replies reasonably susceptible of award. The agency may select one or more vendors within the competitive range with which to negotiate. After negotiations, the agency must award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state, based on the selection criteria.

Effect of Proposed Changes

The bill requires agencies to consider the prior relevant experience of a vendor when evaluating responses to a request for proposal or invitation to negotiate. Currently, agencies may consider prior relevant experience, but agencies are not required to do so.

B. SECTION DIRECTORY:

Section 1. amends s. 287.057, F.S., revising the criteria for evaluating a proposal to include consideration of prior relevant experience of the vendor; revising the criteria for evaluating a response to an agency's invitation to negotiate to include consideration of prior relevant experience of the vendor.

Section 2. provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁸ Section 287.057(1)(b)3., F.S.
 STORAGE NAME: h0953b.GOAS.DOCX
 DATE: 3/20/2014

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to state contracting; amending s.
 3 287.057, F.S.; revising the criteria for evaluating a
 4 proposal to include consideration of prior relevant
 5 experience of the vendor; revising the criteria for
 6 evaluating a response to an agency's invitation to
 7 negotiate to include consideration of prior relevant
 8 experience of the vendor; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (1) of section 287.057, Florida
 13 Statutes, is amended to read:

14 287.057 Procurement of commodities or contractual
 15 services.—

16 (1) The competitive solicitation processes authorized in
 17 this section shall be used for procurement of commodities or
 18 contractual services in excess of the threshold amount provided
 19 for CATEGORY TWO in s. 287.017. Any competitive solicitation
 20 shall be made available simultaneously to all vendors, must
 21 include the time and date for the receipt of bids, proposals, or
 22 replies and of the public opening, and must include all
 23 contractual terms and conditions applicable to the procurement,
 24 including the criteria to be used in determining acceptability
 25 and relative merit of the bid, proposal, or reply.

26 (a) *Invitation to bid.*—The invitation to bid shall be used

27 | when the agency is capable of specifically defining the scope of
 28 | work for which a contractual service is required or when the
 29 | agency is capable of establishing precise specifications
 30 | defining the actual commodity or group of commodities required.

31 | 1. All invitations to bid must include:

32 | a. A detailed description of the commodities or
 33 | contractual services sought; and

34 | b. If the agency contemplates renewal of the contract, a
 35 | statement to that effect.

36 | 2. Bids submitted in response to an invitation to bid in
 37 | which the agency contemplates renewal of the contract must
 38 | include the price for each year for which the contract may be
 39 | renewed.

40 | 3. Evaluation of bids must include consideration of the
 41 | total cost for each year of the contract, including renewal
 42 | years, as submitted by the vendor.

43 | 4. The contract shall be awarded to the responsible and
 44 | responsive vendor who submits the lowest responsive bid.

45 | (b) *Request for proposals.*—An agency shall use a request
 46 | for proposals when the purposes and uses for which the
 47 | commodity, group of commodities, or contractual service being
 48 | sought can be specifically defined and the agency is capable of
 49 | identifying necessary deliverables. Various combinations or
 50 | versions of commodities or contractual services may be proposed
 51 | by a responsive vendor to meet the specifications of the
 52 | solicitation document.

53 1. Before issuing a request for proposals, the agency must
 54 determine and specify in writing the reasons that procurement by
 55 invitation to bid is not practicable.

56 2. All requests for proposals must include:

57 a. A statement describing the commodities or contractual
 58 services sought;

59 b. The relative importance of price and other evaluation
 60 criteria; and

61 c. If the agency contemplates renewal of the contract, a
 62 statement to that effect.

63 3. Criteria that will be used for evaluation of proposals
 64 must ~~shall~~ include, but are not limited to:

65 a. Price, which must be specified in the proposal;

66 b. If the agency contemplates renewal of the contract, the
 67 price for each year for which the contract may be renewed; ~~and~~

68 c. Consideration of the total cost for each year of the
 69 contract, including renewal years, as submitted by the vendor;
 70 and-

71 d. Consideration of prior relevant experience of the
 72 vendor.

73 4. The contract shall be awarded by written notice to the
 74 responsible and responsive vendor whose proposal is determined
 75 in writing to be the most advantageous to the state, taking into
 76 consideration the price and other criteria set forth in the
 77 request for proposals. The contract file shall contain
 78 documentation supporting the basis on which the award is made.

79 (c) *Invitation to negotiate.*—The invitation to negotiate
 80 is a solicitation used by an agency which is intended to
 81 determine the best method for achieving a specific goal or
 82 solving a particular problem and identifies one or more
 83 responsive vendors with which the agency may negotiate in order
 84 to receive the best value.

85 1. Before issuing an invitation to negotiate, the head of
 86 an agency must determine and specify in writing the reasons that
 87 procurement by an invitation to bid or a request for proposal is
 88 not practicable.

89 2. The invitation to negotiate must describe the questions
 90 being explored, the facts being sought, and the specific goals
 91 or problems that are the subject of the solicitation.

92 3. The criteria that will be used for determining the
 93 acceptability of the reply and guiding the selection of the
 94 vendors with which the agency will negotiate must be specified.
 95 The evaluation criteria must include consideration of prior
 96 relevant experience of the vendor.

97 4. The agency shall evaluate replies against all
 98 evaluation criteria set forth in the invitation to negotiate in
 99 order to establish a competitive range of replies reasonably
 100 susceptible of award. The agency may select one or more vendors
 101 within the competitive range with which to commence
 102 negotiations. After negotiations are conducted, the agency shall
 103 award the contract to the responsible and responsive vendor that
 104 the agency determines will provide the best value to the state,

105 | based on the selection criteria.

106 | 5. The contract file for a vendor selected through an
107 | invitation to negotiate must contain a short plain statement
108 | that explains the basis for the selection of the vendor and that
109 | sets forth the vendor's deliverables and price, pursuant to the
110 | contract, along with an explanation of how these deliverables
111 | and price provide the best value to the state.

112 | Section 2. This act shall take effect July 1, 2014.