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576-01687-14

Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to flood insurance; amending s. 627.062, F.S.; adding projected flood losses to the factors that must be considered by the Office of Insurance Regulation in reviewing certain rate filings; amending s. 627.0628, F.S.; requiring the commission to adopt standards and guidelines relating to flood loss by a certain date; creating s. 627.715, F.S.; authorizing insurers to offer flood insurance on residential property in this state; providing legislative findings; defining the term "flood"; establishing the minimum coverage requirements for a flood insurance policy; providing coverage limitations that an insurer may include in such policies; requiring that certain limitations be noted on the policy declarations or face page; providing the insurer with rate options; requiring the insurer to provide notice that flood insurance is available from the National Flood Insurance Program; authorizing an insurer to export a contract or endorsement to a surplus lines insurer without meeting certain requirements; requiring prior notice for cancellation or nonrenewal of a policy; providing additional requirements with respect to notifying the Office of Insurance Regulation before writing flood insurance, filing a plan of operation with the office, using forms that have been approved by the office, and



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28 filing reinsurance contracts before a certain date;  
29 requiring that policies replacing subsidized policies  
30 include a statement that the subsidized rate may be  
31 lost; prohibiting Citizens Property Insurance  
32 Corporation from writing flood insurance; prohibiting  
33 the Florida Hurricane Catastrophe Fund from  
34 reimbursing losses caused by flooding; preempting any  
35 conflicts with other provisions of the Florida  
36 Insurance Code; requiring the Commissioner of the  
37 Office of Insurance Regulation to provide  
38 certification that a condition qualifies for flood  
39 insurance or disaster assistance; providing an  
40 effective date.

41

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

43

44 Section 1. Paragraph (b) of subsection (2) of section  
45 627.062, Florida Statutes, is amended to read:

46 627.062 Rate standards.—

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

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

53 1. Past and prospective loss experience within and without  
54 this state.

55 2. Past and prospective expenses.

56 3. The degree of competition among insurers for the risk



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57 insured.

58 4. Investment income reasonably expected by the insurer,  
59 consistent with the insurer's investment practices, from  
60 investable premiums anticipated in the filing, plus any other  
61 expected income from currently invested assets representing the  
62 amount expected on unearned premium reserves and loss reserves.  
63 The commission may adopt rules using reasonable techniques of  
64 actuarial science and economics to specify the manner in which  
65 insurers calculate investment income attributable to classes of  
66 insurance written in this state and the manner in which  
67 investment income is used to calculate insurance rates. Such  
68 manner must contemplate allowances for an underwriting profit  
69 factor and full consideration of investment income that produces  
70 ~~which produce~~ a reasonable rate of return; however, investment  
71 income from invested surplus may not be considered.

72 5. The reasonableness of the judgment reflected in the  
73 filing.

74 6. Dividends, savings, or unabsorbed premium deposits  
75 allowed or returned to ~~Florida~~ policyholders, members, or  
76 subscribers in this state.

77 7. The adequacy of loss reserves.

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

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

84 10. Conflagration and catastrophe hazards, if applicable.

85 11. Projected hurricane losses, if applicable, which must



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86 be estimated using a model or method found to be acceptable or  
87 reliable by the Florida Commission on Hurricane Loss Projection  
88 Methodology, and as further provided in s. 627.0628.

89 12. Projected flood losses, if applicable, which may be  
90 estimated using a model, a method, or an average of models or  
91 methods determined to be acceptable or reliable by the Florida  
92 Commission on Hurricane Loss Projection Methodology, and as  
93 further provided in s. 627.0628.

94 13.12. A reasonable margin for underwriting profit and  
95 contingencies.

96 14.13. The cost of medical services, if applicable.

97 15.14. Other relevant factors that affect the frequency or  
98 severity of claims or expenses.

99  
100 The provisions of this subsection do not apply to workers'  
101 compensation, employer's liability insurance, and motor vehicle  
102 insurance.

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

105 627.0628 Florida Commission on Hurricane Loss Projection  
106 Methodology; public records exemption; public meetings  
107 exemption.—

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

109 (a) The commission shall consider ~~any~~ actuarial methods,  
110 principles, standards, models, or output ranges that have the  
111 potential for improving the accuracy ~~of~~ or reliability of the  
112 hurricane loss projections and flood loss projections used in  
113 residential property insurance rate filings. The commission  
114 shall, ~~from time to time,~~ adopt and update findings, as needed,



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115 as to the accuracy or reliability of particular methods,  
116 principles, standards, models, or output ranges.

117 (b) The commission shall consider ~~any~~ actuarial methods,  
118 principles, standards, or models that have the potential for  
119 improving the accuracy ~~of~~ or reliability of projecting probable  
120 maximum loss levels. The commission shall adopt and update  
121 findings, as needed, as to the accuracy or reliability of  
122 particular methods, principles, standards, or models related to  
123 probable maximum loss calculations.

124 (c) In establishing reimbursement premiums for the Florida  
125 Hurricane Catastrophe Fund, the State Board of Administration  
126 must, to the extent feasible, employ actuarial methods,  
127 principles, standards, models, or output ranges found by the  
128 commission to be accurate or reliable.

129 (d) With respect to a rate filing under s. 627.062, an  
130 insurer shall employ and may not modify or adjust actuarial  
131 methods, principles, standards, models, or output ranges found  
132 by the commission to be accurate or reliable in determining  
133 hurricane loss factors for use in a rate filing under s.

134 627.062. An insurer shall employ and may not modify or adjust  
135 models found by the commission to be accurate or reliable in  
136 determining probable maximum loss levels pursuant to paragraph

137 (b) with respect to a rate filing under s. 627.062 made more  
138 than 60 days after the commission has made such findings. This  
139 paragraph does not prohibit an insurer from averaging model  
140 results or output ranges or from using an average for the  
141 purpose of a flood insurance rate filing under s. 627.062.

142 (e) The commission shall adopt actuarial methods,  
143 principles, standards, models, or output ranges for flood loss



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144 by July 1, 2016.

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

148 (g)~~(f)~~1. A trade secret, as defined in s. 688.002, which  
149 ~~that~~ is used in designing and constructing a hurricane loss  
150 model and which ~~that~~ is provided pursuant to this section~~7~~ by a  
151 private company~~7~~ to the commission, office, or consumer advocate  
152 appointed pursuant to s. 627.0613~~7~~ is confidential and exempt  
153 from s. 119.07(1) and s. 24(a), Art. I of the State  
154 Constitution.

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

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

164 c. This subparagraph is subject to the Open Government  
165 Sunset Review Act in accordance with s. 119.15 and shall stand  
166 repealed on October 2, 2015, unless reviewed and saved from  
167 repeal through reenactment by the Legislature.

168 Section 3. Section 627.715, Florida Statutes, is created to  
169 read:

170 627.715 Flood insurance.—Subject to the requirements of  
171 this section, an insurer may issue an insurance policy,  
172 contract, or endorsement providing coverage for the peril of



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173 flood on any residential structure or its contents in this  
174 state. This section does not apply to commercial lines risks  
175 policies that provide coverage in excess of an underlying  
176 policy.

177 (1) The Legislature finds that:

178 (a) The National Flood Insurance Program (NFIP) is a  
179 federal program that enables property owners in participating  
180 communities to purchase flood insurance. A community  
181 participates in the federal program by adopting and enforcing  
182 floodplain management regulations that meet or exceed federal  
183 floodplain management criteria designed to reduce future flood  
184 risk to new construction in floodplains. The program was created  
185 by Congress in 1968 because insurance covering the peril of  
186 flood was often unavailable in the private insurance market and  
187 was intended to reduce the amount of financial aid paid by the  
188 Federal Government in the aftermath of flood-related disasters.  
189 After the creation of the NFIP, flood insurance coverage  
190 continued to be generally unavailable for purchase from private  
191 market insurance companies.

192 (b) The Biggert-Waters Flood Insurance Reform Act of 2012  
193 reauthorized and revised the NFIP. The act increased flood  
194 insurance premiums purchased through the program for second  
195 homes, business properties, severe repetitive loss properties,  
196 and substantially improved damaged properties by requiring  
197 premium increases of 25 percent per year until premiums meet the  
198 full actuarial cost. Most residences lose their subsidized rates  
199 if the property is sold, the policy lapses, repeated and severe  
200 flood losses occur, or a new policy is purchased. Policyholders  
201 whose communities adopt a new, updated Flood Insurance Rate Map



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202 (FIRM) that results in higher rates will experience a 5-year  
203 phase in of rate increases to achieve required rate levels.

204 (c) The Biggert-Waters Flood Insurance Reform Act of 2012  
205 also encourages the use and acceptance of private market flood  
206 insurance. The Legislature finds, however, that there has been a  
207 long-term inadequacy of private market flood insurance available  
208 in this state. Such inadequacy suggests that the private market  
209 in this state is unlikely to expand unless the Legislature  
210 provides multiple options for the regulation of flood insurance.  
211 The Legislature also finds that the consumers of this state  
212 would benefit from the availability of competitively priced  
213 private market flood insurance due to the continued availability  
214 of the NFIP flood insurance, the likely availability of  
215 alternative private market flood insurance coverage options, and  
216 the oversight of the Office of Insurance Regulation.

217 (d) The NFIP, as amended by the Biggert-Waters Flood  
218 Insurance Reform Act of 2012, is likely to prevent many property  
219 owners from obtaining affordable flood insurance coverage in  
220 this state. The absence of affordable flood insurance threatens  
221 the public health, safety, and welfare and the economic health  
222 of this state. Therefore, the state has a compelling public  
223 purpose and interest in providing alternatives to coverage from  
224 the NFIP by promoting the availability of flood insurance from  
225 private market insurers at potentially lower premium rates in an  
226 effort to facilitate the remediation, reconstruction, and  
227 replacement of damaged or destroyed property in order to reduce  
228 or avoid harm to public health, safety, and welfare, to the  
229 economy of this state, and to the revenues of state and local  
230 governments which are needed to provide for the public welfare.



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231 (2) As used in this section, the term "flood" means a  
232 general and temporary condition of partial or complete  
233 inundation of 2 acres or more of normally dry land area or of  
234 two or more properties, at least one of which is the  
235 policyholder's property, from:

236 (a) Overflow of inland or tidal waters;

237 (b) Unusual and rapid accumulation or runoff of surface  
238 waters from any source;

239 (c) Mudflow; or

240 (d) Collapse or subsidence of land along the shore of a  
241 lake or similar body of water as a result of erosion or  
242 undermining caused by waves or currents of water exceeding  
243 anticipated cyclical levels.

244 (3) At a minimum, coverage for the peril of flood must  
245 cover a flood as defined in subsection (2). Coverage for the  
246 peril of flood may also include water intrusion, as defined by  
247 the policy, which originates from outside the structure and is  
248 not otherwise covered under the definition of flood.

249 (4) An insurer may offer a flood coverage policy, contract,  
250 or endorsement that:

251 (a) Has a flood deductible based on a stated dollar amount  
252 or a percentage of the coverage amount. The deductible amount  
253 must be acceptable to federal mortgage and banking regulators if  
254 such policy, contract, or endorsement is intended to satisfy a  
255 mortgage requirement;

256 (b) Provides that any flood loss will be adjusted on the  
257 basis of:

258 1. The actual cash value of the property; or

259 2. Replacement costs up to the policy limits as provided



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260 under s. 627.7011(3);

261 (c) Restricts flood coverage to the principal building, as  
262 defined in the applicable policy;

263 (d) Is in an agreed-upon amount, including coverage limited  
264 to the amount of all outstanding mortgages applicable to the  
265 covered property. However, if a policy, contract, or endorsement  
266 does not limit flood coverage to the replacement cost of the  
267 covered property, the policy, contract, or endorsement may not  
268 include a provision penalizing the policyholder for not insuring  
269 the covered property up to replacement cost; or

270 (e) As to the peril of flood, does not cover:

271 1. Additional living expenses;

272 2. Personal property or contents; or

273 3. Law and ordinance coverage. However, an insurer must  
274 offer law and ordinance coverage that is comparable to the law  
275 and ordinance coverage offered in the standard NFIP policy. A  
276 policy, contract, or endorsement that includes the law and  
277 ordinance coverage that must be offered under this paragraph  
278 must include the following disclosure in at least 12-point  
279 uppercase and boldfaced type: "LAW AND ORDINANCE COVERAGE UNDER  
280 THIS POLICY MIGHT HAVE LIMITATIONS ON WHAT IS COVERED IN THE  
281 EVENT OF A LOSS. YOU SHOULD CONSULT WITH YOUR AGENT IF YOU HAVE  
282 QUESTIONS ABOUT THE COVERAGE OFFERED UNDER THIS POLICY."

283 (5) Any limitations on flood coverage or policy limits as  
284 to the peril of flood, including, but not limited to, flood  
285 deductibles or flood coverage limited to the amount of all  
286 outstanding mortgages, must be prominently disclosed on the  
287 declarations page or face page of the policy in at least 12-  
288 point uppercase and boldfaced type and be sufficiently clear so



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289 as to be readily understandable by the agent and the property  
290 owner.

291 (a) A policy that limits flood coverage to an amount less  
292 than the full replacement cost of the property must include the  
293 following statement: "THIS POLICY LIMITS FLOOD COVERAGE TO LESS  
294 THAN THE FULL COST OF REPLACEMENT FOR THE PROPERTY, WHICH MAY  
295 RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU AND MAY PUT YOUR  
296 EQUITY IN THIS PROPERTY AT RISK."

297 (b) A policy that insures a dwelling on the basis of actual  
298 cash value must include the following statement: "THIS POLICY  
299 PAYS YOU THE DEPRECIATED VALUE OF YOUR PROPERTY THAT IS DAMAGED  
300 BY FLOOD, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU  
301 IF YOUR PROPERTY NEEDS TO BE REPAIRED OR REPLACED."

302 (6) An insurer may establish and use flood coverage rates  
303 in accordance with the rate standards under s. 627.062. For  
304 flood coverage rates filed with the office before July 1, 2024,  
305 the insurer may also elect one or more of the following options:

306 (a) In accordance with the rates, rating schedules, or  
307 rating manuals filed by the insurer with the office which allow  
308 the insurer a reasonable rate of return on flood coverage  
309 written in this state. Flood coverage rates established under  
310 this paragraph are not subject to s. 627.062(2) (a) and (f). An  
311 insurer shall notify the office of any change to rates within 30  
312 days after the effective date of the change. The notice must  
313 include the name of the insurer and the average statewide  
314 percentage change in rates. Actuarial data with regard to rates  
315 for flood coverage must be maintained by the insurer for 2 years  
316 after the effective date of such rate change and is subject to  
317 examination by the office. The office may require the insurer to



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318 incur the costs associated with an examination. Upon  
319 examination, the office, in accordance with generally accepted  
320 and reasonable actuarial techniques, shall consider the rate  
321 factors and standards specified in s. 627.062 to determine if  
322 the rate is excessive, inadequate, or unfairly discriminatory.

323 (b) Through individual risk rating as provided in  
324 627.062(3) (a) and (b). Upon examination, the office, in  
325 accordance with generally accepted and reasonable actuarial  
326 techniques, shall determine if the rate is excessive,  
327 inadequate, or unfairly discriminatory.

328 (c) With the written consent of the insured signed before  
329 the policy inception date and filed with the insurer, using a  
330 flood coverage rate that has not been approved by the office.  
331 The signed consent form must notify the insured that the rate is  
332 not subject to the approval of the office. A copy of the form  
333 shall be maintained by the insurer for 3 years and must be  
334 available for review by the office. An insurer is not required  
335 to obtain subsequent written consents upon renewal, but shall  
336 provide notice at each renewal that the rate is not subject to  
337 office approval. Section 627.171(2) does not apply to policies  
338 issued under this section. Upon examination, the office, in  
339 accordance with generally accepted and reasonable actuarial  
340 techniques, shall determine if the rate is excessive,  
341 inadequate, or unfairly discriminatory.

342 (7) A policy, contract, or endorsement providing coverage  
343 for the peril of flood must provide notice that flood insurance  
344 coverage is available from the NFIP.

345 (8) A surplus lines agent may export a contract or  
346 endorsement to an eligible surplus lines insurer without making



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347 a diligent effort to seek such coverage from three or more  
348 authorized insurers under s. 626.916(1) (a). This subsection  
349 expires July 1, 2017.

350 (9) A policy, contract, or endorsement providing coverage  
351 for the peril of flood must require the insurer to give 45 days'  
352 written notice before cancellation or nonrenewal to the insured  
353 and any regulated lending institution or federal agency that is  
354 a mortgagee. An insurer or insured may cancel during the term of  
355 the policy or upon renewal if the cancellation is for a valid  
356 reason under the NFIP.

357 (10) In addition to any other applicable requirements, an  
358 insurer providing flood coverage under this section must:

359 (a) Notify the office at least 30 days before writing flood  
360 insurance in this state;

361 (b) File a plan of operation and financial projections or  
362 revisions to such plan, as applicable, with the office unless  
363 the insurer maintains at least \$35 million in surplus. For  
364 purposes of this paragraph, an insurer may demonstrate such  
365 surplus if the insurer group surplus is used to support covered  
366 flood insurance risks through a pooling arrangement or  
367 intercompany reinsurance;

368 (c) Offer flood insurance on a form that has been filed  
369 with and approved by the office pursuant to s. 627.410. If an  
370 insurer files a form with the office that is substantially  
371 similar to a form used by the NFIP, the office may not extend  
372 the 30-day period as provided under s. 627.410(2); and

373 (d) File all reinsurance contracts with the office on or  
374 before June 30 of each year.

375 (11) For a policy on a structure that was previously



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376 insured through the NFIP at a subsidized rate, the policy must  
377 include the following statement: "BY ACCEPTING A PRIVATE FLOOD  
378 INSURANCE POLICY, YOU MAY LOSE YOUR SUBSIDIZED RATE IN THE  
379 NATIONAL FLOOD INSURANCE PROGRAM WHEN RETURN TO THE NATIONAL  
380 FLOOD INSURANCE PROGRAM AT A LATER TIME."

381 (12) Citizens Property Insurance Corporation may not  
382 provide insurance for the peril of flood.

383 (13) The Florida Hurricane Catastrophe Fund may not provide  
384 reimbursement for losses proximately caused by the peril of  
385 flood, including losses that occur during a covered event as  
386 defined under s. 215.555(2).

387 (14) With respect to the regulation of flood insurance  
388 coverage written in this state by private insurers, this section  
389 supersedes any other provision in the Florida Insurance Code in  
390 the event of a conflict.

391 Section 4. If federal law or rule requires a certification  
392 by a state insurance regulatory official as a condition of  
393 qualifying for private flood insurance or disaster assistance,  
394 the Commissioner of the Office of Insurance Regulation shall  
395 provide such certification, and such certification is not  
396 subject to review under chapter 120.

397 Section 5. This act shall take effect upon becoming a law.