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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/08/2014	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

627.062 Rate standards.—

(2) As to all such classes of insurance:

(b) Upon receiving a rate filing, the office shall review  
the filing to determine if a rate is excessive, inadequate, or



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11 unfairly discriminatory. In making that determination, the  
12 office shall, in accordance with generally accepted and  
13 reasonable actuarial techniques, consider the following factors:

14 1. Past and prospective loss experience within and without  
15 this state.

16 2. Past and prospective expenses.

17 3. The degree of competition among insurers for the risk  
18 insured.

19 4. Investment income reasonably expected by the insurer,  
20 consistent with the insurer's investment practices, from  
21 investable premiums anticipated in the filing, plus any other  
22 expected income from currently invested assets representing the  
23 amount expected on unearned premium reserves and loss reserves.  
24 The commission may adopt rules using reasonable techniques of  
25 actuarial science and economics to specify the manner in which  
26 insurers calculate investment income attributable to classes of  
27 insurance written in this state and the manner in which  
28 investment income is used to calculate insurance rates. Such  
29 manner must contemplate allowances for an underwriting profit  
30 factor and full consideration of investment income that produces  
31 ~~which produce~~ a reasonable rate of return; however, investment  
32 income from invested surplus may not be considered.

33 5. The reasonableness of the judgment reflected in the  
34 filing.

35 6. Dividends, savings, or unabsorbed premium deposits  
36 allowed or returned to ~~Florida~~ policyholders, members, or  
37 subscribers in this state.

38 7. The adequacy of loss reserves.

39 8. The cost of reinsurance. The office may not disapprove a



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40 rate as excessive solely due to the insurer having obtained  
41 catastrophic reinsurance to cover the insurer's estimated 250-  
42 year probable maximum loss or any lower level of loss.

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

45 10. Conflagration and catastrophe hazards, if applicable.

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

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

55 ~~13.12.~~ A reasonable margin for underwriting profit and  
56 contingencies.

57 ~~14.13.~~ The cost of medical services, if applicable.

58 ~~15.14.~~ Other relevant factors that affect the frequency or  
59 severity of claims or expenses.

60

61 The provisions of this subsection do not apply to workers'  
62 compensation, employer's liability insurance, and motor vehicle  
63 insurance.

64 Section 2. Paragraph (b) of subsection (2) and subsection  
65 (3) of section 627.0628, Florida Statutes, are amended to read:

66 627.0628 Florida Commission on Hurricane Loss Projection  
67 Methodology; public records exemption; public meetings  
68 exemption.-



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69 (2) COMMISSION CREATED.—

70 (b) The commission shall consist of the following 14 ~~12~~  
71 members:

72 1. The insurance consumer advocate.

73 2. The senior employee of the State Board of Administration  
74 responsible for the operations of the Florida Hurricane  
75 Catastrophe Fund.

76 3. The Executive Director of the Citizens Property  
77 Insurance Corporation.

78 4. The Director of the Division of Emergency Management.

79 5. The actuary member of the Florida Hurricane Catastrophe  
80 Fund Advisory Council.

81 6. An employee of the office who is an actuary responsible  
82 for property insurance rate filings and who is appointed by the  
83 director of the office.

84 7. Seven ~~Five~~ members appointed by the Chief Financial  
85 Officer, as follows:

86 a. An actuary who is employed full time by a property and  
87 casualty insurer that was responsible for at least 1 percent of  
88 the aggregate statewide direct written premium for homeowner's  
89 insurance in the calendar year preceding the member's  
90 appointment to the commission.

91 b. An expert in insurance finance who is a full-time member  
92 of the faculty of the State University System and who has a  
93 background in actuarial science.

94 c. An expert in statistics who is a full-time member of the  
95 faculty of the State University System and who has a background  
96 in insurance.

97 d. An expert in computer system design who is a full-time



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98 member of the faculty of the State University System.

99 e. An expert in meteorology who is a full-time member of  
100 the faculty of the State University System and who specializes  
101 in hurricanes.

102 f. A licensed professional engineer who is an expert in  
103 floodplain management and who is not regularly retained by or on  
104 behalf of a property and casualty insurer.

105 g. A meteorologist who specializes in floods.

106 8. A licensed professional structural engineer who is a  
107 full-time faculty member in the State University System and who  
108 has expertise in wind mitigation techniques. This appointment  
109 shall be made by the Governor.

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

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

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

126 (c) In establishing reimbursement premiums for the Florida



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127 Hurricane Catastrophe Fund, the State Board of Administration  
128 must, to the extent feasible, employ actuarial methods,  
129 principles, standards, models, or output ranges found by the  
130 commission to be accurate or reliable.

131 (d) With respect to a rate filing under s. 627.062, an  
132 insurer shall employ and may not modify or adjust actuarial  
133 methods, principles, standards, models, or output ranges found  
134 by the commission to be accurate or reliable in determining  
135 hurricane loss factors for use in a rate filing under s.  
136 627.062. An insurer shall employ and may not modify or adjust  
137 models found by the commission to be accurate or reliable in  
138 determining probable maximum loss levels pursuant to paragraph  
139 (b) with respect to a rate filing under s. 627.062 made more  
140 than 60 days after the commission has made such findings. This  
141 paragraph does not prohibit an insurer from averaging model  
142 results or output ranges or using an average for the purpose of  
143 a flood insurance rate filing under s. 627.062.

144 (e) The commission shall adopt actuarial methods,  
145 principles, standards, models, or output ranges for flood loss  
146 by July 1, 2015.

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

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



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156 Constitution.

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

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

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

170 Section 3. Section 627.715, Florida Statutes, is created to  
171 read:

172 627.715 Flood insurance.—Subject to the requirements of  
173 this section, an insurer may issue an insurance policy,  
174 contract, or endorsement providing coverage for the peril of  
175 flood on any structure or on the contents of personal property  
176 on a form that has been filed with and approved by the office  
177 pursuant to s. 627.410(2) and that may be substantially similar  
178 to the form used by the National Flood Insurance Program (NFIP).

179 (1) The Legislature finds that:

180 (a) The National Flood Insurance Program is a federal  
181 program that enables property owners in participating  
182 communities to purchase flood insurance. A community  
183 participates in the federal program by adopting and enforcing  
184 floodplain management regulations that meet or exceed federal



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185 floodplain management criteria designed to reduce future flood  
186 risk to new construction in floodplains. The program was created  
187 by Congress in 1968 because insurance covering the peril of  
188 flood was often unavailable in the private insurance market and  
189 was intended to reduce the amount of financial aid paid by the  
190 Federal Government in the aftermath of flood-related disasters.  
191 After the creation of the NFIP, flood insurance coverage  
192 continued to be generally unavailable for purchase from private  
193 market insurance companies.

194 (b) The Biggert-Waters Flood Insurance Reform Act of 2012  
195 reauthorized and revised the NFIP. The act increases flood  
196 insurance premiums purchased through the program for second  
197 homes, business properties, severe repetitive loss properties,  
198 and substantially improved damaged properties by requiring  
199 premium increases of 25 percent per year until premiums meet the  
200 full actuarial cost. Most residences lose their subsidized rates  
201 if the property is sold, the policy lapses, repeated and severe  
202 flood losses occur, or a new policy is purchased. Policyholders  
203 whose communities adopt a new, updated Flood Insurance Rate Map  
204 (FIRM) that results in higher rates will experience a 5-year  
205 phase-in of rate increases to achieve required rate levels.

206 (c) The Biggert-Waters Flood Insurance Reform Act of 2012  
207 also encourages the use and acceptance of private market flood  
208 insurance. The Legislature finds, however, that there has been a  
209 long-term inadequacy of private market flood insurance available  
210 in this state. Such inadequacy suggests that the private market  
211 in this state is unlikely to expand unless the Legislature  
212 provides multiple options for the regulation of flood insurance.  
213 The Legislature also finds that the consumers of this state





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214 would benefit from the availability of competitively priced  
215 private market flood insurance due to the continued availability  
216 of NFIP flood insurance, the likely availability of alternative  
217 private market flood insurance coverage options, and the  
218 oversight of the Office of Insurance Regulation.

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

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

238 (a) Overflow of inland or tidal waters;

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

241 (c) Mudflow; or

242 (d) Collapse or subsidence of land along the shore of a



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243 lake or similar body of water as a result of erosion or  
244 undermining caused by waves or currents of water exceeding  
245 anticipated cyclical levels which result in a flood.

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

251 (4) An insurer may offer a flood coverage policy, contract,  
252 or endorsement:

253 (a) That has a flood deductible based on a stated dollar  
254 amount or a percentage of the coverage amount. At a minimum, an  
255 insurer must offer deductible amounts applicable to flood losses  
256 that equal the standard deductibles offered under the National  
257 Flood Insurance Program;

258 (b) That provides that any flood loss will be adjusted on  
259 the basis of:

- 260 1. The actual cash value of the property; or  
261 2. Replacement costs up to the policy limits as provided  
262 under s. 627.7011(3);

263 (c) That restricts flood coverage to the principal  
264 building, as defined in the applicable policy;

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



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272 (e) That, as to the peril of flood, does not cover:  
273 1. Additional living expenses;  
274 2. Personal property or contents; or  
275 3. Law and ordinance coverage. However, an insurer, must  
276 offer law and ordinance coverage that is comparable to the law  
277 and ordinance coverage offered in the standard NFIP policy. A  
278 policy, endorsement, or contract that includes the law and  
279 ordinance coverage that must be offered under this paragraph  
280 must include the following disclosure in uppercase bold  
281 lettering of at least 12-point type: LAW AND ORDINANCE COVERAGE  
282 UNDER THIS POLICY MIGHT HAVE LIMITATIONS ON WHAT IS COVERED IN  
283 THE EVENT OF A LOSS. YOU SHOULD CONSULT WITH YOUR AGENT IF YOU  
284 HAVE QUESTIONS ABOUT THE COVERAGE OFFERED UNDER THIS POLICY.  
285 (5) Any limitations on flood coverage or policy limits as  
286 to the peril of flood, including, but not limited to, flood  
287 deductibles or flood coverage limited to the amount of all  
288 outstanding mortgages, must be prominently disclosed on the  
289 declarations page or face page of the policy in uppercase bold  
290 lettering of at least 12-point type and be sufficiently clear so  
291 as to be readily understandable by both the agent and the  
292 property owner.  
293 (a) A policy that limits flood coverage to the amount of  
294 all outstanding mortgages must include the statement: "THIS  
295 POLICY LIMITS FLOOD COVERAGE TO THE AMOUNT OF THE OUTSTANDING  
296 MORTGAGES ON THE PROEPRTY, WHICH MAY RESULT IN HIGH OUT-OF-  
297 POCKET EXPENSES TO YOU AND MAY PUT YOUR EQUITY IN THIS PROPERTY  
298 AT RISK."  
299 (b) A policy that insures a dwelling on the basis of actual  
300 cash value must in include the statement: "THIS POLICY PAYS YOU



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301 THE DEPRECIATED VALUE OF YOUR PROPERTY THAT IS DAMAGED BY FLOOD,  
302 WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU IF YOUR  
303 PROPERTY NEEDS TO BE REPAIRED OR REPLACED."

304 (6) An insurer may establish and use flood coverage rates  
305 in accordance with the rate standards under s. 627.062. For  
306 flood coverage rates filed with the office before July 1, 2017,  
307 the insurer may also elect one or more of the following options:

308 (a) In accordance with the rates, rating schedules, or  
309 rating manuals filed by the insurer with the office which allow  
310 the insurer a reasonable rate of return on flood coverage  
311 written in this state. Flood coverage rates established under  
312 this paragraph are not subject to s. 627.062(2) (a) and (f). An  
313 insurer shall notify the office of any change to rates within 30  
314 days after the effective date of the change. The notice must  
315 include the name of the insurer and the average statewide  
316 percentage change in rates. Actuarial data with regard to rates  
317 for flood coverage must be maintained by the insurer for 2 years  
318 after the effective date of such rate change and is subject to  
319 examination by the office. The office may require the insurer to  
320 incur the costs associated with an examination. Upon  
321 examination, the office, in accordance with generally accepted  
322 and reasonable actuarial techniques, shall consider the rate  
323 factors and standards specified in s. 627.062 to determine if  
324 the rate is excessive, inadequate, or unfairly discriminatory.

325 (b) Through individual risk rating as provided in s.  
326 627.062(3) (a) and (b).

327 (c) With the written consent of the insured signed before  
328 the policy inception date and filed with the insurer, using a  
329 flood coverage rate that has not been approved by the office.



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330 The signed consent form must notify the insured that the rate is  
331 not subject to the approval of the office. A copy of the form  
332 shall be maintained by the insurer for 3 years and must be  
333 available for review by the office. An insurer is not required  
334 to obtain subsequent written consents upon renewal, but shall  
335 provide notice at each renewal that the rate is not subject to  
336 office approval.

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

340 (8) A surplus lines agent may export a contract or  
341 endorsement providing flood coverage of \$1 million or more to an  
342 eligible surplus lines insurer without making a diligent effort  
343 to seek such coverage from three or more authorized insurers  
344 under s. 626.916(1)(a). This subsection expires July 1, 2017.

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

352 (10) In addition to any other applicable requirements, an  
353 insurer providing flood coverage in this state must:

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

356 (b) File a plan of operation and financial projections or  
357 revisions to such plan, as applicable, with the office, unless  
358 the insurer maintains at least \$35 million in surplus and



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359 provides coverage as an endorsement to an existing property  
360 insurance form.

361 (11) With respect to the regulation of flood insurance  
362 coverage written in this state by private insurers, this section  
363 supersedes any other provision in the Florida Insurance Code in  
364 the event of a conflict.

365 Section 4. If federal law or rule requires a certification  
366 by a state insurance regulatory official as a condition of  
367 qualifying for private flood insurance or disaster assistance,  
368 the Commissioner of the Office of Insurance Regulation shall  
369 provide such certification, and such certification is not  
370 subject to review under chapter 120.

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

372  
373 ===== T I T L E A M E N D M E N T =====

374 And the title is amended as follows:

375 Delete everything before the enacting clause  
376 and insert:

377 A bill to be entitled  
378 An act relating to flood insurance; amending s.  
379 627.062, F.S.; adding projected flood losses to the  
380 factors that must be considered by the Office of  
381 Insurance Regulation in reviewing certain rate  
382 filings; amending s. 627.0628, F.S.; increasing the  
383 membership of the Florida Commission on Hurricane Loss  
384 Projection Methodology to include an engineer who is  
385 an expert in floodplain management and a meteorologist  
386 who specializes in floods; requiring the commission to  
387 adopt standards and guidelines relating to flood loss



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388 by a certain date; creating s. 627.715, F.S.;

389 authorizing insurers to offer flood insurance in this

390 state; providing legislative findings; defining the

391 term "flood"; establishing the minimum coverage

392 requirements for such policies; providing coverage

393 limitations that an insurer may include in such

394 policies; requiring that certain limitations be noted

395 on the policy declarations or face page; providing the

396 insurer with rate options; requiring the insurer to

397 provide notice that flood insurance is available from

398 the National Flood Insurance Program; allowing an

399 insurer to export a contract or endorsement of a

400 certain amount to a surplus lines insurer without

401 meeting certain requirements; providing prior notice

402 requirements for cancellation or nonrenewal of a

403 policy; requiring the insurer to notify the office

404 before writing flood insurance and to file a plan of

405 operation with the office; providing that any

406 conflicts with other provisions of the Florida

407 Insurance Code are preempted by this section;

408 requiring the Commissioner of the Office of Insurance

409 Regulation to provide certification that a condition

410 qualifies for flood insurance or disaster assistance;

411 providing an effective date.