

By the Committee on Banking and Insurance; and Senators Brandes, Simpson, and Benacquisto

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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.; increasing the
7 membership of the Florida Commission on Hurricane Loss
8 Projection Methodology to include an engineer who is
9 an expert in floodplain management and a meteorologist
10 who specializes in floods; requiring the commission to
11 adopt standards and guidelines relating to flood loss
12 by a certain date; creating s. 627.715, F.S.;
13 authorizing insurers to offer flood insurance in this
14 state; providing legislative findings; defining the
15 term "flood"; establishing the minimum coverage
16 requirements for such policies; providing coverage
17 limitations that an insurer may include in such
18 policies; requiring that certain limitations be noted
19 on the policy declarations or face page; providing the
20 insurer with rate options; requiring the insurer to
21 provide notice that flood insurance is available from
22 the National Flood Insurance Program; allowing an
23 insurer to export a contract or endorsement of a
24 certain amount to a surplus lines insurer without
25 meeting certain requirements; providing prior notice
26 requirements for cancellation or nonrenewal of a
27 policy; requiring the insurer to notify the office
28 before writing flood insurance and to file a plan of
29 operation with the office; providing that any

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30 conflicts with other provisions of the Florida
31 Insurance Code are preempted by this section;
32 requiring the Commissioner of the Office of Insurance
33 Regulation to provide certification that a condition
34 qualifies for flood insurance or disaster assistance;
35 providing an effective date.
36

37 Be It Enacted by the Legislature of the State of Florida:
38

39 Section 1. Paragraph (b) of subsection (2) of section
40 627.062, Florida Statutes, is amended to read:

41 627.062 Rate standards.—

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

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

48 1. Past and prospective loss experience within and without
49 this state.

50 2. Past and prospective expenses.

51 3. The degree of competition among insurers for the risk
52 insured.

53 4. Investment income reasonably expected by the insurer,
54 consistent with the insurer's investment practices, from
55 investable premiums anticipated in the filing, plus any other
56 expected income from currently invested assets representing the
57 amount expected on unearned premium reserves and loss reserves.

58 The commission may adopt rules using reasonable techniques of

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

67 5. The reasonableness of the judgment reflected in the
68 filing.

69 6. Dividends, savings, or unabsorbed premium deposits
70 allowed or returned to ~~Florida~~ policyholders, members, or
71 subscribers in this state.

72 7. The adequacy of loss reserves.

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

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

79 10. Conflagration and catastrophe hazards, if applicable.

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

84 12. Projected flood losses, if applicable, which may be
85 estimated using a model, a method, or an average of models or
86 methods determined to be acceptable or reliable by the Florida
87 Commission on Hurricane Loss Projection Methodology, and as

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88 further provided in s. 627.0628.

89 ~~13.12.~~ A reasonable margin for underwriting profit and
90 contingencies.

91 ~~14.13.~~ The cost of medical services, if applicable.

92 ~~15.14.~~ Other relevant factors that affect the frequency or
93 severity of claims or expenses.

94

95 The provisions of this subsection do not apply to workers'
96 compensation, employer's liability insurance, and motor vehicle
97 insurance.

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

100 627.0628 Florida Commission on Hurricane Loss Projection
101 Methodology; public records exemption; public meetings
102 exemption.-

103 (2) COMMISSION CREATED.-

104 (b) The commission shall consist of the following 14 ~~12~~
105 members:

106 1. The insurance consumer advocate.

107 2. The senior employee of the State Board of Administration
108 responsible for the operations of the Florida Hurricane
109 Catastrophe Fund.

110 3. The Executive Director of the Citizens Property
111 Insurance Corporation.

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

113 5. The actuary member of the Florida Hurricane Catastrophe
114 Fund Advisory Council.

115 6. An employee of the office who is an actuary responsible
116 for property insurance rate filings and who is appointed by the

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117 director of the office.

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

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

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

128 c. An expert in statistics who is a full-time member of the
129 faculty of the State University System and who has a background
130 in insurance.

131 d. An expert in computer system design who is a full-time
132 member of the faculty of the State University System.

133 e. An expert in meteorology who is a full-time member of
134 the faculty of the State University System and who specializes
135 in hurricanes.

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

139 g. A meteorologist who specializes in floods.

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

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

145 (a) The commission shall consider ~~any~~ actuarial methods,

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146 principles, standards, models, or output ranges that have the
147 potential for improving the accuracy of or reliability of the
148 hurricane loss projections and flood loss projections used in
149 residential property insurance rate filings. The commission
150 shall, ~~from time to time,~~ adopt and update findings as to the
151 accuracy or reliability of particular methods, principles,
152 standards, models, or output ranges.

153 (b) The commission shall consider ~~any~~ actuarial methods,
154 principles, standards, or models that have the potential for
155 improving the accuracy of or reliability of projecting probable
156 maximum loss levels. The commission shall adopt and update
157 findings as to the accuracy or reliability of particular
158 methods, principles, standards, or models related to probable
159 maximum loss calculations.

160 (c) In establishing reimbursement premiums for the Florida
161 Hurricane Catastrophe Fund, the State Board of Administration
162 must, to the extent feasible, employ actuarial methods,
163 principles, standards, models, or output ranges found by the
164 commission to be accurate or reliable.

165 (d) With respect to a rate filing under s. 627.062, an
166 insurer shall employ and may not modify or adjust actuarial
167 methods, principles, standards, models, or output ranges found
168 by the commission to be accurate or reliable in determining
169 hurricane loss factors for use in a rate filing under s.
170 627.062. An insurer shall employ and may not modify or adjust
171 models found by the commission to be accurate or reliable in
172 determining probable maximum loss levels pursuant to paragraph
173 (b) with respect to a rate filing under s. 627.062 made more
174 than 60 days after the commission has made such findings. This

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175 paragraph does not prohibit an insurer from averaging model
176 results or output ranges or using an average for the purpose of
177 a flood insurance rate filing under s. 627.062.

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

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

184 (g)-(f)1. A trade secret, as defined in s. 688.002, which
185 ~~that~~ is used in designing and constructing a hurricane loss
186 model and which ~~that~~ is provided pursuant to this section, by a
187 private company, to the commission, office, or consumer advocate
188 appointed pursuant to s. 627.0613, is confidential and exempt
189 from s. 119.07(1) and s. 24(a), Art. I of the State
190 Constitution.

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

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

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

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204 Section 3. Section 627.715, Florida Statutes, is created to
205 read:

206 627.715 Flood insurance.—Subject to the requirements of
207 this section, an insurer may issue an insurance policy,
208 contract, or endorsement providing coverage for the peril of
209 flood on any structure or on the contents of personal property
210 on a form that has been filed with and approved by the office
211 pursuant to s. 627.410(2) and that may be substantially similar
212 to the form used by the National Flood Insurance Program (NFIP).

213 (1) The Legislature finds that:

214 (a) The National Flood Insurance Program is a federal
215 program that enables property owners in participating
216 communities to purchase flood insurance. A community
217 participates in the federal program by adopting and enforcing
218 floodplain management regulations that meet or exceed federal
219 floodplain management criteria designed to reduce future flood
220 risk to new construction in floodplains. The program was created
221 by Congress in 1968 because insurance covering the peril of
222 flood was often unavailable in the private insurance market and
223 was intended to reduce the amount of financial aid paid by the
224 Federal Government in the aftermath of flood-related disasters.
225 After the creation of the NFIP, flood insurance coverage
226 continued to be generally unavailable for purchase from private
227 market insurance companies.

228 (b) The Biggert-Waters Flood Insurance Reform Act of 2012
229 reauthorized and revised the NFIP. The act increases flood
230 insurance premiums purchased through the program for second
231 homes, business properties, severe repetitive loss properties,
232 and substantially improved damaged properties by requiring

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233 premium increases of 25 percent per year until premiums meet the
234 full actuarial cost. Most residences lose their subsidized rates
235 if the property is sold, the policy lapses, repeated and severe
236 flood losses occur, or a new policy is purchased. Policyholders
237 whose communities adopt a new, updated Flood Insurance Rate Map
238 (FIRM) that results in higher rates will experience a 5-year
239 phase-in of rate increases to achieve required rate levels.

240 (c) The Biggert-Waters Flood Insurance Reform Act of 2012
241 also encourages the use and acceptance of private market flood
242 insurance. The Legislature finds, however, that there has been a
243 long-term inadequacy of private market flood insurance available
244 in this state. Such inadequacy suggests that the private market
245 in this state is unlikely to expand unless the Legislature
246 provides multiple options for the regulation of flood insurance.
247 The Legislature also finds that the consumers of this state
248 would benefit from the availability of competitively priced
249 private market flood insurance due to the continued availability
250 of NFIP flood insurance, the likely availability of alternative
251 private market flood insurance coverage options, and the
252 oversight of the Office of Insurance Regulation.

253 (d) The NFIP, as amended by the Biggert-Waters Flood
254 Insurance Reform Act of 2012, will prevent many property owners
255 from obtaining affordable flood insurance coverage in this
256 state. The absence of affordable flood insurance threatens the
257 public health, safety, and welfare and the economic health of
258 this state. Therefore, the state has a compelling public purpose
259 and interest in providing alternatives to coverage from NFIP by
260 promoting the availability of flood insurance from private
261 market insurers at potentially lower premium rates so as to

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262 facilitate the remediation, reconstruction, and replacement of
263 damaged or destroyed property in order to reduce or avoid harm
264 to the public health, safety, and welfare, to the economy of
265 this state, and to the revenues of state and local governments
266 which are needed to provide for the public welfare.

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

272 (a) Overflow of inland or tidal waters;

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

275 (c) Mudflow; or

276 (d) Collapse or subsidence of land along the shore of a
277 lake or similar body of water as a result of erosion or
278 undermining caused by waves or currents of water exceeding
279 anticipated cyclical levels which result in a flood.

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

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

287 (a) That has a flood deductible based on a stated dollar
288 amount or a percentage of the coverage amount. At a minimum, an
289 insurer must offer deductible amounts applicable to flood losses
290 that equal the standard deductibles offered under the National

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- 291 Flood Insurance Program;
- 292 (b) That provides that any flood loss will be adjusted on
293 the basis of:
- 294 1. The actual cash value of the property; or
295 2. Replacement costs up to the policy limits as provided
296 under s. 627.7011(3);
- 297 (c) That restricts flood coverage to the principal
298 building, as defined in the applicable policy;
- 299 (d) In an agreed-upon amount, including coverage limited to
300 the amount of all outstanding mortgages applicable to the
301 covered property. However, if a policy, contract, or endorsement
302 does not limit flood coverage to the replacement cost of the
303 covered property, the contract or endorsement may not include a
304 provision penalizing the policyholder for not insuring the
305 covered property up to replacement cost; or
- 306 (e) That, as to the peril of flood, does not cover:
- 307 1. Additional living expenses;
308 2. Personal property or contents; or
309 3. Law and ordinance coverage. However, an insurer, must
310 offer law and ordinance coverage that is comparable to the law
311 and ordinance coverage offered in the standard NFIP policy. A
312 policy, endorsement, or contract that includes the law and
313 ordinance coverage that must be offered under this paragraph
314 must include the following disclosure in uppercase bold
315 lettering of at least 12-point type: "LAW AND ORDINANCE COVERAGE
316 UNDER THIS POLICY MIGHT HAVE LIMITATIONS ON WHAT IS COVERED IN
317 THE EVENT OF A LOSS. YOU SHOULD CONSULT WITH YOUR AGENT IF YOU
318 HAVE QUESTIONS ABOUT THE COVERAGE OFFERED UNDER THIS POLICY."
- 319 (5) Any limitations on flood coverage or policy limits as

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320 to the peril of flood, including, but not limited to, flood
321 deductibles or flood coverage limited to the amount of all
322 outstanding mortgages, must be prominently disclosed on the
323 declarations page or face page of the policy in uppercase bold
324 lettering of at least 12-point type and be sufficiently clear so
325 as to be readily understandable by both the agent and the
326 property owner.

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

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

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

342 (a) In accordance with the rates, rating schedules, or
343 rating manuals filed by the insurer with the office which allow
344 the insurer a reasonable rate of return on flood coverage
345 written in this state. Flood coverage rates established under
346 this paragraph are not subject to s. 627.062(2)(a) and (f). An
347 insurer shall notify the office of any change to rates within 30
348 days after the effective date of the change. The notice must

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349 include the name of the insurer and the average statewide
350 percentage change in rates. Actuarial data with regard to rates
351 for flood coverage must be maintained by the insurer for 2 years
352 after the effective date of such rate change and is subject to
353 examination by the office. The office may require the insurer to
354 incur the costs associated with an examination. Upon
355 examination, the office, in accordance with generally accepted
356 and reasonable actuarial techniques, shall consider the rate
357 factors and standards specified in s. 627.062 to determine if
358 the rate is excessive, inadequate, or unfairly discriminatory.

359 (b) Through individual risk rating as provided in s.
360 627.062 (3) (a) and (b).

361 (c) With the written consent of the insured signed before
362 the policy inception date and filed with the insurer, using a
363 flood coverage rate that has not been approved by the office.
364 The signed consent form must notify the insured that the rate is
365 not subject to the approval of the office. A copy of the form
366 shall be maintained by the insurer for 3 years and must be
367 available for review by the office. An insurer is not required
368 to obtain subsequent written consents upon renewal, but shall
369 provide notice at each renewal that the rate is not subject to
370 office approval.

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

374 (8) A surplus lines agent may export a contract or
375 endorsement providing flood coverage of \$1 million or more to an
376 eligible surplus lines insurer without making a diligent effort
377 to seek such coverage from three or more authorized insurers

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378 under s. 626.916(1)(a). This subsection expires July 1, 2017.

379 (9) A policy, endorsement, or contract providing coverage
380 for the peril of flood must require the insurer to give 45 days'
381 prior written notice of cancellation or nonrenewal to the
382 insured and any regulated lending institution or federal agency
383 that is a mortgagee. An insurer or insured may cancel during the
384 term of the policy or upon renewal if the cancellation is for a
385 valid reason under the NFIP.

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

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

390 (b) File a plan of operation and financial projections or
391 revisions to such plan, as applicable, with the office, unless
392 the insurer maintains at least \$35 million in surplus and
393 provides coverage as an endorsement to an existing property
394 insurance form.

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

399 Section 4. If federal law or rule requires a certification
400 by a state insurance regulatory official as a condition of
401 qualifying for private flood insurance or disaster assistance,
402 the Commissioner of the Office of Insurance Regulation shall
403 provide such certification, and such certification is not
404 subject to review under chapter 120.

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