

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 personal
12 lines residential flood loss by a certain date;
13 creating s. 627.715, F.S.; authorizing insurers to
14 offer flood insurance in this state; providing
15 standard coverage requirements; defining the term
16 "flood"; establishing the minimum coverage
17 requirements for such policies; providing coverage
18 limitations that an insurer may include in such
19 policies; requiring that certain limitations be noted
20 on the policy declarations or face page; providing the
21 insurer with rate options; allowing an agent to export
22 a contract or endorsement of a certain amount to a
23 surplus lines insurer without meeting certain
24 requirements under certain circumstances; requiring
25 the insurer to notify the office before writing flood
26 insurance and to file a plan of operation with the

27 office; providing an exception; requiring certain
 28 agents to obtain an acknowledgment of certain
 29 disclosures signed by the applicant; providing
 30 construction; providing an effective date.

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

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 34 Section 1. Paragraph (b) of subsection (2) of section
 35 627.062, Florida Statutes, is amended to read:

36 627.062 Rate standards.—

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

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

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

45 2. Past and prospective expenses.

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

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

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

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

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

67 7. The adequacy of loss reserves.

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

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

74 10. Conflagration and catastrophe hazards, if applicable.

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

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

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

87 ~~14.13.~~ The cost of medical services, if applicable.

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

90

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

94 Section 2. Paragraph (b) of subsection (2) and subsection
 95 (3) of section 627.0628, Florida Statutes, are amended to read:
 96 627.0628 Florida Commission on Hurricane Loss Projection
 97 Methodology; public records exemption; public meetings
 98 exemption.—

99 (2) COMMISSION CREATED.—

100 (b) The commission shall consist of the following 14 ~~12~~
 101 members:

102 1. The insurance consumer advocate.

103 2. The senior employee of the State Board of

104 Administration responsible for the operations of the Florida

105 Hurricane Catastrophe Fund.

106 3. The Executive Director of the Citizens Property
107 Insurance Corporation.

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

109 5. The actuary member of the Florida Hurricane Catastrophe
110 Fund Advisory Council.

111 6. An employee of the office who is an actuary responsible
112 for property insurance rate filings and who is appointed by the
113 director of the office.

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

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

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

124 c. An expert in statistics who is a full-time member of
125 the faculty of the State University System and who has a
126 background in insurance.

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

129 e. An expert in meteorology who is a full-time member of
130 the faculty of the State University System and who specializes

131 in hurricanes.

132 f. A licensed professional engineer who is an expert in
 133 floodplain management.

134 g. A meteorologist who specializes in floods.

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

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

140 (a) The commission shall consider ~~any~~ actuarial methods,
 141 principles, standards, models, or output ranges that have the
 142 potential for improving the accuracy of or reliability of the
 143 hurricane loss projections and flood loss projections used in
 144 personal lines residential flood ~~residential property~~ insurance
 145 rate filings. The commission shall, from time to time, adopt
 146 findings as to the accuracy or reliability of particular
 147 methods, principles, standards, models, or output ranges.

148 (b) The commission shall consider ~~any~~ actuarial methods,
 149 principles, standards, or models that have the potential for
 150 improving the accuracy of or reliability of projecting probable
 151 maximum loss levels. The commission shall adopt findings as to
 152 the accuracy or reliability of particular methods, principles,
 153 standards, or models related to probable maximum loss
 154 calculations.

155 (c) In establishing reimbursement premiums for the Florida
 156 Hurricane Catastrophe Fund, the State Board of Administration

157 must, to the extent feasible, employ actuarial methods,
 158 principles, standards, models, or output ranges found by the
 159 commission to be accurate or reliable.

160 (d) With respect to a rate filing under s. 627.062, an
 161 insurer shall employ and may not modify or adjust actuarial
 162 methods, principles, standards, models, or output ranges found
 163 by the commission to be accurate or reliable in determining
 164 hurricane loss factors for use in a rate filing under s.
 165 627.062. An insurer shall employ and may not modify or adjust
 166 models found by the commission to be accurate or reliable in
 167 determining probable maximum loss levels pursuant to paragraph
 168 (b) with respect to a rate filing under s. 627.062 made more
 169 than 60 days after the commission has made such findings. This
 170 paragraph does not prohibit an insurer from using a straight
 171 average of model results or output ranges for the purposes of a
 172 rate filing for personal lines residential flood insurance
 173 coverage under s. 627.062.

174 (e) The commission shall adopt actuarial methods,
 175 principles, standards, models, or output ranges for personal
 176 lines residential flood loss by July 1, 2015.

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

180 (g)(f)1. A trade secret, as defined in s. 688.002, that is
 181 used in designing and constructing a hurricane loss model and
 182 that is provided pursuant to this section, ~~by a private company,~~

183 to the commission, office, or consumer advocate appointed
 184 pursuant to s. 627.0613~~7~~ is confidential and exempt from s.
 185 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

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

199 Section 3. Section 627.715, Florida Statutes, is created
 200 to read:

201 627.715 Flood insurance.—An insurer may issue an insurance
 202 policy, contract, or endorsement providing personal lines
 203 residential coverage for the peril of flood on a structure or
 204 the contents of personal property contained in a structure,
 205 subject to the provisions of this section. This section does not
 206 apply to residential or nonresidential commercial lines coverage
 207 for the peril of flood or the peril of flood that is excess
 208 coverage over any other insurance covering the peril of flood.

209 An insurer may issue flood insurance policies, contracts, or
 210 endorsements on a standard or preferred basis.

211 (1) (a) Standard flood insurance must cover only losses
 212 from the peril of flood, as defined in subsection (2),
 213 equivalent to coverage provided under a standard flood insurance
 214 policy under the National Flood Insurance Program. Standard
 215 flood insurance issued under this section must provide the same
 216 coverage, including deductibles and adjustment of losses, as
 217 that provided under a standard flood insurance policy under the
 218 National Flood Insurance Program.

219 (b) Preferred flood insurance must include the same
 220 coverage as standard flood insurance. However, it must also:

221 1. Include, within the definition of "flood," losses from
 222 water intrusion originating from outside the structure that are
 223 not otherwise provided under subsection (2).

224 2. Include coverage for additional living expenses.

225 3. Provide that any loss under personal property or
 226 contents coverage that is repaired or replaced shall be adjusted
 227 only on the basis of replacement costs up to the policy limits.

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

233 (a) Overflow of inland or tidal waters;

234 (b) Unusual and rapid accumulation or runoff of surface

235 waters from any source;

236 (c) Mudflow; or

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

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

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

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

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

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

258 (c) That restricts flood coverage to the principal
 259 building, as defined in the applicable policy; or

260 (d) In an agreed-upon amount, including coverage limited

261 to the amount of all outstanding mortgages applicable to the
262 covered property. However, if a policy, contract, or endorsement
263 does not limit flood coverage to the replacement cost of the
264 covered property, the contract or endorsement may not include a
265 provision penalizing the policyholder for not insuring the
266 covered property up to replacement cost.

267 (5) Any limitations on flood coverage or policy limits
268 pursuant to this section, including, but not limited to,
269 deductibles, must be prominently disclosed on the declarations
270 page or face page of the policy.

271 (6) An insurer may establish and use flood coverage rates
272 in accordance with the rate standards provided in s. 627.062.
273 For flood coverage rates filed with the office before October 1,
274 2019, the insurer may also establish and use such rates pursuant
275 to one or more of the following options:

276 (a) In accordance with the rates, rating schedules, or
277 rating manuals filed by the insurer with the office which allow
278 the insurer a reasonable rate of return on flood coverage
279 written in this state. Flood coverage rates established under
280 this paragraph are not subject to s. 627.062(2)(a) and (f). An
281 insurer shall notify the office of any change to rates within 30
282 days after the effective date of the change. The notice must
283 include the name of the insurer and the average statewide
284 percentage change in rates. Actuarial data with regard to rates
285 for flood coverage must be maintained by the insurer for 2 years
286 after the effective date of such rate change and is subject to

287 examination by the office. The office may require the insurer to
288 incur the costs associated with an examination. Upon
289 examination, the office, in accordance with generally accepted
290 and reasonable actuarial techniques, shall consider the rate
291 factors and standards specified in s. 627.062(2)(b), (c), (d),
292 and (e) to determine whether the rate is excessive, inadequate,
293 or unfairly discriminatory.

294 (b) Through individual risk rating as provided in s.
295 627.062(3)(a) and (b) if the rate charged is not excessive under
296 s. 627.062(2)(e).

297 (c) With the written consent of the insured signed before
298 the policy inception date and filed with the insurer, using a
299 flood coverage rate that has not been approved by the office, if
300 the rate charged is not excessive under s. 627.062(2)(e). The
301 signed consent form must notify the insured that the rate is not
302 subject to the approval of the office and that flood coverage
303 may be available from the National Flood Insurance Program. A
304 copy of the form shall be maintained by the insurer for 3 years
305 and must be available for review by the office.

306 (7) A surplus lines agent may export a contract or
307 endorsement providing flood coverage to an eligible surplus
308 lines insurer without making a diligent effort to seek such
309 coverage from three or more authorized insurers under s.
310 626.916(1)(a) only if the premium for the coverage from the
311 surplus lines insurer is at least 10 percent less than the
312 premium for comparable coverage from an authorized insurer.

313 (8) In addition to any other applicable requirements, an
314 insurer providing flood coverage in this state must:

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

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

322 (9) An agent obtaining an application for flood coverage
323 from an authorized or surplus lines insurer for a property
324 receiving flood insurance under the National Flood Insurance
325 Program must obtain an acknowledgment signed by the applicant
326 before placing the coverage with the authorized or surplus lines
327 insurer. The acknowledgment must notify the applicant that the
328 full risk rate for flood insurance may apply to the property if
329 such insurance is later obtained under the National Flood
330 Insurance Program.

331 (10) With respect to the regulation of flood insurance
332 coverage written in this state by private insurers, this section
333 supersedes any other provision in the Florida Insurance Code in
334 the event of a conflict.

335 Section 4. This act shall take effect July 1, 2014.