

By Senator Brandes

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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 a rate filing;  
6       amending s. 627.0628, F.S.; increasing the membership  
7       of the Florida Commission on Hurricane Loss Projection  
8       Methodology to include an engineer who is an expert in  
9       floodplain management and a meteorologist who  
10      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 such limitations to be noted on  
19      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 to a  
24      surplus lines insurer without meeting certain  
25      requirements; providing prior notice requirements for  
26      cancellation or nonrenewal of a policy; requiring the  
27      insurer to notify the office before writing flood  
28      insurance and to file a plan of operation with the  
29      office; providing that any conflicts with other

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30 provisions of the Florida Insurance Code are preempted  
31 by this section; providing an effective date.  
32

33 Be It Enacted by the Legislature of the State of Florida:  
34

35 Section 1. Paragraph (b) of subsection (2) of section  
36 627.062, Florida Statutes, is amended to read:

37 627.062 Rate standards.—

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

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

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

46 2. Past and prospective expenses.

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

49 4. Investment income reasonably expected by the insurer,  
50 consistent with the insurer's investment practices, from  
51 investable premiums anticipated in the filing, plus any other  
52 expected income from currently invested assets representing the  
53 amount expected on unearned premium reserves and loss reserves.  
54 The commission may adopt rules using reasonable techniques of  
55 actuarial science and economics to specify the manner in which  
56 insurers calculate investment income attributable to classes of  
57 insurance written in this state and the manner in which  
58 investment income is used to calculate insurance rates. Such

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59 manner must contemplate allowances for an underwriting profit  
60 factor and full consideration of investment income that produces  
61 ~~which produce~~ a reasonable rate of return; however, investment  
62 income from invested surplus may not be considered.

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

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

68 7. The adequacy of loss reserves.

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

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

75 10. Conflagration and catastrophe hazards, if applicable.

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

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

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

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88       ~~14.13.~~ The cost of medical services, if applicable.

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

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

93       627.0628 Florida Commission on Hurricane Loss Projection  
94 Methodology; public records exemption; public meetings  
95 exemption.—

96       (2) COMMISSION CREATED.—

97       (b) The commission shall consist of the following 14 ~~12~~  
98 members:

99       1. The insurance consumer advocate.

100       2. The senior employee of the State Board of Administration  
101 responsible for the operations of the Florida Hurricane  
102 Catastrophe Fund.

103       3. The Executive Director of the Citizens Property  
104 Insurance Corporation.

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

106       5. The actuary member of the Florida Hurricane Catastrophe  
107 Fund Advisory Council.

108       6. An employee of the office who is an actuary responsible  
109 for property insurance rate filings and who is appointed by the  
110 director of the office.

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

113       a. An actuary who is employed full time by a property and  
114 casualty insurer that was responsible for at least 1 percent of  
115 the aggregate statewide direct written premium for homeowner's  
116 insurance in the calendar year preceding the member's

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117 appointment to the commission.

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

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

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

126       e. An expert in meteorology who is a full-time member of  
127 the faculty of the State University System and who specializes  
128 in hurricanes.

129       f. A licensed professional engineer who is an expert in  
130 floodplain management.

131       g. A meteorologist who specializes in floods.

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

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

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

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

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146 principles, standards, or models that have the potential for  
147 improving the accuracy of or reliability of projecting probable  
148 maximum loss levels. The commission shall adopt and update  
149 findings as to the accuracy or reliability of particular  
150 methods, principles, standards, or models related to probable  
151 maximum loss calculations.

152 (c) In establishing reimbursement premiums for the Florida  
153 Hurricane Catastrophe Fund, the State Board of Administration  
154 must, to the extent feasible, employ actuarial methods,  
155 principles, standards, models, or output ranges determined ~~found~~  
156 by the commission to be accurate or reliable.

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

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

173 (f) ~~(e)~~ The commission shall revise ~~adopt revisions to~~  
174 previously adopted actuarial methods, principles, standards,

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175 models, or output ranges every odd-numbered ~~odd~~ year.

176 (g)~~(f)~~1. A trade secret, as defined in s. 688.002, which  
177 ~~that~~ is used in designing and constructing a hurricane loss  
178 model and which ~~that~~ is provided pursuant to this section~~7~~ by a  
179 private company~~7~~ to the commission, office, or consumer advocate  
180 appointed pursuant to s. 627.0613~~7~~ is confidential and exempt  
181 from s. 119.07(1) and s. 24(a), Art. I of the State  
182 Constitution.

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

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

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

196 Section 3. Section 627.715, Florida Statutes, is created to  
197 read:

198 627.715 Flood Insurance.—An insurer may issue an insurance  
199 policy, contract, or endorsement providing coverage for the  
200 peril of flood on any structure or the contents of personal  
201 property contained therein, subject to this section.

202 (1) The Legislature finds that:

203 (a) The National Flood Insurance Program (NFIP) is a

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204 federal program that enables property owners in participating  
205 communities to purchase flood insurance. A community  
206 participates in the federal program by adopting and enforcing  
207 floodplain management regulations that meet or exceed federal  
208 floodplain management criteria designed to reduce future flood  
209 risk to new construction in floodplains. The program was created  
210 by Congress in 1968 because insurance covering the peril of  
211 flood was often unavailable in the private insurance market and  
212 was intended to reduce the amount of financial aid paid by the  
213 Federal Government in the aftermath of flood-related disasters.  
214 Since the creation of the NFIP, generally flood insurance  
215 coverage has been unavailable for purchase from private market  
216 insurance companies.

217 (b) The Biggert-Waters Flood Insurance Reform Act of 2012  
218 reauthorized and revised the NFIP. The act increases flood  
219 insurance premiums purchased through the program for second  
220 homes, business properties, severe repetitive loss properties,  
221 and substantially improved damaged properties by requiring  
222 premium increases of 25 percent per year until premiums meet the  
223 full actuarial cost. Primary residences lose their subsidized  
224 rates if the property is sold, the policy lapses, repeated and  
225 severe flood losses occur, or a new policy is purchased.  
226 Policyholders whose communities adopt a new, updated Flood  
227 Insurance Rate Map (FIRM) that results in higher rates will  
228 experience a 5-year phase-in of rate increases to achieve  
229 required rate levels.

230 (c) The Biggert-Waters Flood Insurance Reform Act of 2012  
231 also encourages the use and acceptance of private-market flood  
232 insurance. The Legislature finds, however, that there has been a



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233 long-term inadequacy of private-market flood insurance available  
234 in this state. Such inadequacy suggests that the private market  
235 in this state is unlikely to expand unless the Legislature  
236 provides multiple options for the regulation of flood insurance.  
237 In addition, the consumers of this state will be protected from  
238 excessive premiums by the continued oversight of insurance rates  
239 by the Office of Insurance Regulation and the continued  
240 availability of flood insurance from the NFIP.

241 (d) The NFIP, as amended by the Biggert-Waters Flood  
242 Insurance Reform Act of 2012, will prevent many property owners  
243 from obtaining affordable flood insurance coverage in this  
244 state. The absence of affordable flood insurance threatens the  
245 public health, safety, and welfare and the economic health of  
246 this state. Therefore, the state has a compelling public purpose  
247 and interest in providing alternatives to coverage from NFIP by  
248 promoting the availability of flood insurance from private  
249 market insurers at potentially lower premium rates so as to  
250 facilitate the remediation, reconstruction, and replacement of  
251 damaged or destroyed property in order to reduce or avoid harm  
252 to the public health, safety, and welfare, to the economy of  
253 this state, and to the revenues of state and local governments  
254 which are needed to provide for the public welfare.

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

260 (a) Overflow of inland or tidal waters;

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

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262 waters from any source;

263 (c) Mudflow; or

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

268 (3) At a minimum, coverage for the peril of flood must  
269 cover a flood as defined in subsection (2). Coverage for the  
270 peril of flood may also include water intrusion originating from  
271 outside the structure which is not otherwise covered under the  
272 definition of flood. A policy, contract, or endorsement  
273 providing coverage for the peril of flood which includes water  
274 intrusion originating from outside the structure must also be  
275 regulated and rated as a flood policy in accordance with this  
276 section and not as a homeowners or other personal lines  
277 residential policy under separate provisions of the Insurance  
278 Code.

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

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

286 (b) That provides that any loss that is repaired or  
287 replaced will be adjusted on the basis of:

288 1. Replacement costs up to the policy limits; or

289 2. The actual cash value of the property;

290 (c) That restricts flood coverage to the principal

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291 building, as defined in the applicable policy;

292 (d) In any agreed-upon amount, including coverage limited  
293 to the amount of all outstanding mortgages applicable to the  
294 covered property. However, if a policy, contract, or endorsement  
295 does not limit flood coverage to the replacement cost of the  
296 covered property, the contract or endorsement may not include a  
297 provision penalizing the policyholder for not insuring the  
298 covered property up to replacement cost; or

299 (e) That does not cover:

- 300 1. Additional living expenses;  
301 2. Personal property or contents; or  
302 3. Ordinance and law coverage.

303 (5) Any limitations on coverage or policy limits,  
304 including, but not limited to, deductibles or coverage limited  
305 to the amount of all outstanding mortgages, must be prominently  
306 disclosed on the declarations page or face page of the policy.

307 (6) An insurer may establish and use flood coverage rates  
308 pursuant to one or more of the following options:

309 (a) In accordance with the rate standards of s. 627.062,  
310 including s. 627.062(2)(a)-(b);

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

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320 the insurer for 2 years after the effective date of such rate  
321 changes and is subject to examination by the office. The office  
322 may require the insurer to incur the costs associated with an  
323 examination. Upon examination, the office, in accordance with  
324 generally accepted and reasonable actuarial techniques, shall  
325 consider the rate factors specified in s. 627.062(2)(b)-(d) and  
326 the standards specified in s. 627.062(2)(e) to determine if the  
327 rate is excessive, inadequate, or unfairly discriminatory;

328 (c) Through individual risk rating as provided in s.  
329 627.062(3)(a) and (b); or

330 (d) With the written consent of the insured signed before  
331 the policy inception date and filed with the insurer, using a  
332 flood coverage rate that has not been approved by the office.  
333 The signed consent form must notify the insured that the rate is  
334 not subject to the approval of the office. A copy of the form  
335 shall be maintained by the insurer for 3 years and must be  
336 available for review by the office. An insurer is not required  
337 to obtain subsequent written consents upon renewal, but shall  
338 provide notice at each renewal that the rate is not subject to  
339 office approval.

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

343 (8) A surplus lines agent may export a contract or  
344 endorsement providing flood coverage to an eligible surplus  
345 lines insurer without making a diligent effort to seek such  
346 coverage from three or more authorized insurers under s.  
347 626.916(1)(a).

348 (9) A policy, endorsement, or contract providing coverage

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349 for the peril of flood must require the insurer to give 45 days'  
350 prior written notice of cancellation or nonrenewal to the  
351 insured and any regulated lending institution or federal agency  
352 that is a mortgagee. An insurer or insured may cancel during the  
353 term of the policy or upon renewal if the cancellation is for a  
354 valid reason under the NFIP.

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

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

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

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

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