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LEGISLATIVE ACTION

Senate

House

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04/24/2009 03:25 PM

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Senator Fasano moved the following:

1           **Senate Substitute for Amendment (147230) (with title**  
2 **amendment)**

3  
4           Delete lines 1003 - 1231

5 and insert:

6           3. For all residential property insurance filings made or  
7 submitted after January 25, 2007, but before December 31, 2012  
8 ~~2009~~, an insurer seeking a rate that is greater than the rate  
9 most recently approved by the office shall make a "file and use"  
10 filing. For purposes of this subparagraph, motor vehicle  
11 collision and comprehensive coverages are not considered to be  
12 property coverages.



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

18 1. Past and prospective loss experience within and without  
19 this state.

20 2. Past and prospective expenses.

21 3. The degree of competition among insurers for the risk  
22 insured.

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

37 5. The reasonableness of the judgment reflected in the  
38 filing.

39 6. Dividends, savings, or unabsorbed premium deposits  
40 allowed or returned to Florida policyholders, members, or  
41 subscribers.



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- 42           7. The adequacy of loss reserves.
- 43           8. The cost of reinsurance. The office shall not disapprove  
44 a rate as excessive solely due to the insurer having obtained  
45 catastrophic reinsurance to cover the insurer's estimated 250-  
46 year probable maximum loss or any lower level of loss.
- 47           9. Trend factors, including trends in actual losses per  
48 insured unit for the insurer making the filing.
- 49           10. Conflagration and catastrophe hazards, if applicable.
- 50           11. Projected hurricane losses, if applicable, which must  
51 be estimated using a model or method found to be acceptable or  
52 reliable by the Florida Commission on Hurricane Loss Projection  
53 Methodology, and as further provided in s. 627.0628.
- 54           12. A reasonable margin for underwriting profit and  
55 contingencies.
- 56           13. The cost of medical services, if applicable.
- 57           14. Other relevant factors which impact upon the frequency  
58 or severity of claims or upon expenses.
- 59           (c) In the case of fire insurance rates, consideration  
60 shall be given to the availability of water supplies and the  
61 experience of the fire insurance business during a period of not  
62 less than the most recent 5-year period for which such  
63 experience is available.
- 64           (d) If conflagration or catastrophe hazards are given  
65 consideration by an insurer in its rates or rating plan,  
66 including surcharges and discounts, the insurer shall establish  
67 a reserve for that portion of the premium allocated to such  
68 hazard and shall maintain the premium in a catastrophe reserve.  
69 Any removal of such premiums from the reserve for purposes other  
70 than paying claims associated with a catastrophe or purchasing



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71 reinsurance for catastrophes shall be subject to approval of the  
72 office. Any ceding commission received by an insurer purchasing  
73 reinsurance for catastrophes shall be placed in the catastrophe  
74 reserve.

75 (e) After consideration of the rate factors provided in  
76 paragraphs (b), (c), and (d), a rate may be found by the office  
77 to be excessive, inadequate, or unfairly discriminatory based  
78 upon the following standards:

79 1. Rates shall be deemed excessive if they are likely to  
80 produce a profit from Florida business that is unreasonably high  
81 in relation to the risk involved in the class of business or if  
82 expenses are unreasonably high in relation to services rendered.

83 2. Rates shall be deemed excessive if, among other things,  
84 the rate structure established by a stock insurance company  
85 provides for replenishment of surpluses from premiums, when the  
86 replenishment is attributable to investment losses.

87 3. Rates shall be deemed inadequate if they are clearly  
88 insufficient, together with the investment income attributable  
89 to them, to sustain projected losses and expenses in the class  
90 of business to which they apply.

91 4. A rating plan, including discounts, credits, or  
92 surcharges, shall be deemed unfairly discriminatory if it fails  
93 to clearly and equitably reflect consideration of the  
94 policyholder's participation in a risk management program  
95 adopted pursuant to s. 627.0625.

96 5. A rate shall be deemed inadequate as to the premium  
97 charged to a risk or group of risks if discounts or credits are  
98 allowed which exceed a reasonable reflection of expense savings  
99 and reasonably expected loss experience from the risk or group



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100 of risks.

101         6. A rate shall be deemed unfairly discriminatory as to a  
102 risk or group of risks if the application of premium discounts,  
103 credits, or surcharges among such risks does not bear a  
104 reasonable relationship to the expected loss and expense  
105 experience among the various risks.

106         (f) In reviewing a rate filing, the office may require the  
107 insurer to provide at the insurer's expense all information  
108 necessary to evaluate the condition of the company and the  
109 reasonableness of the filing according to the criteria  
110 enumerated in this section.

111         (g) The office may at any time review a rate, rating  
112 schedule, rating manual, or rate change; the pertinent records  
113 of the insurer; and market conditions. If the office finds on a  
114 preliminary basis that a rate may be excessive, inadequate, or  
115 unfairly discriminatory, the office shall initiate proceedings  
116 to disapprove the rate and shall so notify the insurer. However,  
117 the office may not disapprove as excessive any rate for which it  
118 has given final approval or which has been deemed approved for a  
119 period of 1 year after the effective date of the filing unless  
120 the office finds that a material misrepresentation or material  
121 error was made by the insurer or was contained in the filing.  
122 Upon being so notified, the insurer or rating organization  
123 shall, within 60 days, file with the office all information  
124 which, in the belief of the insurer or organization, proves the  
125 reasonableness, adequacy, and fairness of the rate or rate  
126 change. The office shall issue a notice of intent to approve or  
127 a notice of intent to disapprove pursuant to the procedures of  
128 paragraph (a) within 90 days after receipt of the insurer's



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129 initial response. In such instances and in any administrative  
130 proceeding relating to the legality of the rate, the insurer or  
131 rating organization shall carry the burden of proof by a  
132 preponderance of the evidence to show that the rate is not  
133 excessive, inadequate, or unfairly discriminatory. After the  
134 office notifies an insurer that a rate may be excessive,  
135 inadequate, or unfairly discriminatory, unless the office  
136 withdraws the notification, the insurer shall not alter the rate  
137 except to conform with the office's notice until the earlier of  
138 120 days after the date the notification was provided or 180  
139 days after the date of the implementation of the rate. The  
140 office may, subject to chapter 120, disapprove without the 60-  
141 day notification any rate increase filed by an insurer within  
142 the prohibited time period or during the time that the legality  
143 of the increased rate is being contested.

144 (h) In the event the office finds that a rate or rate  
145 change is excessive, inadequate, or unfairly discriminatory, the  
146 office shall issue an order of disapproval specifying that a new  
147 rate or rate schedule which responds to the findings of the  
148 office be filed by the insurer. The office shall further order,  
149 for any "use and file" filing made in accordance with  
150 subparagraph (a)2., that premiums charged each policyholder  
151 constituting the portion of the rate above that which was  
152 actuarially justified be returned to such policyholder in the  
153 form of a credit or refund. If the office finds that an  
154 insurer's rate or rate change is inadequate, the new rate or  
155 rate schedule filed with the office in response to such a  
156 finding shall be applicable only to new or renewal business of  
157 the insurer written on or after the effective date of the



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158 responsive filing.

159 (i) Except as otherwise specifically provided in this  
160 chapter, the office shall not prohibit any insurer, including  
161 any residual market plan or joint underwriting association, from  
162 paying acquisition costs based on the full amount of premium, as  
163 defined in s. 627.403, applicable to any policy, or prohibit any  
164 such insurer from including the full amount of acquisition costs  
165 in a rate filing.

166 (j) With respect to residential property insurance rate  
167 filings, the rate filing must account for mitigation measures  
168 undertaken by policyholders to reduce hurricane losses.

169 (k)1. An insurer may make a separate filing limited solely  
170 to an adjustment of its rates for reinsurance or financing costs  
171 to replace or finance payment of amounts covered by the Florida  
172 Hurricane Catastrophe Fund if:

173 a. Reinsurance costs contained in the filing do not result  
174 in an overall premium increase of more than 10 percent for any  
175 individual policyholder. If the insurer elects to purchase a  
176 liquidity instrument or line of credit instead of reinsurance,  
177 the cost included in the filing for the liquidity instrument or  
178 line of credit may not result in a premium increase exceeding 3  
179 percent for any individual policyholder;

180 b. The insurer includes in the filing a copy of all of its  
181 reinsurance, liquidity instrument, or line of credit contracts;  
182 proof of the billing or payment for the contracts; and the  
183 calculations upon which the proposed rate changes are based  
184 demonstrating that the costs meet the criteria of this section  
185 and are not loaded for expenses or profit;

186 c. The insurer makes no other changes to its rates; and



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187       d. The insurer has not implemented an increase in its rate  
188 within the 6 months immediately preceding the filing.

189       2. An insurer making a filing pursuant to this paragraph is  
190 not eligible to file for any additional rate increase for the  
191 same business for at least 12 months after implementation of the  
192 limited filing.

193       3. This paragraph does not limit the authority of the  
194 office to disapprove the rate filing as excessive, inadequate,  
195 or unfairly discriminatory. All other standards of the rating  
196 law apply, including the standard of reasonableness.

197       4. This paragraph does not apply to rate filings for any  
198 insurance other than residential property insurance.

199  
200       The provisions of this subsection do ~~shall~~ not apply to  
201 workers' compensation and employer's liability insurance and to  
202 motor vehicle insurance.

203       (5) With respect to a rate filing involving coverage of the  
204 type for which the insurer is required to pay a reimbursement  
205 premium to the Florida Hurricane Catastrophe Fund, the insurer  
206 may fully recoup in its property insurance premiums any  
207 reimbursement premiums paid to the Florida Hurricane Catastrophe  
208 Fund, together with reasonable costs of other reinsurance, but  
209 except as otherwise provided in this section, may not recoup  
210 reinsurance costs that duplicate coverage provided by the  
211 Florida Hurricane Catastrophe Fund. An insurer may not recoup  
212 more than 1 year of reimbursement premium at a time. Any under-  
213 recoupment from the prior year may be added to the following  
214 year's reimbursement premium and any over-recoupment shall be  
215 subtracted from the following year's reimbursement premium.



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

And the title is amended as follows:

Delete lines 45 - 50

and insert:

627.062, F.S.; extending the period for which an insurer seeking a residential property insurance rate that is greater than the rate most recently approved by the Office of Insurance Regulation must make a "file and use" filing; authorizing an insurer to make a separate filing limited solely to an adjustment of its rates for reinsurance or financing costs to replace or finance payment of amounts covered by the Florida Hurricane Catastrophe Fund under certain circumstances; providing that certain insurers are not eligible to file for certain additional rate increases during a specified period after implementation of a limited filing; preserving the authority of the office to disapprove a rate filing as excessive, inadequate, or unfairly discriminatory; providing for the applicability of certain provisions of state law; amending s. 627.0621, F.S.;