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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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04/27/2009 04:42 PM

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Senators Fasano, Crist, Storms, and Lynn moved the following:

**Senate Amendment (with title amendment)**

Delete lines 1003 - 1231

and insert:

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

(b) Upon receiving a rate filing, the office shall review



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

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

19 2. Past and prospective expenses.

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

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

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

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

41 7. The adequacy of loss reserves.



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42           8. The cost of reinsurance. The office shall not disapprove  
43 a rate as excessive solely due to the insurer having obtained  
44 catastrophic reinsurance to cover the insurer's estimated 250-  
45 year probable maximum loss or any lower level of loss.

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

48           10. Conflagration and catastrophe hazards, if applicable.

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

53           12. A reasonable margin for underwriting profit and  
54 contingencies.

55           13. The cost of medical services, if applicable.

56           14. Other relevant factors which impact upon the frequency  
57 or severity of claims or upon expenses.

58           (c) In the case of fire insurance rates, consideration  
59 shall be given to the availability of water supplies and the  
60 experience of the fire insurance business during a period of not  
61 less than the most recent 5-year period for which such  
62 experience is available.

63           (d) If conflagration or catastrophe hazards are given  
64 consideration by an insurer in its rates or rating plan,  
65 including surcharges and discounts, the insurer shall establish  
66 a reserve for that portion of the premium allocated to such  
67 hazard and shall maintain the premium in a catastrophe reserve.  
68 Any removal of such premiums from the reserve for purposes other  
69 than paying claims associated with a catastrophe or purchasing  
70 reinsurance for catastrophes shall be subject to approval of the



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

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

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

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

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

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

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



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

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

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



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

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



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

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

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

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

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

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

186 d. The insurer has not implemented an increase in its rate



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187 within the 6 months immediately preceding the filing.

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

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

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

198  
199 The provisions of this subsection do ~~shall~~ not apply to workers'  
200 compensation and employer's liability insurance and to motor  
201 vehicle insurance.

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





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

217 And the title is amended as follows:

218 Delete lines 45 - 50

219 and insert:

220 627.062, F.S.; extending the period for which an  
221 insurer seeking a residential property insurance rate  
222 that is greater than the rate most recently approved  
223 by the Office of Insurance Regulation must make a  
224 "file and use" filing; authorizing an insurer to make  
225 a separate filing limited solely to an adjustment of  
226 its rates for reinsurance or financing costs to  
227 replace or finance payment of amounts covered by the  
228 Florida Hurricane Catastrophe Fund under certain  
229 circumstances; providing that certain insurers are not  
230 eligible to file for certain additional rate increases  
231 during a specified period after implementation of a  
232 limited filing; preserving the authority of the office  
233 to disapprove a rate filing as excessive, inadequate,  
234 or unfairly discriminatory; providing for the  
235 applicability of certain provisions of state law;  
236 amending s. 627.0621, F.S.;