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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2014	.	
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Appropriations Subcommittee on General Government (Simpson)
recommended the following:

1 **Senate Amendment (with title amendment)**

2
3 Delete lines 98 - 398

4 and insert:

5 Section 2. Subsection (3) of section 627.0628, Florida
6 Statutes, is amended to read:

7 627.0628 Florida Commission on Hurricane Loss Projection
8 Methodology; public records exemption; public meetings
9 exemption.—



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

11 (a) The commission shall consider ~~any~~ actuarial methods,
12 principles, standards, models, or output ranges that have the
13 potential for improving the accuracy ~~of~~ or reliability of the
14 hurricane loss projections and flood loss projections used in
15 residential property insurance rate filings. The commission
16 shall, ~~from time to time,~~ adopt and update findings, as needed,
17 as to the accuracy or reliability of particular methods,
18 principles, standards, models, or output ranges.

19 (b) The commission shall consider ~~any~~ actuarial methods,
20 principles, standards, or models that have the potential for
21 improving the accuracy ~~of~~ or reliability of projecting probable
22 maximum loss levels. The commission shall adopt and update
23 findings, as needed, as to the accuracy or reliability of
24 particular methods, principles, standards, or models related to
25 probable maximum loss calculations.

26 (c) In establishing reimbursement premiums for the Florida
27 Hurricane Catastrophe Fund, the State Board of Administration
28 must, to the extent feasible, employ actuarial methods,
29 principles, standards, models, or output ranges found by the
30 commission to be accurate or reliable.

31 (d) With respect to a rate filing under s. 627.062, an
32 insurer shall employ and may not modify or adjust actuarial
33 methods, principles, standards, models, or output ranges found
34 by the commission to be accurate or reliable in determining
35 hurricane loss factors for use in a rate filing under s.
36 627.062. An insurer shall employ and may not modify or adjust
37 models found by the commission to be accurate or reliable in
38 determining probable maximum loss levels pursuant to paragraph



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39 (b) with respect to a rate filing under s. 627.062 made more
40 than 60 days after the commission has made such findings. This
41 paragraph does not prohibit an insurer from averaging model
42 results or output ranges or from using an average for the
43 purpose of a flood insurance rate filing under s. 627.062.

44 (e) The commission shall adopt actuarial methods,
45 principles, standards, models, or output ranges for flood loss
46 by July 1, 2016.

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

50 (g)~~(f)~~ 1. A trade secret, as defined in s. 688.002, which
51 ~~that~~ is used in designing and constructing a hurricane loss
52 model and which ~~that~~ is provided pursuant to this section~~,~~ by a
53 private company~~,~~ to the commission, office, or consumer advocate
54 appointed pursuant to s. 627.0613~~,~~ is confidential and exempt
55 from s. 119.07(1) and s. 24(a), Art. I of the State
56 Constitution.

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

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

66 c. This subparagraph is subject to the Open Government
67 Sunset Review Act in accordance with s. 119.15 and shall stand



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68 repealed on October 2, 2015, unless reviewed and saved from
69 repeal through reenactment by the Legislature.

70 Section 3. Section 627.715, Florida Statutes, is created to
71 read:

72 627.715 Flood insurance.—Subject to the requirements of
73 this section, an insurer may issue an insurance policy,
74 contract, or endorsement providing coverage for the peril of
75 flood on any structure or on the contents of personal property
76 in this state.

77 (1) The Legislature finds that:

78 (a) The National Flood Insurance Program (NFIP) is a
79 federal program that enables property owners in participating
80 communities to purchase flood insurance. A community
81 participates in the federal program by adopting and enforcing
82 floodplain management regulations that meet or exceed federal
83 floodplain management criteria designed to reduce future flood
84 risk to new construction in floodplains. The program was created
85 by Congress in 1968 because insurance covering the peril of
86 flood was often unavailable in the private insurance market and
87 was intended to reduce the amount of financial aid paid by the
88 Federal Government in the aftermath of flood-related disasters.
89 After the creation of the NFIP, flood insurance coverage
90 continued to be generally unavailable for purchase from private
91 market insurance companies.

92 (b) The Biggert-Waters Flood Insurance Reform Act of 2012
93 reauthorized and revised the NFIP. The act increased flood
94 insurance premiums purchased through the program for second
95 homes, business properties, severe repetitive loss properties,
96 and substantially improved damaged properties by requiring



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

104 (c) The Biggert-Waters Flood Insurance Reform Act of 2012
105 also encourages the use and acceptance of private market flood
106 insurance. The Legislature finds, however, that there has been a
107 long-term inadequacy of private market flood insurance available
108 in this state. Such inadequacy suggests that the private market
109 in this state is unlikely to expand unless the Legislature
110 provides multiple options for the regulation of flood insurance.
111 The Legislature also finds that the consumers of this state
112 would benefit from the availability of competitively priced
113 private market flood insurance due to the continued availability
114 of the NFIP flood insurance, the likely availability of
115 alternative private market flood insurance coverage options, and
116 the oversight of the Office of Insurance Regulation.

117 (d) The NFIP, as amended by the Biggert-Waters Flood
118 Insurance Reform Act of 2012, is likely to prevent many property
119 owners from obtaining affordable flood insurance coverage in
120 this state. The absence of affordable flood insurance threatens
121 the public health, safety, and welfare and the economic health
122 of this state. Therefore, the state has a compelling public
123 purpose and interest in providing alternatives to coverage from
124 the NFIP by promoting the availability of flood insurance from
125 private market insurers at potentially lower premium rates in an



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126 effort to facilitate the remediation, reconstruction, and
127 replacement of damaged or destroyed property in order to reduce
128 or avoid harm to public health, safety, and welfare, to the
129 economy of this state, and to the revenues of state and local
130 governments which are needed to provide for the public welfare.

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

136 (a) Overflow of inland or tidal waters;

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

139 (c) Mudflow; or

140 (d) Collapse or subsidence of land along the shore of a
141 lake or similar body of water as a result of erosion or
142 undermining caused by waves or currents of water exceeding
143 anticipated cyclical levels.

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

149 (4) An insurer may offer a flood coverage policy, contract,
150 or endorsement that:

151 (a) Has a flood deductible based on a stated dollar amount
152 or a percentage of the coverage amount. The deductible amount
153 must be acceptable to federal mortgage and banking regulators if
154 such policy, contract, or endorsement is intended to satisfy a



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155 mortgage requirement;

156 (b) Provides that any flood loss will be adjusted on the
157 basis of:

158 1. The actual cash value of the property; or

159 2. Replacement costs up to the policy limits as provided
160 under s. 627.7011(3);

161 (c) Restricts flood coverage to the principal building, as
162 defined in the applicable policy;

163 (d) Is in an agreed-upon amount, including coverage limited
164 to the amount of all outstanding mortgages applicable to the
165 covered property. However, if a policy, contract, or endorsement
166 does not limit flood coverage to the replacement cost of the
167 covered property, the policy, contract, or endorsement may not
168 include a provision penalizing the policyholder for not insuring
169 the covered property up to replacement cost; or

170 (e) As to the peril of flood, does not cover:

171 1. Additional living expenses;

172 2. Personal property or contents; or

173 3. Law and ordinance coverage. However, an insurer must
174 offer law and ordinance coverage that is comparable to the law
175 and ordinance coverage offered in the standard NFIP policy. A
176 policy, contract, or endorsement that includes the law and
177 ordinance coverage that must be offered under this paragraph
178 must include the following disclosure in at least 12-point
179 uppercase and boldfaced type: "LAW AND ORDINANCE COVERAGE UNDER
180 THIS POLICY MIGHT HAVE LIMITATIONS ON WHAT IS COVERED IN THE
181 EVENT OF A LOSS. YOU SHOULD CONSULT WITH YOUR AGENT IF YOU HAVE
182 QUESTIONS ABOUT THE COVERAGE OFFERED UNDER THIS POLICY."

183 (5) Any limitations on flood coverage or policy limits as



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184 to the peril of flood, including, but not limited to, flood
185 deductibles or flood coverage limited to the amount of all
186 outstanding mortgages, must be prominently disclosed on the
187 declarations page or face page of the policy in at least 12-
188 point uppercase and boldfaced type and be sufficiently clear so
189 as to be readily understandable by the agent and the property
190 owner.

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

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

202 (6) An insurer may establish and use flood coverage rates
203 in accordance with the rate standards under s. 627.062. For
204 flood coverage rates filed with the office before July 1, 2024,
205 the insurer may also elect one or more of the following options:

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



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213 include the name of the insurer and the average statewide
214 percentage change in rates. Actuarial data with regard to rates
215 for flood coverage must be maintained by the insurer for 2 years
216 after the effective date of such rate change and is subject to
217 examination by the office. The office may require the insurer to
218 incur the costs associated with an examination. Upon
219 examination, the office, in accordance with generally accepted
220 and reasonable actuarial techniques, shall consider the rate
221 factors and standards specified in s. 627.062 to determine if
222 the rate is excessive, inadequate, or unfairly discriminatory.

223 (b) Through individual risk rating as provided in s.
224 627.062 (3) (a) and (b).

225 (c) With the written consent of the insured signed before
226 the policy inception date and filed with the insurer, using a
227 flood coverage rate that has not been approved by the office.
228 The signed consent form must notify the insured that the rate is
229 not subject to the approval of the office. A copy of the form
230 shall be maintained by the insurer for 3 years and must be
231 available for review by the office. An insurer is not required
232 to obtain subsequent written consents upon renewal, but shall
233 provide notice at each renewal that the rate is not subject to
234 office approval. Section 627.171(2) does not apply to policies
235 issued under this section.

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

239 (8) A surplus lines agent may export a contract or
240 endorsement to an eligible surplus lines insurer without making
241 a diligent effort to seek such coverage from three or more



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242 authorized insurers under s. 626.916(1) (a). This subsection
243 expires July 1, 2017.

244 (9) A policy, contract, or endorsement providing coverage
245 for the peril of flood must require the insurer to give 45 days'
246 written notice before cancellation or nonrenewal to the insured
247 and any regulated lending institution or federal agency that is
248 a mortgagee. An insurer or insured may cancel during the term of
249 the policy or upon renewal if the cancellation is for a valid
250 reason under the NFIP.

251 (10) In addition to any other applicable requirements, an
252 insurer providing flood coverage under this section must:

253 (a) Notify the office at least 30 days before writing flood
254 insurance in this state;

255 (b) File a plan of operation and financial projections or
256 revisions to such plan, as applicable, with the office unless
257 the insurer maintains at least \$35 million in surplus. For
258 purposes of this paragraph, an insurer may demonstrate such
259 surplus if the insurer group surplus is used to support covered
260 flood insurance risks through a pooling arrangement or
261 intercompany reinsurance;

262 (c) Offer flood insurance on a form that has been filed
263 with and approved by the office pursuant to s. 627.410. If an
264 insurer files a form with the office that is substantially
265 similar to a form used by the NFIP, the office may not extend
266 the 30-day period as provided under s. 627.410(2); and

267 (d) File all reinsurance contracts with the office on or
268 before June 30 of each year.

269 (11) For a policy on a structure that was previously
270 insured through the NFIP at a subsidized rate, the policy must



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271 include the following statement: "BY ACCEPTING A PRIVATE FLOOD
272 INSURANCE POLICY, YOU MAY LOSE YOUR SUBSIDIZED RATE IN THE
273 NATIONAL FLOOD INSURANCE PROGRAM WHEN RETURN TO THE NATIONAL
274 FLOOD INSURANCE PROGRAM AT A LATER TIME."

275 (12) Citizens Property Insurance Corporation may not
276 provide insurance for the peril of flood.

277 (13) The Florida Hurricane Catastrophe Fund may not provide
278 reimbursement for losses proximately caused by the peril of
279 flood, including losses that occur during a covered event as
280 defined under s. 215.555(2).

281 (14) With respect to the regulation of flood insurance coverage
282 written in this state by private insurers, this section
283 supersedes any other provision in the Florida Insurance Code in
284 the event of a conflict.

285
286 ===== T I T L E A M E N D M E N T =====

287 And the title is amended as follows:

288 Delete lines 6 - 31

289 and insert:

290 filings; amending s. 627.0628, F.S.; requiring the
291 commission to adopt standards and guidelines relating
292 to flood loss by a certain date; creating s. 627.715,
293 F.S.; authorizing insurers to offer flood insurance in
294 this state; providing legislative findings; defining
295 the term "flood"; establishing the minimum coverage
296 requirements for a flood insurance policy; providing
297 coverage limitations that an insurer may include in
298 such policies; requiring that certain limitations be
299 noted on the policy declarations or face page;



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300 providing the insurer with rate options; requiring the
301 insurer to provide notice that flood insurance is
302 available from the National Flood Insurance Program;
303 authorizing an insurer to export a contract or
304 endorsement to a surplus lines insurer without meeting
305 certain requirements; requiring prior notice for
306 cancellation or nonrenewal of a policy; providing
307 additional requirements with respect to notifying the
308 Office of Insurance Regulation before writing flood
309 insurance, filing a plan of operation with the office,
310 using forms that have been approved by the office, and
311 filing reinsurance contracts before a certain date;
312 requiring that policies replacing subsidized policies
313 include a statement that the subsidized rate may be
314 lost; prohibiting Citizens Property Insurance
315 Corporation from writing flood insurance; prohibiting
316 the Florida Hurricane Catastrophe Fund from
317 reimbursing losses caused by flooding; preempting any
318 conflicts with other provisions of the Florida
319 Insurance Code;