

By the Committees on Appropriations; and Banking and Insurance;
and Senators Brandes, Simpson, Benacquisto, Galvano, Bradley,
and Latvala

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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 certain rate
6 filings; amending s. 627.0628, F.S.; requiring the
7 commission to adopt standards and guidelines relating
8 to flood loss by a certain date; creating s. 627.715,
9 F.S.; authorizing insurers to offer flood insurance on
10 residential property in this state; providing
11 legislative findings; defining the term "flood";
12 establishing the minimum coverage requirements for a
13 flood insurance policy; providing coverage limitations
14 that an insurer may include in such policies;
15 requiring that certain limitations be noted on the
16 policy declarations or face page; providing the
17 insurer with rate options; requiring the insurer to
18 provide notice that flood insurance is available from
19 the National Flood Insurance Program; authorizing an
20 insurer to export a contract or endorsement to a
21 surplus lines insurer without meeting certain
22 requirements; requiring prior notice for cancellation
23 or nonrenewal of a policy; providing additional
24 requirements with respect to notifying the Office of
25 Insurance Regulation before writing flood insurance,
26 filing a plan of operation with the office, using
27 forms that have been approved by the office, and
28 filing reinsurance contracts before a certain date;
29 requiring that policies replacing subsidized policies

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30 include a statement that the subsidized rate may be
31 lost; prohibiting Citizens Property Insurance
32 Corporation from writing flood insurance; prohibiting
33 the Florida Hurricane Catastrophe Fund from
34 reimbursing losses caused by flooding; preempting any
35 conflicts with other provisions of the Florida
36 Insurance Code; requiring the Commissioner of the
37 Office of Insurance Regulation to provide
38 certification that a condition qualifies for flood
39 insurance or disaster assistance; providing an
40 effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44
45 Section 1. Paragraph (b) of subsection (2) of section
46 627.062, Florida Statutes, is amended to read:

47 627.062 Rate standards.—

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

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

54 1. Past and prospective loss experience within and without
55 this state.

56 2. Past and prospective expenses.

57 3. The degree of competition among insurers for the risk
58 insured.

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59 4. Investment income reasonably expected by the insurer,
60 consistent with the insurer's investment practices, from
61 investable premiums anticipated in the filing, plus any other
62 expected income from currently invested assets representing the
63 amount expected on unearned premium reserves and loss reserves.
64 The commission may adopt rules using reasonable techniques of
65 actuarial science and economics to specify the manner in which
66 insurers calculate investment income attributable to classes of
67 insurance written in this state and the manner in which
68 investment income is used to calculate insurance rates. Such
69 manner must contemplate allowances for an underwriting profit
70 factor and full consideration of investment income that produces
71 ~~which produce~~ a reasonable rate of return; however, investment
72 income from invested surplus may not be considered.

73 5. The reasonableness of the judgment reflected in the
74 filing.

75 6. Dividends, savings, or unabsorbed premium deposits
76 allowed or returned to ~~Florida~~ policyholders, members, or
77 subscribers in this state.

78 7. The adequacy of loss reserves.

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

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

85 10. Conflagration and catastrophe hazards, if applicable.

86 11. Projected hurricane losses, if applicable, which must
87 be estimated using a model or method found to be acceptable or

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88 reliable by the Florida Commission on Hurricane Loss Projection
89 Methodology, and as further provided in s. 627.0628.

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

95 ~~13.12.~~ A reasonable margin for underwriting profit and
96 contingencies.

97 ~~14.13.~~ The cost of medical services, if applicable.

98 ~~15.14.~~ Other relevant factors that affect the frequency or
99 severity of claims or expenses.

100

101 The provisions of this subsection do not apply to workers'
102 compensation, employer's liability insurance, and motor vehicle
103 insurance.

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

106 627.0628 Florida Commission on Hurricane Loss Projection
107 Methodology; public records exemption; public meetings
108 exemption.—

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

110 (a) The commission shall consider ~~any~~ actuarial methods,
111 principles, standards, models, or output ranges that have the
112 potential for improving the accuracy ~~of~~ or reliability of the
113 hurricane loss projections and flood loss projections used in
114 residential property insurance rate filings. The commission
115 shall, ~~from time to time,~~ adopt and update findings, as needed,
116 as to the accuracy or reliability of particular methods,

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117 principles, standards, models, or output ranges.

118 (b) The commission shall consider ~~any~~ actuarial methods,
119 principles, standards, or models that have the potential for
120 improving the accuracy ~~of~~ or reliability of projecting probable
121 maximum loss levels. The commission shall adopt and update
122 findings, as needed, as to the accuracy or reliability of
123 particular methods, principles, standards, or models related to
124 probable maximum loss calculations.

125 (c) In establishing reimbursement premiums for the Florida
126 Hurricane Catastrophe Fund, the State Board of Administration
127 must, to the extent feasible, employ actuarial methods,
128 principles, standards, models, or output ranges found by the
129 commission to be accurate or reliable.

130 (d) With respect to a rate filing under s. 627.062, an
131 insurer shall employ and may not modify or adjust actuarial
132 methods, principles, standards, models, or output ranges found
133 by the commission to be accurate or reliable in determining
134 hurricane loss factors for use in a rate filing under s.
135 627.062. An insurer shall employ and may not modify or adjust
136 models found by the commission to be accurate or reliable in
137 determining probable maximum loss levels pursuant to paragraph
138 (b) with respect to a rate filing under s. 627.062 made more
139 than 60 days after the commission has made such findings. This
140 paragraph does not prohibit an insurer from averaging model
141 results or output ranges or from using an average for the
142 purpose of a flood insurance rate filing under s. 627.062.

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

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

149 (g)~~(f)~~1. A trade secret, as defined in s. 688.002, which
150 ~~that~~ is used in designing and constructing a hurricane loss
151 model and which ~~that~~ is provided pursuant to this section, by a
152 private company, to the commission, office, or consumer advocate
153 appointed pursuant to s. 627.0613, is confidential and exempt
154 from s. 119.07(1) and s. 24(a), Art. I of the State
155 Constitution.

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

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

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

169 Section 3. Section 627.715, Florida Statutes, is created to
170 read:

171 627.715 Flood insurance.—Subject to the requirements of
172 this section, an insurer may issue an insurance policy,
173 contract, or endorsement providing coverage for the peril of
174 flood on any residential structure or its contents in this

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175 state. This section does not apply to commercial lines risks
176 policies that provide coverage in excess of an underlying
177 policy.

178 (1) The Legislature finds that:

179 (a) The National Flood Insurance Program (NFIP) is a
180 federal program that enables property owners in participating
181 communities to purchase flood insurance. A community
182 participates in the federal program by adopting and enforcing
183 floodplain management regulations that meet or exceed federal
184 floodplain management criteria designed to reduce future flood
185 risk to new construction in floodplains. The program was created
186 by Congress in 1968 because insurance covering the peril of
187 flood was often unavailable in the private insurance market and
188 was intended to reduce the amount of financial aid paid by the
189 Federal Government in the aftermath of flood-related disasters.
190 After the creation of the NFIP, flood insurance coverage
191 continued to be generally unavailable for purchase from private
192 market insurance companies.

193 (b) The Biggert-Waters Flood Insurance Reform Act of 2012
194 reauthorized and revised the NFIP. The act increased flood
195 insurance premiums purchased through the program for second
196 homes, business properties, severe repetitive loss properties,
197 and substantially improved damaged properties by requiring
198 premium increases of 25 percent per year until premiums meet the
199 full actuarial cost. Most residences lose their subsidized rates
200 if the property is sold, the policy lapses, repeated and severe
201 flood losses occur, or a new policy is purchased. Policyholders
202 whose communities adopt a new, updated Flood Insurance Rate Map
203 (FIRM) that results in higher rates will experience a 5-year

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204 phase in of rate increases to achieve required rate levels.

205 (c) The Biggert-Waters Flood Insurance Reform Act of 2012
206 also encourages the use and acceptance of private market flood
207 insurance. The Legislature finds, however, that there has been a
208 long-term inadequacy of private market flood insurance available
209 in this state. Such inadequacy suggests that the private market
210 in this state is unlikely to expand unless the Legislature
211 provides multiple options for the regulation of flood insurance.
212 The Legislature also finds that the consumers of this state
213 would benefit from the availability of competitively priced
214 private market flood insurance due to the continued availability
215 of the NFIP flood insurance, the likely availability of
216 alternative private market flood insurance coverage options, and
217 the oversight of the Office of Insurance Regulation.

218 (d) The NFIP, as amended by the Biggert-Waters Flood
219 Insurance Reform Act of 2012, is likely to prevent many property
220 owners from obtaining affordable flood insurance coverage in
221 this state. The absence of affordable flood insurance threatens
222 the public health, safety, and welfare and the economic health
223 of this state. Therefore, the state has a compelling public
224 purpose and interest in providing alternatives to coverage from
225 the NFIP by promoting the availability of flood insurance from
226 private market insurers at potentially lower premium rates in an
227 effort to facilitate the remediation, reconstruction, and
228 replacement of damaged or destroyed property in order to reduce
229 or avoid harm to public health, safety, and welfare, to the
230 economy of this state, and to the revenues of state and local
231 governments which are needed to provide for the public welfare.

232 (2) As used in this section, the term "flood" means a

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233 general and temporary condition of partial or complete
234 inundation of 2 acres or more of normally dry land area or of
235 two or more properties, at least one of which is the
236 policyholder's property, from:

237 (a) Overflow of inland or tidal waters;

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

240 (c) Mudflow; or

241 (d) Collapse or subsidence of land along the shore of a
242 lake or similar body of water as a result of erosion or
243 undermining caused by waves or currents of water exceeding
244 anticipated cyclical levels.

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

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

252 (a) Has a flood deductible based on a stated dollar amount
253 or a percentage of the coverage amount. The deductible amount
254 must be acceptable to federal mortgage and banking regulators if
255 such policy, contract, or endorsement is intended to satisfy a
256 mortgage requirement;

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

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

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

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

264 (d) Is in an agreed-upon amount, including coverage limited
265 to the amount of all outstanding mortgages applicable to the
266 covered property. However, if a policy, contract, or endorsement
267 does not limit flood coverage to the replacement cost of the
268 covered property, the policy, contract, or endorsement may not
269 include a provision penalizing the policyholder for not insuring
270 the covered property up to replacement cost; or

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

272 1. Additional living expenses;

273 2. Personal property or contents; or

274 3. Law and ordinance coverage. However, an insurer must
275 offer law and ordinance coverage that is comparable to the law
276 and ordinance coverage offered in the standard NFIP policy. A
277 policy, contract, or endorsement that includes the law and
278 ordinance coverage that must be offered under this paragraph
279 must include the following disclosure in at least 12-point
280 uppercase and boldfaced type: "LAW AND ORDINANCE COVERAGE UNDER
281 THIS POLICY MIGHT HAVE LIMITATIONS ON WHAT IS COVERED IN THE
282 EVENT OF A LOSS. YOU SHOULD CONSULT WITH YOUR AGENT IF YOU HAVE
283 QUESTIONS ABOUT THE COVERAGE OFFERED UNDER THIS POLICY."

284 (5) Any limitations on flood coverage or policy limits as
285 to the peril of flood, including, but not limited to, flood
286 deductibles or flood coverage limited to the amount of all
287 outstanding mortgages, must be prominently disclosed on the
288 declarations page or face page of the policy in at least 12-
289 point uppercase and boldfaced type and be sufficiently clear so
290 as to be readily understandable by the agent and the property

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291 owner.

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

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

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

307 (a) In accordance with the rates, rating schedules, or
308 rating manuals filed by the insurer with the office which allow
309 the insurer a reasonable rate of return on flood coverage
310 written in this state. Flood coverage rates established under
311 this paragraph are not subject to s. 627.062(2)(a) and (f). An
312 insurer shall notify the office of any change to rates within 30
313 days after the effective date of the change. The notice must
314 include the name of the insurer and the average statewide
315 percentage change in rates. Actuarial data with regard to rates
316 for flood coverage must be maintained by the insurer for 2 years
317 after the effective date of such rate change and is subject to
318 examination by the office. The office may require the insurer to
319 incur the costs associated with an examination. Upon

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320 examination, the office, in accordance with generally accepted
321 and reasonable actuarial techniques, shall consider the rate
322 factors and standards specified in s. 627.062 to determine if
323 the rate is excessive, inadequate, or unfairly discriminatory.

324 (b) Through individual risk rating as provided in
325 627.062(3)(a) and (b). Upon examination, the office, in
326 accordance with generally accepted and reasonable actuarial
327 techniques, shall determine if the rate is excessive,
328 inadequate, or unfairly discriminatory.

329 (c) With the written consent of the insured signed before
330 the policy inception date and filed with the insurer, using a
331 flood coverage rate that has not been approved by the office.
332 The signed consent form must notify the insured that the rate is
333 not subject to the approval of the office. A copy of the form
334 shall be maintained by the insurer for 3 years and must be
335 available for review by the office. An insurer is not required
336 to obtain subsequent written consents upon renewal, but shall
337 provide notice at each renewal that the rate is not subject to
338 office approval. Section 627.171(2) does not apply to policies
339 issued under this section. Upon examination, the office, in
340 accordance with generally accepted and reasonable actuarial
341 techniques, shall determine if the rate is excessive,
342 inadequate, or unfairly discriminatory.

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

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

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

351 (9) A policy, contract, or endorsement providing coverage
352 for the peril of flood must require the insurer to give 45 days'
353 written notice before cancellation or nonrenewal to the insured
354 and any regulated lending institution or federal agency that is
355 a mortgagee. An insurer or insured may cancel during the term of
356 the policy or upon renewal if the cancellation is for a valid
357 reason under the NFIP.

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

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

362 (b) File a plan of operation and financial projections or
363 revisions to such plan, as applicable, with the office unless
364 the insurer maintains at least \$35 million in surplus. For
365 purposes of this paragraph, an insurer may demonstrate such
366 surplus if the insurer group surplus is used to support covered
367 flood insurance risks through a pooling arrangement or
368 intercompany reinsurance;

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

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

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

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378 include the following statement: "BY ACCEPTING A PRIVATE FLOOD
379 INSURANCE POLICY, YOU MAY LOSE YOUR SUBSIDIZED RATE IN THE
380 NATIONAL FLOOD INSURANCE PROGRAM WHEN RETURN TO THE NATIONAL
381 FLOOD INSURANCE PROGRAM AT A LATER TIME."

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

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

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

392 Section 4. If federal law or rule requires a certification
393 by a state insurance regulatory official as a condition of
394 qualifying for private flood insurance or disaster assistance,
395 the Commissioner of the Office of Insurance Regulation shall
396 provide such certification, and such certification is not
397 subject to review under chapter 120.

398 Section 5. This act shall take effect upon becoming a law.