

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

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

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

627.062 Rate standards.—

(2) As to all such classes of insurance:

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

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

2. Past and prospective expenses.

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

4. Investment income reasonably expected by the insurer,
consistent with the insurer's investment practices, from
investable premiums anticipated in the filing, plus any other
expected income from currently invested assets representing the
amount expected on unearned premium reserves and loss reserves.
The commission may adopt rules using reasonable techniques of
actuarial science and economics to specify the manner in which
insurers calculate investment income attributable to classes of
insurance written in this state and the manner in which
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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models, or output ranges every odd-numbered ~~odd~~ year.

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

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

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

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

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

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

(1) The Legislature finds that:

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

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

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

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

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

(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.