

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.; increasing the  
7 membership of the Florida Commission on Hurricane Loss  
8 Projection Methodology to include an engineer who is  
9 an expert in floodplain management and a meteorologist  
10 who 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 that certain limitations be noted  
19 on 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 of a  
24 certain amount to a surplus lines insurer without  
25 meeting certain requirements; providing prior notice  
26 requirements for cancellation or nonrenewal of a

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27 policy; requiring the insurer to notify the office  
28 before writing flood insurance and to file a plan of  
29 operation with the office; providing that any  
30 conflicts with other provisions of the Florida  
31 Insurance Code are preempted by this section;  
32 requiring the Commissioner of the Office of Insurance  
33 Regulation to provide certification that a condition  
34 qualifies for flood insurance or disaster assistance;  
35 providing an effective date.

36  
37 Be It Enacted by the Legislature of the State of Florida:

38  
39 Section 1. Paragraph (b) of subsection (2) of section  
40 627.062, Florida Statutes, is amended to read:

41 627.062 Rate standards.—

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

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

- 48 1. Past and prospective loss experience within and without  
49 this state.
- 50 2. Past and prospective expenses.
- 51 3. The degree of competition among insurers for the risk  
52 insured.

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

67 5. The reasonableness of the judgment reflected in the  
68 filing.

69 6. Dividends, savings, or unabsorbed premium deposits  
70 allowed or returned to ~~Florida~~ policyholders, members, or  
71 subscribers in this state.

72 7. The adequacy of loss reserves.

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

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

79 | 10. Conflagration and catastrophe hazards, if applicable.

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

84 | 12. Projected flood losses, if applicable, which may be  
85 | estimated using a model, a method, or an average of models or  
86 | methods determined to be acceptable or reliable by the Florida  
87 | Commission on Hurricane Loss Projection Methodology, and as  
88 | further provided in s. 627.0628.

89 | ~~13.12.~~ A reasonable margin for underwriting profit and  
90 | contingencies.

91 | ~~14.13.~~ The cost of medical services, if applicable.

92 | ~~15.14.~~ Other relevant factors that affect the frequency or  
93 | severity of claims or expenses.

94 |  
95 | The provisions of this subsection do not apply to workers'  
96 | compensation, employer's liability insurance, and motor vehicle  
97 | insurance.

98 | Section 2. Paragraph (b) of subsection (2) and subsection  
99 | (3) of section 627.0628, Florida Statutes, are amended to read:

100 | 627.0628 Florida Commission on Hurricane Loss Projection  
101 | Methodology; public records exemption; public meetings  
102 | exemption.—

103 | (2) COMMISSION CREATED.—

104 | (b) The commission shall consist of the following 14 ~~12~~

105 members:

- 106 1. The insurance consumer advocate.
- 107 2. The senior employee of the State Board of
- 108 Administration responsible for the operations of the Florida
- 109 Hurricane Catastrophe Fund.
- 110 3. The Executive Director of the Citizens Property
- 111 Insurance Corporation.
- 112 4. The Director of the Division of Emergency Management.
- 113 5. The actuary member of the Florida Hurricane Catastrophe
- 114 Fund Advisory Council.
- 115 6. An employee of the office who is an actuary responsible
- 116 for property insurance rate filings and who is appointed by the
- 117 director of the office.
- 118 7. Seven ~~Five~~ members appointed by the Chief Financial
- 119 Officer, as follows:
- 120 a. An actuary who is employed full time by a property and
- 121 casualty insurer that was responsible for at least 1 percent of
- 122 the aggregate statewide direct written premium for homeowner's
- 123 insurance in the calendar year preceding the member's
- 124 appointment to the commission.
- 125 b. An expert in insurance finance who is a full-time
- 126 member of the faculty of the State University System and who has
- 127 a background in actuarial science.
- 128 c. An expert in statistics who is a full-time member of
- 129 the faculty of the State University System and who has a
- 130 background in insurance.

131 d. An expert in computer system design who is a full-time  
 132 member of the faculty of the State University System.

133 e. An expert in meteorology who is a full-time member of  
 134 the faculty of the State University System and who specializes  
 135 in hurricanes.

136 f. A licensed professional engineer who is an expert in  
 137 floodplain management and who is not regularly retained by or on  
 138 behalf of a property and casualty insurer.

139 g. A meteorologist who specializes in floods.

140 8. A licensed professional structural engineer who is a  
 141 full-time faculty member in the State University System and who  
 142 has expertise in wind mitigation techniques. This appointment  
 143 shall be made by the Governor.

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

145 (a) The commission shall consider ~~any~~ actuarial methods,  
 146 principles, standards, models, or output ranges that have the  
 147 potential for improving the accuracy of or reliability of the  
 148 hurricane loss projections and flood loss projections used in  
 149 residential property insurance rate filings. The commission  
 150 shall, ~~from time to time,~~ adopt and update findings as to the  
 151 accuracy or reliability of particular methods, principles,  
 152 standards, models, or output ranges.

153 (b) The commission shall consider ~~any~~ actuarial methods,  
 154 principles, standards, or models that have the potential for  
 155 improving the accuracy of or reliability of projecting probable  
 156 maximum loss levels. The commission shall adopt and update

157 findings as to the accuracy or reliability of particular  
158 methods, principles, standards, or models related to probable  
159 maximum loss calculations.

160 (c) In establishing reimbursement premiums for the Florida  
161 Hurricane Catastrophe Fund, the State Board of Administration  
162 must, to the extent feasible, employ actuarial methods,  
163 principles, standards, models, or output ranges found by the  
164 commission to be accurate or reliable.

165 (d) With respect to a rate filing under s. 627.062, an  
166 insurer shall employ and may not modify or adjust actuarial  
167 methods, principles, standards, models, or output ranges found  
168 by the commission to be accurate or reliable in determining  
169 hurricane loss factors for use in a rate filing under s.  
170 627.062. An insurer shall employ and may not modify or adjust  
171 models found by the commission to be accurate or reliable in  
172 determining probable maximum loss levels pursuant to paragraph  
173 (b) with respect to a rate filing under s. 627.062 made more  
174 than 60 days after the commission has made such findings. This  
175 paragraph does not prohibit an insurer from averaging model  
176 results or output ranges or using an average for the purpose of  
177 a flood insurance rate filing under s. 627.062.

178 (e) The commission shall adopt actuarial methods,  
179 principles, standards, models, or output ranges for flood loss  
180 by July 1, 2015.

181 (f) ~~(e)~~ The commission shall revise ~~adopt revisions to~~  
182 previously adopted actuarial methods, principles, standards,

183 models, or output ranges every odd-numbered ~~odd~~ year.

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

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

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

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

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

206 627.715 Flood insurance.—Subject to the requirements of  
 207 this section, an insurer may issue an insurance policy,  
 208 contract, or endorsement providing coverage for the peril of



209 flood on any structure or on the contents of personal property  
210 on a form that has been filed with and approved by the office  
211 pursuant to s. 627.410(2) and that may be substantially similar  
212 to the form used by the National Flood Insurance Program (NFIP).

213 (1) The Legislature finds that:

214 (a) The National Flood Insurance Program is a federal  
215 program that enables property owners in participating  
216 communities to purchase flood insurance. A community  
217 participates in the federal program by adopting and enforcing  
218 floodplain management regulations that meet or exceed federal  
219 floodplain management criteria designed to reduce future flood  
220 risk to new construction in floodplains. The program was created  
221 by Congress in 1968 because insurance covering the peril of  
222 flood was often unavailable in the private insurance market and  
223 was intended to reduce the amount of financial aid paid by the  
224 Federal Government in the aftermath of flood-related disasters.  
225 After the creation of the NFIP, flood insurance coverage  
226 continued to be generally unavailable for purchase from private  
227 market insurance companies.

228 (b) The Biggert-Waters Flood Insurance Reform Act of 2012  
229 reauthorized and revised the NFIP. The act increases flood  
230 insurance premiums purchased through the program for second  
231 homes, business properties, severe repetitive loss properties,  
232 and substantially improved damaged properties by requiring  
233 premium increases of 25 percent per year until premiums meet the  
234 full actuarial cost. Most residences lose their subsidized rates

235 if the property is sold, the policy lapses, repeated and severe  
236 flood losses occur, or a new policy is purchased. Policyholders  
237 whose communities adopt a new, updated Flood Insurance Rate Map  
238 (FIRM) that results in higher rates will experience a 5-year  
239 phase-in of rate increases to achieve required rate levels.

240 (c) The Biggert-Waters Flood Insurance Reform Act of 2012  
241 also encourages the use and acceptance of private market flood  
242 insurance. The Legislature finds, however, that there has been a  
243 long-term inadequacy of private market flood insurance available  
244 in this state. Such inadequacy suggests that the private market  
245 in this state is unlikely to expand unless the Legislature  
246 provides multiple options for the regulation of flood insurance.  
247 The Legislature also finds that the consumers of this state  
248 would benefit from the availability of competitively priced  
249 private market flood insurance due to the continued availability  
250 of NFIP flood insurance, the likely availability of alternative  
251 private market flood insurance coverage options, and the  
252 oversight of the Office of Insurance Regulation.

253 (d) The NFIP, as amended by the Biggert-Waters Flood  
254 Insurance Reform Act of 2012, will prevent many property owners  
255 from obtaining affordable flood insurance coverage in this  
256 state. The absence of affordable flood insurance threatens the  
257 public health, safety, and welfare and the economic health of  
258 this state. Therefore, the state has a compelling public purpose  
259 and interest in providing alternatives to coverage from NFIP by  
260 promoting the availability of flood insurance from private

261 market insurers at potentially lower premium rates so as to  
262 facilitate the remediation, reconstruction, and replacement of  
263 damaged or destroyed property in order to reduce or avoid harm  
264 to the public health, safety, and welfare, to the economy of  
265 this state, and to the revenues of state and local governments  
266 which are needed to provide for the public welfare.

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

272 (a) Overflow of inland or tidal waters;

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

275 (c) Mudflow; or

276 (d) Collapse or subsidence of land along the shore of a  
277 lake or similar body of water as a result of erosion or  
278 undermining caused by waves or currents of water exceeding  
279 anticipated cyclical levels which result in a flood.

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

285 (4) An insurer may offer a flood coverage policy,  
286 contract, or endorsement:

287 (a) That has a flood deductible based on a stated dollar  
 288 amount or a percentage of the coverage amount. At a minimum, an  
 289 insurer must offer deductible amounts applicable to flood losses  
 290 that equal the standard deductibles offered under the National  
 291 Flood Insurance Program;

292 (b) That provides that any flood loss will be adjusted on  
 293 the basis of:

- 294 1. The actual cash value of the property; or
- 295 2. Replacement costs up to the policy limits as provided  
 296 under s. 627.7011(3);

297 (c) That restricts flood coverage to the principal  
 298 building, as defined in the applicable policy;

299 (d) In an agreed-upon amount, including coverage limited  
 300 to the amount of all outstanding mortgages applicable to the  
 301 covered property. However, if a policy, contract, or endorsement  
 302 does not limit flood coverage to the replacement cost of the  
 303 covered property, the contract or endorsement may not include a  
 304 provision penalizing the policyholder for not insuring the  
 305 covered property up to replacement cost; or

306 (e) That, as to the peril of flood, does not cover:

- 307 1. Additional living expenses;
- 308 2. Personal property or contents; or
- 309 3. Law and ordinance coverage. However, an insurer, must  
 310 offer law and ordinance coverage that is comparable to the law  
 311 and ordinance coverage offered in the standard NFIP policy. A  
 312 policy, endorsement, or contract that includes the law and

313 ordinance coverage that must be offered under this paragraph  
314 must include the following disclosure in uppercase bold  
315 lettering of at least 12-point type: "LAW AND ORDINANCE COVERAGE  
316 UNDER THIS POLICY MIGHT HAVE LIMITATIONS ON WHAT IS COVERED IN  
317 THE EVENT OF A LOSS. YOU SHOULD CONSULT WITH YOUR AGENT IF YOU  
318 HAVE QUESTIONS ABOUT THE COVERAGE OFFERED UNDER THIS POLICY."

319 (5) Any limitations on flood coverage or policy limits as  
320 to the peril of flood, including, but not limited to, flood  
321 deductibles or flood coverage limited to the amount of all  
322 outstanding mortgages, must be prominently disclosed on the  
323 declarations page or face page of the policy in uppercase bold  
324 lettering of at least 12-point type and be sufficiently clear so  
325 as to be readily understandable by both the agent and the  
326 property owner.

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

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

338 (6) An insurer may establish and use flood coverage rates

339 in accordance with the rate standards under s. 627.062. For  
340 flood coverage rates filed with the office before July 1, 2017,  
341 the insurer may also elect one or more of the following options:

342 (a) In accordance with the rates, rating schedules, or  
343 rating manuals filed by the insurer with the office which allow  
344 the insurer a reasonable rate of return on flood coverage  
345 written in this state. Flood coverage rates established under  
346 this paragraph are not subject to s. 627.062(2)(a) and (f). An  
347 insurer shall notify the office of any change to rates within 30  
348 days after the effective date of the change. The notice must  
349 include the name of the insurer and the average statewide  
350 percentage change in rates. Actuarial data with regard to rates  
351 for flood coverage must be maintained by the insurer for 2 years  
352 after the effective date of such rate change and is subject to  
353 examination by the office. The office may require the insurer to  
354 incur the costs associated with an examination. Upon  
355 examination, the office, in accordance with generally accepted  
356 and reasonable actuarial techniques, shall consider the rate  
357 factors and standards specified in s. 627.062 to determine if  
358 the rate is excessive, inadequate, or unfairly discriminatory.

359 (b) Through individual risk rating as provided in s.  
360 627.062(3)(a) and (b).

361 (c) With the written consent of the insured signed before  
362 the policy inception date and filed with the insurer, using a  
363 flood coverage rate that has not been approved by the office.  
364 The signed consent form must notify the insured that the rate is

365 not subject to the approval of the office. A copy of the form  
366 shall be maintained by the insurer for 3 years and must be  
367 available for review by the office. An insurer is not required  
368 to obtain subsequent written consents upon renewal, but shall  
369 provide notice at each renewal that the rate is not subject to  
370 office approval.

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

374 (8) A surplus lines agent may export a contract or  
375 endorsement providing flood coverage of \$1 million or more to an  
376 eligible surplus lines insurer without making a diligent effort  
377 to seek such coverage from three or more authorized insurers  
378 under s. 626.916(1)(a). This subsection expires July 1, 2017.

379 (9) A policy, endorsement, or contract providing coverage  
380 for the peril of flood must require the insurer to give 45 days'  
381 prior written notice of cancellation or nonrenewal to the  
382 insured and any regulated lending institution or federal agency  
383 that is a mortgagee. An insurer or insured may cancel during the  
384 term of the policy or upon renewal if the cancellation is for a  
385 valid reason under the NFIP.

386 (10) In addition to any other applicable requirements, an  
387 insurer providing flood coverage in this state must:

388 (a) Notify the office at least 30 days before writing  
389 flood insurance in this state; and

390 (b) File a plan of operation and financial projections or

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391 revisions to such plan, as applicable, with the office, unless  
392 the insurer maintains at least \$35 million in surplus and  
393 provides coverage as an endorsement to an existing property  
394 insurance form.

395 (11) With respect to the regulation of flood insurance  
396 coverage written in this state by private insurers, this section  
397 supersedes any other provision in the Florida Insurance Code in  
398 the event of a conflict.

399 Section 4. If federal law or rule requires a certification  
400 by a state insurance regulatory official as a condition of  
401 qualifying for private flood insurance or disaster assistance,  
402 the Commissioner of the Office of Insurance Regulation shall  
403 provide such certification, and such certification is not  
404 subject to review under chapter 120.

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