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## NATIONAL COUNCIL OF INSURANCE LEGISLATORS (NCOIL)

### State Flood Disaster Mitigation and Relief Model Act

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*Amended by the NCOIL Property-Casualty Insurance Committee on July 11, 2008, and Executive Committee on July 13, 2008.*

*Originally adopted by the NCOIL Property-Casualty Insurance and Executive Committees on November 21, 2003.*

*Re-adopted by the NCOIL Property & Casualty Insurance Committee on July 12, 2018 and the NCOIL Executive Committee on July 15, 2018; re-adoption extended by the NCOIL Property & Casualty Insurance Committee on December 7, 2018 and the NCOIL Executive Committee on December 8, 2018 (per NCOIL bylaws, 5 year re-adoption is pending while amendments are being considered)*

#### ***Proposed amendments sponsored by Rep. David Santiago (FL)***

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The legislature finds that unforeseen periodic flood disasters cause personal hardship and economic distress, requiring substantial disaster relief that strains limited state resources. The legislature further finds managing these disasters requires the participation of state and local governments to mitigate the hazard and lower the magnitude of the disaster.

In order to provide a sustainable system to provide disaster relief, in 1968 the U.S. Congress ~~has~~ established the National Flood Insurance Program (NFIP), to which provides flood insurance in conjunction with the private insurance industry. This NFIP remains in operation, however the program has incurred significant losses and now has substantial debt as a result. While there have been various efforts by Congress to address the issue (Biggert Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014), no permanent solution has been adopted.

In response to the uncertainties surrounding the program, many private insurers have begun to explore the possibility of offering private flood insurance policies to consumers.

The legislature ~~further~~ finds that in addition to the policies available via the NFIP, encouraging private insurers to offer flood insurance policies to consumers will enhance the long term stability of the state's property insurance market. Further, the viability of this essential program required the participation of state and local governments to mitigate the hazard and lower the magnitude of the potential disasters.

This Act develops a multifaceted state program of insurance [policy options](#); producer and realtor education; local floodplain zoning; mandatory purchase of flood insurance by, and notification by lenders to, property owners in a floodplain; property owner self-certification of compliance; and other measures to improve floodplain management and hazard mitigation.

## Section 2. Short Title

This act may be called the State Flood [Insurance and](#) Disaster Mitigation ~~and~~ Relief Model Act.

# PART I. FLOOD INSURANCE COVERAGE AND NOTICE

## Sec. 1. Flood insurance purchase and compliance requirements and escrow accounts

(a) Requirement of State officers/agencies. After 60 days following the passage of this Act, no state officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director of the Federal Emergency Management Agency (FEMA) or designee as an area having special flood hazards and in which the sale of flood insurance has been made available [under the National Flood Insurance Act, 42 U.S.C. Chapter 50](#), unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act, 42 U.S.C. Chapter 50, whichever is less. If the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.

(b) Requirement for mortgage loans.

(1) Regulated lending institutions. Each [State entity for lending regulation] shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Director as an area having special flood hazards and in which flood insurance has been made available [under the National Flood Insurance Act, 42 U.S.C. Chapter 50](#), unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Act with respect to the particular type of property, whichever is less.

(2) Applicability

(A) Existing coverage. Except as provided in subdivision (b)(1), this subsection shall apply [three months] after the effective date of this Act.

(B) New coverage. This subsection shall apply only with respect to any loan made, increased, extended, or renewed after the expiration of the one-year period beginning [three months] after the effective date of this Act.

- (3) Small loans. Notwithstanding any other provision of this Sec. 1, subsections (a) and (b) of this section shall not apply to any loan having
- (A) an original outstanding principal balance of \$5,000 or less; and
  - (B) a repayment term of one year or less.

(c) Escrow of flood insurance payments.

(1) Regulated lending institutions. Each [State entity for lending regulation] shall by regulation require that, if a regulated lending institution requires the escrowing of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home, then all premiums and fees for flood insurance ~~under the National Flood Insurance Act, 42 U.S.C. Chapter 50~~ for the real estate or mobile home shall be paid to the regulated lending institution or other servicer for the loan in a manner sufficient to make payments as due for the duration of the loan. Upon receipt of the premiums, the regulated lending institution or servicer of the loan shall deposit the premiums in an escrow account on behalf of the borrower. Upon receipt of a notice from the [State entity for lending regulation] or the provider of the insurance that insurance premiums are due, the regulated lending institution or servicer shall pay from the escrow account to the provider of the insurance the amount of insurance premiums owed.

(2) "Residential improved real estate" defined. For purposes of this subsection, the term "residential improved real estate" means improved real estate for which the improvement is a residential building.

(3) Applicability. This subsection shall apply only with respect to any loan made, increased, extended, or renewed after [one year following the passage of this Act].

(d) Placement of flood insurance by lender.

(1) Notification to borrower of lack of coverage. If, at the time of origination or at any time during the term of a loan secured by improved real estate or by a mobile home located in an area that has been identified by the Director (at the time of the origination of the loan or at any time during the term of the loan) as an area having special flood hazards and in which flood insurance is available ~~under the National Flood Insurance Act, 42 U.S.C. Chapter 50~~, the lender or servicer for the loan determines that the building or mobile home and any personal property securing the loan is not covered by flood insurance or is covered by such insurance in an amount less than the amount required for the property pursuant to subdivision (b)(1), (2), or (3) of this Sec. 1, the lender or servicer shall notify the borrower under the loan that the borrower should obtain, at the borrower's expense, an amount of flood insurance for the building or mobile home and such personal property that is not less than the amount under subdivision (b)(1) of this Sec.1, for the term of the loan.

(2) Purchase of coverage on behalf of borrower. If the borrower fails to purchase such flood insurance within 45 days after notification under subdivision (d)(1), the lender or servicer for the loan shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer for the loan in purchasing the insurance.

(3) Review of determination regarding required purchase.

(A) In general. The borrower and lender for a loan secured by improved real estate or a mobile home may jointly request the Director to review a determination of whether the building or mobile home is located in an

area having special flood hazards. Such request shall be supported by technical information relating to the improved real estate or mobile home. Not later than 45 days after the Director receives the request, the Director shall review the determination and provide to the borrower and the lender a letter stating whether or not the building or mobile home is in an area having special flood hazards. The determination of the Director shall be final.

(B) Effect of determination. Any person to whom a borrower provides a letter issued by the Director pursuant to subdivision (d)(3)(A), stating that the building or mobile home securing the loan of the borrower is not in an area having special flood hazards, shall have no obligation under this title to require the purchase of flood insurance for such building or mobile home during the period determined by the Director, which shall be specified in the letter and shall begin on the date on which such letter is provided.

(C) Effect of failure to respond. If a request under subdivision (d)(3)(A) is made in connection with the origination of a loan and the Director fails to provide a letter under subdivision (d)(3)(A) before the later of either (i) the expiration of the 45-day period under such subdivision, or (ii) the closing of the loan, no person shall have an obligation under this title to require the purchase of flood insurance for the building or mobile home securing the loan until such letter is provided.

(4) Applicability. This subsection (d) shall apply to all loans outstanding on or after [three months following the passage of this Act].

(e) Civil monetary penalties for failure to require flood insurance or to notify.

(1) Civil monetary penalties against regulated lenders. Any regulated lending institution that is found to have a pattern or practice of committing violations under subdivision (e)(2) (below) shall be assessed a civil penalty by the [appropriate State entity for lending regulation] in the amount provided under subdivision (e)(4) (below).

(2) Lender violations. The violations referred to in subdivision (e)(1) shall include:

- (A) making, increasing, extending, or renewing loans in violation of:
  - (i) the regulations issued pursuant to subsection (b) of this Sec. 1;
  - (ii) the escrow requirements under subsection (c) of this Sec. 1;or
- (iii) the notice requirements under Sec. 2 of this Part (below); or
- (B) failure to provide notice or purchase flood insurance coverage in violation of subsection (e) of this section.

(3) Notice and hearing. A penalty under this subsection (e) may be issued only after notice and an opportunity for a hearing on the record.

(4) Amount. A civil monetary penalty under this subsection may not exceed \$350 for each violation cited under subdivision (e)(2). The total amount of penalties assessed under this subsection against any single regulated lending institution or enterprise during any calendar year may not exceed \$100,000.

(5) Lender compliance. Notwithstanding any State or local law, for purposes of this subsection (e), any regulated lending institution that purchases flood insurance or renews a contract for flood insurance on behalf of or as an agent of a borrower of a loan for which flood insurance is required shall be considered to have complied with the regulations issued under subsection (b) of this Sec. 1.

(6) Effect of transfer on liability. Any sale or other transfer of a loan by a regulated lending institution that has committed a violation under subdivision (e)(1), which occurs subsequent to the violation, shall not affect the liability of the transferring lender with respect to any penalty under this subsection. A lender shall not be liable for any violations relating to a loan committed by another regulated lending institution that previously held the loan.

(7) Deposit of penalties. Any penalties collected under this subsection shall be paid into the Hazard Mitigation and Floodplain Management Account established in Sec. 4 of Part III of this Act. [Drafting note: This money could be targeted for floodplain mapping.]

(8) Additional penalties. Any penalty under this subsection shall be in addition to any civil remedy or criminal penalty otherwise available.

(9) Statute of limitations. No penalty may be imposed under this subsection after the expiration of the [four-year period] beginning on the date of the occurrence of the violation for which the penalty is authorized under this subsection.

(f) Other actions to remedy pattern of noncompliance.

(1) Authority of State entities for lending regulation. A [State entity for lending] regulation may require a regulated lending institution to take such remedial actions as are necessary to ensure that the regulated lending institution complies with the requirements of the National Flood Insurance Program if the State agency for lending regulation makes a determination under subdivision (f)(2) (below) regarding the regulated lending institution.

(2) Determination of violations. A determination under this subdivision shall be a finding that:

(A) the regulated lending institution has engaged in a pattern and practice of noncompliance in violation of the regulations issued pursuant to subsection (b), (c), or (d) of this Sec. 1 or the notice requirements under Sec. 2 of this Part; and

(B) the regulated lending institution has not demonstrated measurable improvement in compliance despite the assessment of civil monetary penalties under subsection (e) of this Sec. 1.

(g) Fee for determining location. Notwithstanding any other Federal or State law, any person who makes a loan secured by improved real estate or a mobile home or any servicer for such a loan may charge a reasonable fee for the costs of determining whether the building or mobile home securing the loan is located in an area having special flood hazards, but only in accordance with the following requirements:

(1) Borrower fee. The borrower under such a loan may be charged the fee, but only if the determination:

(A) is made pursuant to the making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(B) is made pursuant to a revision or updating under 42 U.S.C. 4101(f) of the floodplain areas and flood-risk zones or publication of a notice or compendia under subsection (h) or (i) of 42 U.S.C. 4101(h) or (i) that affects the area in which the improved real estate or mobile home securing the loan is located or that, in the determination of the Director, may reasonably be considered to require a determination under this subsection; or

(C) results in the purchase of flood insurance coverage pursuant to the requirement under subdivision (d)(2) of this Sec. 1.

(2) Purchaser or transferee fee. The purchaser or transferee of such a loan may be charged the fee in the case of sale or transfer of the loan.

## **Sec. 2. Notice requirements**

### *(a) Notification of special flood hazards.*

(1) Regulated lending institutions. Each [State entity for lending regulation] shall by regulation require regulated lending institutions, as a condition of making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home that the regulated lending institution determines is located or is to be located in an area that has been identified by the Director under 42 U.S.C. Chapter 50 as an area having special flood hazards, to notify the purchaser or lessee (or to obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee) and the servicer of the loan of such special flood hazards, in writing, a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction. The regulations also shall require that the regulated lending institution retain a record of the receipt of the notices by the purchaser or lessee and the servicer.

(2) Contents of notice. Written notification required under this subsection (a) shall include:

(A) a warning, in a form to be established by the [State entity for lending regulation], stating that the building on the improved real estate securing the loan is located, or the mobile home securing the loan is or is to be located, in an area having special flood hazards;

(B) a description of the flood insurance purchase requirements under section 102(b) of the Flood Disaster Protection Act, 42 U.S.C. Chapter 50;

(C) a statement that flood insurance coverage may be purchased under the National Flood Insurance Program and also is available from private insurers; and

(D) any other information that the [State entity for lending regulation] considers necessary to carry out the purposes of the National Flood Insurance Program.

### *(b) Notification of change of servicer.*

(1) Lending institutions. Each [State entity for lending regulation] shall by regulation require regulated lending institutions, in connection with the making, increasing, extending, renewing, selling, or transferring any loan described in subdivision (b)(1) of this Sec. 1, to notify, in writing, the [State entity for lending regulation] of the servicer of the loan during the term of the loan. Such institutions shall also notify the [State entity for lending regulation] of any change in the servicer of the loan, not later than 60 days after the effective date of such change. The regulations under this subsection shall provide that, upon any change in the servicing of a loan, the duty to provide notification under this subsection shall transfer to the transferee servicer of the loan.

*(c) Notification of expiration of insurance.* The [State entity for lending regulation] shall, not less than 45 days before the expiration of any contract for flood insurance under this chapter, issue notice of such expiration by first-class mail to the owner of the property covered by the contract, the servicer of any loan secured by the property covered by the contract, and (if known to the [State entity for lending regulation]) the owner of the loan.

### **Sec. 3. Rules; report**

(a) The [State entity for lending regulation] is authorized to adopt rules to implement this Part I.

(b) The [State entity for lending regulation] shall submit a report to the legislature on the implementation of this Part I and on compliance with the rules one year after passage.

## **PART II. FLOODPLAIN REGULATION**

### **Sec. 1. Purposes**

The purposes of this Part are to:

(1) Minimize the extent of floods by preventing obstructions that inhibit water flow and increase flood height and damage.

(2) Prevent and minimize loss of life, injuries, property damage, and other losses in flood hazard areas.

(3) Promote the public health, safety, and welfare of citizens of the State in flood hazard areas.

### **Sec. 2. Definitions**

(a) *As used in this Part:*

(1) "Agency" means the state agency in charge of floodplain regulation

(2) "Artificial obstruction" means any obstruction to the flow of water in a stream that is not a natural obstruction, including any that, while not a significant obstruction in itself, is capable of accumulating debris and thereby reducing the flood-carrying capacity of the stream.

(3) "Base flood" or "100-year flood" means a flood that has a one percent (1%) chance of being equaled or exceeded in any given year. The term "base flood" is used in the National Flood Insurance Program to indicate the minimum level of flooding to be addressed by a community in its floodplain management regulations.

(4) "Base floodplain" or "100-year floodplain" means that area subject to a one percent (1%) or greater chance of flooding in any given year, as shown on the current floodplain maps prepared pursuant to the National Flood Insurance Program or approved by the Agency.

(5) "Flood hazard area" means the area designated by a local government, pursuant to this Part, as an area where development must be regulated to prevent damage from flooding. The flood hazard area must include and may exceed the base floodplain.

(6) "Local government" means any county or city.

(7) "Lowest floor," when used in reference to a structure, means the lowest enclosed area, including a basement, of the structure. An unfinished or flood-resistant enclosed area, other than a basement, that is usable solely for parking vehicles, building access, or storage is not a lowest floor.

(8) "Natural obstruction" includes any rock, tree, gravel, or other natural matter that is an obstruction and has been located within the 100-year floodplain by a nonhuman cause.

(9) "Secretary" means the Secretary of the Agency.

(10) "Stream" means a watercourse that collects surface runoff from an area of one square mile or greater.

(11) "Structure" means a walled or roofed building, including a mobile home and a gas or liquid storage tank.

*(b) As used in this Part, the terms "artificial obstruction" and "structure" do not include any of the following:*

(1) An electric generation, distribution, or transmission facility.

(2) A gas pipeline or gas transmission or distribution facility, including a compressor station or related facility.

(3) A water treatment or distribution facility, including a pump station.

(4) A wastewater collection or treatment facility, including a lift station.

(5) Processing equipment used in connection with a mining operation.

### **Sec. 3. Regulation of flood hazard areas; prohibited uses**

*(a) Powers of local government.* A local government may adopt ordinances to regulate uses in flood hazard areas and may grant permits for the use of flood hazard areas that are consistent with the requirements of this Part II.

*(b) Allowable uses.* The following uses may be made of flood hazard areas without a permit issued under this Part, provided that these uses comply with local land-use ordinances and any other applicable laws or regulations:

(1) General farming, pasture, outdoor plant nurseries, horticulture, forestry, mining, wildlife sanctuary, game farm, and other similar agricultural, wildlife, and related uses;

(2) Ground-level loading areas, parking areas, rotary aircraft ports and other similar ground-level area uses;

(3) Lawns, gardens, play areas and other similar uses;

(4) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space, and other similar private and public recreational uses.

(5) Land application of waste at agronomic rates consistent with an approved animal waste-management plan.

(6) Land application of septage consistent with a permit issued by the State permit authority.

*(c) Prohibited uses.* New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities are prohibited in the 100-year floodplain except as authorized under Sec. 4(b) (below).

### **Sec. 4. Minimum standards for ordinances; variances for prohibited uses**

*(a) A flood-hazard prevention ordinance adopted by a county or city pursuant to this Part shall, at a minimum:*

(1) Meet the requirements for participation in the National Flood Insurance Program and of this Sec. 4.

(2) Prohibit new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities in the 100-year floodplain except as authorized under subsection (b) of this Sec. 4.

(3) Provide that a structure or tank for chemical or fuel storage incidental to a use that is allowed under this Sec. 4 or to the operation of a water treatment plant or wastewater treatment facility may be located in a 100-year floodplain only if the structure or tank is either elevated above base-flood elevation or designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

*(b) Variances.* A flood-hazard prevention ordinance may include a procedure for granting variances for uses prohibited under Sec. 3(c). A county or city shall notify the Secretary of its intention to grant a variance at least 30 days prior to granting the variance. A county or city may grant a variance upon finding that all of the following apply:

(1) The use serves a critical need in the community.

(2) No feasible location exists for the location of the use outside the 100-year floodplain.

(3) The lowest floor of any structure is elevated above the base-flood elevation or is designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

(4) The use complies with all other applicable laws and regulations.

## **Sec. 5. Acquisition of existing structures**

A local government may acquire, by purchase, exchange, or condemnation an existing structure located in a flood hazard area in the area regulated by the local government if the local government determines that the acquisition is necessary to prevent damage from flooding. The procedure in all condemnation proceedings pursuant to this Sec. 5 shall conform as nearly as possible to the procedure provided in [State statute reference].

## **Sec. 6. Delineation of flood hazard areas and 100-year floodplains; powers of the Agency; powers of local governments and of the Agency**

*(a) Use of additional resources.* For the purpose of delineating a flood hazard area and evaluating the possibility of flood damages, a local government may:

(1) Request technical assistance from the competent State and federal agencies, including the Army Corps. of Engineers, the Natural Resources Conservation Service, the Federal Emergency Management Agency (FEMA), the Department of Public Safety, and the U.S. Geological Survey, or successor agencies.

(2) Utilize the reports and data supplied by federal and state agencies as the basis for the exercise by local ordinance or resolution of the powers and responsibilities conferred on responsible local governments by this Part II.

*(b) Powers of the Agency.* The Agency shall provide advice and assistance to any local government having responsibilities under this Part. In exercising this function, the Agency may furnish manuals, suggested standards, plans, and other technical data; conduct training programs; give advice and assistance with respect to delineation of flood hazard areas and the development of appropriate ordinances; and provide any

other advice and assistance that the Agency deems appropriate. The Agency shall send a copy of every rule adopted to implement this Part to the governing body of each local government in the State.

*(c) Delineation using maps and descriptions.* A local government may delineate any flood hazard area subject to its regulation by showing it on a map or drawing, by a written description, or any combination thereof, to be designated appropriately and filed permanently with the clerk of superior court and with the register of deeds in the county where the land lies. A local government also may delineate a flood hazard area by reference to a map prepared pursuant to the National Flood Insurance Program. Alterations in the lines delineated shall be indicated by appropriate entries upon or addition to the appropriate map, drawing, or description. Entries or additions shall be made by or under the direction of the clerk of superior court. Photographic, typed, or other copies of the map, drawing, or description, certified by the clerk of superior court, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. A local government may provide for the redrawing of any map. A redrawn map shall supersede for all purposes the earlier map or maps that it is designated to replace upon the filing and approval thereof as designated and provided above.

*(d) Preparation of maps.* The Agency may prepare a floodplain map that identifies the 100- year floodplain and base-flood elevations for an area for the purposes of this Part II if all of the following conditions apply:

- (1) The 100-year floodplain and base-flood elevations for the area are not identified on a floodplain map prepared pursuant to the National Flood Insurance Program within the previous five years.
- (2) The Agency determines that the 100-year floodplain and the base-flood elevations for the area need to be identified and the use of the area regulated in accordance with the requirements of this Part II in order to prevent damage from flooding.
- (3) The Agency prepares the floodplain map in accordance with the federal standards required for maps to be accepted for use in administering the National Flood Insurance Program.

*(e) Notice.* Prior to preparing a floodplain map pursuant to subsection (d) of this Sec. 6, the Agency shall advise each local government whose jurisdiction includes a portion of the area to be mapped.

*(f) Upon completing a floodplain map pursuant to subsection (d) of this Sec. 6, the Agency shall both:*

- (1) Provide copies of the floodplain map to every local government whose jurisdiction includes a portion of the 100-year floodplain identified on the floodplain map.
- (2) Submit the floodplain map to the Federal Emergency Management Agency for approval for use in administering the National Flood Insurance Program.

*(g) Responsibility upon approval of map.* Upon approval by the Federal Emergency Management Agency of a floodplain map prepared pursuant to subsection (d) of this Sec. 6 for use in administering the National Flood Insurance Program, it shall be the responsibility of each local government whose jurisdiction includes a portion of the 100-

year floodplain identified in the floodplain map to incorporate the revised map into its floodplain ordinance.

## **Sec. 7. Procedures in issuing permits**

*(a) Considerations.* A local government may establish application forms and require maps, plans, and other information necessary for the issuance of permits in a manner consonant with the objectives of this Part II. For this purpose a local government may take into account anticipated development in the foreseeable future that may be adversely affected by the obstruction, as well as existing development. A local government shall consider the danger that a proposed artificial obstruction in a stream may pose to life and property by:

- (1) Water that may be backed up or diverted by the obstruction.
- (2) The danger that the obstruction will be swept downstream to the injury of others.
- (3) The injury or damage at the site of the obstruction itself.

*(b) Ordinances.* In prescribing standards and requirements for the issuance of permits under this Part II and in issuing permits, local governments shall enact ordinances.

*(c) Issuance of permits.* The local governing body is hereby empowered to adopt regulations it may deem necessary concerning the form, time, and manner of submission of applications for permits under this Part II. These regulations may provide for the issuance of permits under this Part by the local [governing body], as prescribed by the governing body. Every final decision granting or denying a permit under this Part shall be subject to review by the superior court of the county, with the right of jury trial at the election of the party seeking review. Pending the final disposition of an appeal, no action shall be taken that would be unlawful in the absence of a permit issued under this Part.

## **Sec. 8. Violations and penalties**

*(a) Violations.* Any willful violation of this Part II or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part shall constitute a [indicate level of crime] misdemeanor.

- (1) A local government may use all of the remedies available for the enforcement of ordinances to enforce an ordinance adopted pursuant to this Part II.

*(b) Failure to remedy.* Failure to remove any artificial obstruction or enlargement or replacement thereof, that violates this Part or any ordinance adopted (or the provision of any permit issued) under the authority of this Part, shall constitute a separate violation of this Part for each day that the failure continues after written notice from the county board of commissioners or governing body of a city.

*(c) Other proceedings.* In addition to or in lieu of other remedies, the local governing body may institute any appropriate action or proceeding to restrain or prevent any violation of this Part II or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part, or to require any person, firm, or corporation that has committed a violation to remove a violating obstruction or restore the conditions existing before the placement of the obstruction.

## **Sec. 9. Other approvals required**

*(a) Approvals required under separate statutes.* The granting of a permit under the provisions of this Part II shall in no way affect any other type of approval required by any other statute or ordinance of the State or any political subdivision of the State, or of the United States, but shall be construed as an added requirement.

*(b) Permits for construction.* No permit for the construction of any structure to be located within a flood-hazard area shall be granted by a political subdivision unless the applicant has first obtained the permit required by any local ordinance adopted pursuant to this Part.

## **Sec. 10. Floodplain management**

The provisions of this Part II shall not preclude the imposition by responsible local governments of land-use controls and other regulations in the interest of floodplain management for the 100-year floodplain.

### **PART III. FLOODPLAIN MANAGEMENT AND HAZARD MITIGATION**

#### **Sec. 1. Zoning restrictions in floodplain**

*(a) Definition.* As used in this Sec. 1, “floodplain” means that area of a municipality located within the real or theoretical limits of the base flood or base flood for a critical activity, as determined by the Federal Emergency Management Agency in its flood insurance study or flood insurance–rate map for the municipality, prepared pursuant to the National Flood Insurance Program (44 C.F.R. Part 59 et seq.).

*(b) Restrictions upon revising zoning requirements.* Whenever a municipality, pursuant to the National Flood Insurance Program (44 C.F.R. Part 59 et seq.), is required to revise its zoning regulation or any other ordinance regulating a proposed building, structure, development, or use located in a floodplain, the revision shall provide for restrictions for flood storage and conveyance of water for floodplains that are not tidally influenced as follows:

(1) Within a designated floodplain, all encroachments (including fill, new construction, substantial improvements to existing structures, and any other development) are prohibited unless the applicant provides certification to the commission by a registered professional engineer that such encroachment shall not result in any increase in base-flood elevation;

(2) The water-holding capacity of the floodplain shall (A) not be reduced by any form of development unless such reduction is compensated for by deepening or widening the floodplain, (B) be on-site, unless adjacent property owners grant easements, (C) be within the same hydraulic reach and a volume not previously used for flood storage, (D) be hydraulically comparable and incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project, and (E) have an unrestricted hydraulic connection to the same waterway or water body; and

(3) Any work within adjacent land subject to flooding, including work to provide compensatory storage, shall not restrict flows resulting in increased flood stage or velocity.

(c) *Additional restrictions.* Notwithstanding the provisions of subsection (b) of this Sec. 1, a municipality may adopt more stringent restrictions for flood storage and conveyance of water for floodplains that are not tidally influenced.

## **Sec. 2. Creation of plan by Secretary**

The Secretary of the [State agency in charge of flood regulations], after consultation with all appropriate State, regional and local agencies and other appropriate persons shall, prior to [set date], (1) complete a revision of the existing plan and enlarge it to include policies relating to risks associated with natural hazards, including, but not limited to, flooding, high winds, and wildfires; (2) identify the potential impacts of natural hazards on infrastructure and property; and (3) make recommendations for the siting of future infrastructure and property development to minimize the use of areas prone to natural hazards, including, but not limited to, flooding, high winds, and wildfires.

## **Sec. 3. Plan of conservation and development**

At least once every ten years, the [local entity in charge of planning] shall prepare or amend and shall adopt a plan of conservation and development for the municipality. Following adoption, the [local entity in charge of planning] shall regularly review and maintain such plan. The [local entity in charge of planning] may adopt such geographical, functional, or other amendments to the plan or parts of the plan, in accordance with the provisions of this Sec. 3, as it deems necessary. The [local entity in charge of planning] may, at any time, prepare, amend, and adopt plans for the redevelopment and improvement of districts or neighborhoods that, in its judgment, contain special problems or opportunities or show a trend toward lower land values. The [local entity in charge of planning] shall identify the potential impacts of natural hazards on infrastructure and property and shall prepare, adopt, and amend plans for the siting of future infrastructure and property development to minimize the use of areas prone to natural hazards, including, but not limited to, flooding, high winds, and wildfires.

## **Sec. 4. Hazard mitigation and floodplain management account**

(a) *General.* There is established an account to be known as the “Hazard Mitigation and Floodplain Management Account.” Any balance remaining in the account at the end of any fiscal year shall be carried forward in the account for the fiscal year next succeeding. The account shall be available to the [State entity in charge of environmental protection] for the purposes of Sec.s 3 to 7, inclusive, of this Part III.

(b) *Funding.* The State shall increase the fee for land use permits [or similar fee] and dedicate proceeds of the increase to the Hazard Mitigation and Floodplain Management Account.

## **Sec. 5. Definitions**

As used in Sec.s 6 to 9, inclusive, of this Part III:

(a) “Hazard mitigation” means activities that include, but are not limited to, actions taken to reduce or eliminate long-term risk to human life, infrastructure, and property resulting from natural hazards including, but not limited to, flooding, high winds, and wildfires; and

(b) "Floodplain management" means activities that include, but are not limited to, actions taken to retain the existing capacity of designated floodplain areas to store and convey flood waters.

## **Sec. 6. Hazard mitigation and floodplain management grant program**

(a) *Purposes and applications.* The [State entity in charge of environmental protection] shall establish and administer a hazard mitigation and floodplain management grant program to reimburse municipalities for costs incurred in the reduction or elimination of long-term risks to human life, infrastructure and property from natural hazards, including, but not limited to, flooding, high winds and wildfires, and in the retention of present capacity of designated floodplain areas to store and convey flood waters. Application for a grant shall be made in writing to the commissioner in such form as the [State entity] may prescribe and shall include a description of the purpose, objectives, and budget of the activities to be funded by the grant. The chief executive officer of the municipality applying for the grant may designate the town planner, director of public works, police chief, fire chief, or emergency management director as the agent to make the application.

(b) *Awarding of grants; notice of program.* The [State entity in charge of environmental protection] shall establish, by rules, relative priorities for the approval of grants under this Sec. 6. Such priorities may take into account the differing needs of municipalities, the need for consistency and equity in the distribution of grant awards, and the extent to which particular projects may advance the purposes of this section. The [State entity] may establish further criteria for the approval of grants under this Sec. 6 and shall develop and disseminate a pamphlet that describes the evaluation process for grant applications. In awarding grants under this section, the [State entity] shall consult with any person the commissioner deems necessary.

(c) *Allocation of moneys.* The [State entity] shall allocate not less than 60 percent of the moneys in the Hazard Mitigation and Floodplain Management Account in any fiscal year for grants under this section.

## **Sec. 7. Grants to municipalities for planning**

(a) *Effective date.* On and after [insert date], the [State entity in charge of environmental protection] shall make grants to municipalities from the Hazard Mitigation and Floodplain Management Account, established under Sec. 4 of Part III of this Act, for hazard mitigation and floodplain management.

(b) *Conditions of repayment.* If the [State entity] finds that any grant awarded pursuant to this section is being used for other purposes or to supplant a previous source of funds, the commissioner may require repayment.

(c) *Specific purposes.* The [State entity] shall allocate moneys in the Hazard Mitigation and Floodplain Management Account, established under Sec. 4 of Part III of this Act, for (1) the preparation or revision of hazard mitigation plans by municipalities; (2) the preparation or revision of municipal plans of conservation and development that include the identification of the potential impacts of natural hazards, including, but not limited to, flooding, high winds, and wildfires; (3) reimbursement of costs associated with participation in the community rating system of the National Flood Insurance Program;

(4) the execution of hazard mitigation projects by municipalities in accordance with approved hazard mitigation plans; and (5) costs for administering and providing financial assistance for the hazard mitigation and floodplain management grant program established under Sec. 6 of Part III of this Act.

*(d) Submission of report.* Annually, the [State entity] shall submit a report describing the activities performed with the allocated moneys for the preceding fiscal year to the joint standing committees of the General Assembly having cognizance of matters relating to planning and development and the environment.

## **Sec. 8. Municipal report**

*(a)* Each municipality that receives a grant from the Hazard Mitigation and Floodplain Management Account, established under Sec. 4 of Part III of this Act, shall submit a report to the [State entity in charge of environmental protection], in such form as the [State entity] prescribes, not later than September first of the fiscal year following the year such grant was received. Such report shall contain a description of activities paid for with financial assistance under the grant. The chief executive officer of a municipality that receives a grant from the Hazard Mitigation and Floodplain Management Account may designate the town planner, director of public works, police chief, fire chief, or emergency management director of that municipality as the agent to make such report.

*(b)* Report of [State entity in charge of environmental protection]. On or before [insert date], and annually thereafter, the [State entity in charge of environmental protection] shall submit a report on grants made under Sec.s 6 and 7 of Part III of this Act for the preceding fiscal year to the joint standing committees of the General Assembly having cognizance of matters relating to planning and development and the environment. Each such report shall include: (1) a description of the grants made, including the amount, purposes, and the municipalities to which they were made; (2) a summary of the activities for which the Department of Environmental Protection used the moneys allocated to it under Sec. 6 of Part III of this Act; and (3) any findings or recommendations concerning the operation and effectiveness of the grant program.

## **Sec. 9. Model ordinance**

The [State entity in charge of environmental protection] shall develop guidelines to be used by municipalities in revising ordinances restricting flood storage and conveyance of water for floodplains that are not tidally influenced. Such guidelines shall include, but not be limited to, a model ordinance that may be used by municipalities to comply with the provisions of Sec. 1 of this Part III. The commissioner shall make the guidelines available to the public.

## **Sec. 10. Regulations**

The [State entity in charge of environmental protection] shall adopt regulations to implement the provisions of this Part III.

# **PART IV. MISCELLANEOUS PROVISIONS REGARDING PARTICIPATION**

## **Sec. 1. Insurance producer qualification; continuing education**

The [State entity for regulating insurance] shall require:

(a) Pre-licensing requirement. The [State entity for regulating insurance] shall require all resident insurance producer applicants to demonstrate satisfactory knowledge and understanding of flood insurance and the National Flood Insurance Program, as determined by the [State entity for regulating insurance] in order to qualify for licensure.

(b) Continuing education requirement for existing licensees. The [State entity for regulating insurance] shall require resident insurance producers licensed on [the bill's effective date] to complete a basic or advanced continuing education course related to flood insurance and the National Flood Insurance Program before [a date certain at least two years from the bill's effective date]. The course may be online or instructor-led and shall be approved by the [State entity for regulating insurance]. Completion of the course will provide the licensee with continuing education credits as determined by the [State entity for regulating insurance].

### **Sec. 2. Insurance adjuster qualification; education**

The [State entity for regulating insurance] shall require:

(a) Insurance-adjuster license applicants to demonstrate satisfactory knowledge and understanding of flood insurance, as determined by the [State entity for regulating insurance], in order to qualify; and

(b) An applicant for an insurance-adjuster license renewal to complete at least two hours of continuing educational programs in flood insurance every two years.

### **Sec. 3. Real estate broker and salesperson qualification; education**

The [State entity for regulating the licensing of real estate brokers and salespersons] shall require:

(a) applicants for real-estate broker or salesperson licensing to demonstrate satisfactory knowledge and understanding of flood insurance, as determined by the [State entity for regulating the licensing of real estate brokers and salespersons], in order to qualify; and

(b) an applicant for real-estate broker or salesperson license renewal to complete at least two hours of continuing educational programs in flood insurance every two years.

### **Sec. 4. Disclosure of real estate flood propensity**

The [State entity in charge of consumer protection or the State Real Estate Commission, as the case may be] shall, by regulations, require a written residential disclosure report to be provided to a real estate buyer that is to include information concerning flood propensity. [If a state already has a required form for disclosure, this provision could be added to it.]

## **PART V. FACILITATING PRIVATE FLOOD INSURANCE**

In an effort to provide protection of lives and property from the increasing peril of flood, the legislature encourages a robust private flood insurance market to provide consumer choices to the existing NFIP.

## **Sec. 1. Prior Form Approval**

The [State entity for regulating insurance] may ensure, through prior form approval, that an authorized insurer may issue an insurance policy, contract, or endorsement that meets or exceeds coverage available from the National Flood Insurance Program.

## **Sec. 2. Rates**

(a) Flood coverage rates established pursuant to this paragraph are not subject to prior approval by the [state entity for regulation of insurance]. An insurer may establish and use flood insurance rates in accordance with a filed rating manual or a description of a single catastrophe model, or description of an average of models used to calculate the rates.

(b) Notwithstanding existing prohibitions regarding the use of catastrophe models in the underwriting and rating of personal property risk, the legislature finds that reliable methods for establishing rates for flood insurance are essential. The ability to accurately rate flood risks has been enhanced greatly in recent years through the use of catastrophe modeling. It is the public policy of this state to encourage the use of the most sophisticated actuarial methods to assure that consumers are charged lawful rates for flood insurance coverage.

(c) The legislature recognizes the need for expert evaluation of models and other recently developed or improved actuarial methodologies for projecting flood losses, in order to resolve conflicts among actuarial professionals, and in order to provide both immediate and continuing improvement in the sophistication of actuarial methods used to set rates charged to consumers.

(d) The [state entity for regulation of insurance] may adopt actuarial methods, principles, standards, models, or output ranges for personal lines residential flood loss no later than xx/xx/xxxx. It is the intent of the Legislature that such standards and guidelines be employed as soon as possible, and that they be subject to continuing review thereafter.

(e) The [state entity for regulation of insurance] may review any model to determine compliance with the adopted actuarial methods, principles, standards, models, or output ranges. Catastrophe models that meet the established standards and guidelines may be approved for use in establishing personal lines residential flood rates.

(f) Rate filings that utilize that a catastrophe model that has been reviewed and approved by the [state entity for regulation of insurance] may be exempt from the certification requirement listed in (a) above.

(g) The [state entity for regulation of insurance] may engage experts to assist in the review of the catastrophe models or the [state entity for regulation of insurance] may rely in whole or in part on another state or jurisdiction's review or approval of the same model where the state or jurisdiction has adopted standards that are substantially similar to those adopted by [state entity for regulation of insurance]. The cost of any expert retained by the [state entity for regulation of insurance] may be the responsibility of the insurer, filer or modeler.

(h) An insurer may notify the [state entity for regulation of insurance] of any change to such rates within 30 days after the effective date of the change. The notice must include the name of the insurer and the average statewide percentage change in rates. Actuarial data with regard to such rates for flood coverage must be maintained by the insurer for 2 years after the effective date of such rate change...

### **Sec. 3. Duties of Insurer**

(a) Authorized insurers must notify the [State entity for regulating insurance] at least 30 days before writing flood insurance in this state; and

(b) File a plan of operation and financial projections or revisions to such plan.

### **Sec. 4. Duties of an Agent**

An agent must provide written evidence to be signed by the applicant acknowledging that:

(a) the agent has explained the National Flood Insurance Program and private market alternatives to flood insurance coverage;

(b) that a homeowner's property insurance policy, unless endorsed for flood insurance coverage, does not include coverage for the peril of flood; and

(c) that unless purchased, the applicant has declined flood coverage.

### **Sec. 5. Other Provisions**

(a) With respect to the regulation of flood coverage written in this state by authorized insurers, this section supersedes any other provision in the State Insurance Code in the event of a conflict.

(b) If federal law or rule requires a certification by the [state entity for regulation of insurance] as a condition of qualifying for private flood insurance or disaster assistance, the Executive of the [state entity for regulation of insurance] may provide the certification, and such certification is not subject to review under the State's Administrative Procedures Act.

(c) An authorized insurer offering flood insurance may request the [state entity for regulation of insurance] to certify that a policy, contract, or endorsement provides coverage for the peril of flood which equals or exceeds the flood coverage offered by the National Flood Insurance Program. To be eligible for certification, such policy, contract, or endorsement must contain a provision stating that it meets the private flood insurance requirements specified in 42 U.S.C. s. 4012a(b) and may not contain any provision that is not in compliance with 42 U.S.C. s. 4012a(b).

(d) The authorized insurer or its agent may reference or include a certification under paragraph (a) in advertising or communications with an agent, a lending institution, an insured, or a potential insured only for a policy, contract, or endorsement that is certified under this subsection. The authorized insurer may include a statement that notifies an insured of the certification on the declarations page or other policy documentation related to flood coverage certified under this subsection.

(e) An insurer or agent who knowingly misrepresents that a flood policy, contract, or endorsement is certified under this subsection commits an unfair or deceptive act under State Unfair Trade Practices Act.

The [state entity for regulation of insurance] may adopt rules to implement this law.

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