

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
SPECIAL COMMITTEE ON NATURAL DISASTER RECOVERY  
INTERIM COMMITTEE CONFERENCE CALL  
JUNE 3, 2019  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Special Committee on Natural Disaster Recovery held an interim meeting via conference call on Monday, June 3, 2019 at 10:00 a.m.

Senator Dan “Blade” Morrish (LA), NCOIL President and Acting Chair of the Committee, presided.

Other members of the Committees present were:

Rep. David Santiago (FL)  
Rep. Matt Lehman (IN)  
Rep. Edmond Jordan (LA)

Sen. Vickie Sawyer (NC)  
Sen. Thomas Alexander (SC)  
Rep. Tom Oliverson, M.D. (TX)

Other legislators present were:

Rep. Jennifer Webb (FL)  
Del. Courtney Watson (MD)

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services, LLC  
Will Melofchik, NCOIL General Counsel

#### DISCUSSION ON COMMITTEE COURSE OF ACTION REGARDING THE PRIVATE FLOOD INSURANCE MARKET

Senator Dan “Blade” Morrish (LA) – NCOIL President and Acting Chair of the Special Committee on Natural Disaster Recovery (Committee)– thanked everyone for joining and noted the importance and timeliness of the Committee’ meeting. Sen. Morrish stated that the Committee had a very productive inaugural meeting at the NCOIL Spring Meeting in Nashville, Tennessee. In addition to thoroughly discussing the proposed amendments to the existing NCOIL State Flood Disaster and Mitigation Relief Model Act (Model) that aim to facilitate expansion of the private flood insurance market, the Committee voted without objection to adopt a Resolution Sen. Morrish sponsored Recognizing September 1st to 7th, 2019 as “Natural Disaster Resiliency Week” which several states have adopted.

Sen. Morrish stated that the purpose of the Committee’ meeting today is to consider how the Committee would like to proceed regarding the proposed amendments to the Model concerning the private flood insurance market which are sponsored by Florida Representative David Santiago (FL). Sen. Morrish asked Rep. Santiago to comment on the proposed amendments.

Rep. Santiago thanked everyone for joining and noted that during the Committee's meeting in Nashville there was some conversation regarding converting the proposed amendments to the Model to a Resolution. Rep. Santiago stated that he neither accepted or rejected that course of action, and after speaking with NCOIL staff he thought it would be best for the Committee to decide whether to proceed with the proposed amendments or develop a Resolution. Rep. Santiago noted that he offered the proposed amendments to the Model, which are based on existing Florida law, mainly because the Florida law is working well and is worthy of having the country examine.

Sen. Morrish stated that if the Committee decides to move forward with the proposed amendments to the Model, he is not sure that they have been vetted completely. Sen. Morrish asked Rep. Santiago for his thoughts on which course of action he would like the Committee to take. Rep. Santiago stated that in conversations with industry representatives, his major sticking point with their proposals is that they do not want to have prior approved form requirements. Rep. Santiago stated that he believes the prior form approval requirement in Florida is a main reason why its private flood insurance market has been so successful and able to work with the National Flood Insurance Program (NFIP) and mortgage lenders as they review the private flood insurance product. Form approval or some type of form consensus would help the marketplace feel comfortable that at least some legislative or governmental body has looked at the product to make sure that it at least meets the minimum standards of the NFIP. Rep. Santiago stated that such a process has worked in Florida and he would welcome the opportunity to talk to Committee members at the NCOIL Summer Meeting to present facts and figures about the flourishing Florida private flood insurance market. Rep. Santiago also noted that Florida does not regulate the private flood insurance market rates and he is not opposed to that being mirrored in any model legislation.

Sen. Morrish stated that from his perspective, if the Florida private flood insurance market is indeed flourishing, then clearly something was done right and Florida's laws should be examined by the Committee. Rep. Santiago stated that the non-admitted flood insurance market in Florida is also flourishing so it is important to note that everything can co-exist: the NFIP, the admitted market with form approval, and the non-admitted market. Sen. Morrish stated that it will be important to work closely with the NFIP as the issue of leaving the NFIP to go to the private flood insurance market and not being able to return to the NFIP still exists. That issue certainly needs to be addressed at the federal but should also be part of the Committee's discussions. Sen. Morrish then asked if any other legislators present would like to comment.

Indiana Representative Matt Lehman, NCOIL Vice President, thanked Sen. Morrish and Rep. Santiago for their leadership on this issue and noted that the issue of private flood insurance market reform is a heavy lift. Rep. Lehman stated he embraces more private market involvement in this area as the NFIP has failed in his opinion. Rep. Lehman noted that industry has said that in order for the private flood insurance market to work most effectively things like rate and underwriting freedom should be implemented, similar to how the commercial lines market operates. Rep. Lehman further stated that the proposed amendments currently use the word "may" instead of "shall" in several places, which is fine, but may result in the model, if adopted, not having much teeth. Rep. Lehman also stated that the requirement in the proposed amendments for an agent to provide written evidence of a signed rejection of flood coverage would be the only such requirement in personal lines insurance today. It is done with terrorism and cyber coverage, but not with any personal lines. Rep. Lehman stated that such a requirement

may be an undue burden on agents and asked for feedback on how the agent community has reacted in Florida. It is important to protect against possible errors & omissions issues for agents who are trying to get clients into the private flood insurance market.

Rep. Santiago stated that he does not recall the legislation passed in Florida containing the agent duties mentioned by Rep. Lehman, but his recollection is that on Florida forms there is a stipulation in bold text stating that typical homeowner policies do not cover flood events. Rep. Santiago also stated that he is certainly open to conversations about any amendments to the agent section of the proposed amendments, and that he does not recall the agent community in Florida opposing the legislation. Rep. Santiago further stated that changes to Florida forms were made this year to clear up certain discrepancies that were arising between the aforementioned statement that the homeowner policy does not cover flood and the fact that private flood insurers were in fact covering flood as an addendum.

Rep. Lehman stated that in Indiana, agents go through homeowners policies to with prospective insureds to make clear that flood coverage is excluded. However, the requirement in the proposed amendments for agents to provide written evidence of explaining to the applicant the NFIP and private market alternatives to flood insurance coverage may be difficult to comply with. Rep. Santiago stated Rep. Lehman's point is worth examining. Rep. Lehman further stated that there have also been a lot of problems with floodplains. There are situations where a garage must have flood coverage because it is in the floodplain, but the house is in the floodplain and therefore needs coverage. A policy for the house that included the garage could have been obtained for less than a garage-only policy, but the bank would not allow it citing legal restrictions. Local governments should be given more flexibility in situations like that. Rep. Lehman closed by stating that he likes the much of the substance of the proposed amendments but believes some things will have to be tweaked. Rep. Santiago agreed.

Texas Representative Tom Oliverson, M.D., stated that after Hurricane Harvey it was realized that so many people did not realize they did not have flood coverage. Rep. Oliverson stated that he understood the points made by Rep. Lehman regarding putting a burden on agents, but the most critical thing is for people to be informed at the time they are purchasing coverage for their property whether they have coverage for flood. In Texas, it was important to close that loophole to no longer have situations where people simply were not aware they did not have flood coverage. Therefore, going forward in Texas, there will be disclosure requirements as to whether a homeowner policy includes coverage for flood, and if not, how to obtain such coverage.

Sen. Morrish stated that based on the conversation thus far he believes the Committee should proceed with developing the proposed amendments to the Model rather than developing a Resolution. Sen Morrish stated that he realizes that it may be a heavy lift, but it would be ideal to have the amendments completed and voted upon by the NCOIL Annual National Meeting in December. Rep. Santiago stated that he supports that plan.

The Honorable Tom Considine, NCOIL CEO, stated that executing that plan within that timeframe should not be a problem but requested that the Committee not make a formal decision on which course of action to take until it hears from interested parties present. Sen. Morrish agreed.

Ron Jackson of the American Property Casualty Insurance Association (APCIA) stated that APCIA is happy to participate in these discussions as the issue of the growth of the private flood insurance market is indeed a popular one. Mr. Jackson noted that the language in the proposed amendments relating to prior form approval and catastrophe modeling are sticking points for APCIA. APCIA's members write a significant amount of flood coverage including the vast majority of the companies listed on the Florida's Office of Insurance Regulation's website. Mr. Jackson stated that APCIA does not necessarily agree that the increased flood writings in Florida are occurring because there is prior approval of forms. Rather, the rate flexibility facilitated the growth. If you look at the vast majority of the business in Florida on a nationwide basis on the private side residing in the surplus lines market really speaks to the need for both rate and form flexibility to drive the issuance coverage for the risk of flood. APCIA looks forward to discussing those issues further.

Rep. Santiago stated that as a retail insurance agent in Florida, whenever he pitched private flood insurance to a consumer so many questions arise. Rep. Santiago stated that in discussion with industry on these issues, he has no problem with rating freedom, but having some type of either form approval or form filing is needed. Rep. Santiago stated that industry stated it would work on providing some type of form filing language prior to the NCOIL Summer Meeting in July. Rep. Santiago stated that he is open to such language that states the coverage meets or exceeds NFIP standards.

Wes Bissett of the Independent Insurance Agents and Brokers of America (IIABA) thanked Sen. Morrish and Rep. Santiago for bringing this issue forward as the IIABA believes it is important to bolster the private flood insurance market. With regard to whether the Committee should move forward with the proposed amendments or develop a Resolution, Mr. Bissett stated that IIABA does not have a strong position as it believes the vehicle is far less important than the substance of what a model law or resolution might say. With regard to the proposed amendments, IIABA has very strong concerns with Section 4 – Duties of an Agent – as it is vague, subjective, troubling and unclear as to how a typical agent could meet the burdens imposed. Mr. Bissett stated that IIABA is certainly willing to discuss amendments to that section. Sen. Morrish thanked Mr. Bissett for his comments and stated that it is his understanding that everything in the proposed amendments are subject to change as it is important to arrive at the best possible final work product.

Dennis Burke of the Reinsurance Association of America (RAA) stated that RAA supports NCOIL seeking to facilitate consumer choice in flood insurance coverage but opposes the proposed amendments. Mr. Burke noted that RAA supported passage of the Florida legislation, which the proposed amendments are based on, but opposes the that legislation as a national model because the legislation is Florida-centric and not appropriate on a nationwide basis. Mr. Burke stated that RAA looks forward to working with NCOIL throughout the process to address any issues. With regard to form approval, RAA's members do not file forms since they are reinsurers but it is important to be aware that one of the form approval issues dealt with an early bank regulator proposal that would have had the insurance department certify that the forms were as broad as the NFIP. That regulation is no longer on the table as banking regulators have finalized their proposal and the rule does not require regulator certification anymore. It would be helpful for the Committee to discuss that rule. The market largely developed with an "as broad as" endorsement and the current regulation permits that. NFIP

reauthorized for 2 weeks, not 2 years. Mr. Burke closed by stating he looks forward to working on these issues with NCOIL going forward.

Paul Martin of the National Association of Mutual Insurance Companies (NAMIC) stated that when discussing the issue of the lack of private flood insurance with NAMIC members, the real issue being discussed is a lack of capital in the flood market. NAMIC believes that capital is already coming and will continue to come with or without any reaction by NCOIL because the market continues to develop organically. NAMIC is not hearing anyone say, on this line of insurance or any other line of insurance, is that if form approval was required more capital would come into the marketplace. Mr. Martin stated that there may be capital coming into the Florida marketplace with form approval, but NAMIC believes that is a form or correlation, not causation. Mr. Martin noted that in earlier meetings with Rep. Santiago, industry pointed out that the private flood insurance market is nascent, still developing, and growing organically across the country with or without any type of model laws. At some point, as the market grows, there may very well be a need for a model law but NAMIC does not believe that point in time has arrived yet. NAMIC would prefer to see a Resolution outlining some best practices to encourage states to remove any regulatory barriers that may exist currently and to let the market flourish organically. As the market matures, then it would be an opportune time to discuss development of a model law based on more market experience.

Rep. Santiago stated that he understands that there may not be any causation between form approval and capital entry, but it is important to keep in mind that form approval is a form of consumer protection.

John Ashenfelter of State Farm first stated that State Farm is supportive of the Committee moving forward with the development of a Resolution rather than a model law. Mr. Ashenfelter stated that it is important to be reminded of the NFIP's huge debt of \$20 billion dollars. If that type of burden was placed on the private market it would be significant and would probably cause some carriers to face insolvency issues. Therefore, unless there is rate, form, and underwriting freedom, along with a very strong emphasis on loss mitigation measures, the likelihood of a hit upon the guaranty funds for property and casualty is significant, especially due to the increased prevalence of flood events – both coastal and inland.

Mr. Ashenfelter stated that he believes the Model in its current form already has a disclosure requirement for those writing homeowners insurance to disclose whether the policy covers flood. Many states have adopted that sound disclosure provision which protects consumers. Mr. Ashenfelter agreed with Mr. Bissett and Rep. Lehman's statements that obtaining a rejection is burdensome for agents especially in today's market where an agent may be able to write the policy via online or via the telephone. Mr. Ashenfelter noted that the proposed amendments require approval of the flood modeling that is used which can be very complicated and detrimental to ensuring the adequacy of rates. When models are in flux and dynamic as they are year to year based upon the events that have occurred, getting behind the curve on modeling because of an approval process could be very damaging for rate adequacy for private flood insurance.

Mr. Ashenfelter stated that he believes what will probably start to be seen is that the surplus lines market - where many form, approval, and underwriting restrictions do not exist - will be where the private flood insurance market can thrive. Mr. Ashenfelter stated that while it would be very beneficial if all 50 states adopted the NCOIL flex-rating

model, many states have not done so. Also, with regard to underwriting, restrictions such as being stuck on a risk in perpetuity could be disastrous in a flood situation particular in states like Florida which has seen multiple flood events in one year. Mr. Ashenfelter closed by reiterating that State Farm is supportive of the committee moving forward with a resolution in part because there are so many difference among the states, and in part because a resolution gets across the point that the private flood insurance market is important to the overall health of the country in terms of protection from flooding events, knowing that not everyone can insure it in light of the significant losses the flood market has faced through the NFIP.

Amy Bach of United Policyholders (UP) stated that it is important to remember that the NFIP was in the black for most of its existence until Hurricane Katrina. Additionally, there are only about 5 million households in the NFIP and therefore it should be a goal shared by everyone to increase the number of homes with non-compulsory flood insurance coverage. Ms. Bach stated that form regulation is something that should not be thrown out the window. While a competitive flood insurance market is important in order to give consumers options outside of the NFIP, the states need to have some baseline below which a basic flood insurance policy cannot fall beneath. Situations that would result in short-term flood insurance policies and products being purchased that people believe give them protection but really don't should be avoided. Ms. Bach stated that one of the most important things that NCOIL can do is to seek to ensure a baseline for what flood insurance coverage must contain. To abandon that in the interest of stimulating competition could result in significant blowback from constituents.

The Honorable Ted Nickel, former Wisconsin Insurance Commissioner and National Association of Insurance Commissioners (NAIC) President, stated that it would be a mistake for NCOIL to not seize the moment and continue the work it is doing with regard to developing model legislation that would facilitate growth of the private flood insurance market. Cmsr. Nickel stated that as a former regulator, consistency is always ideal and that is why it is important for NCOIL to continue its work and work out any issues to develop a model that states can adopt. States can then always take the model and tailor it to the needs of their markets.

Cmsr. Nickel stated that he believes it is important to be upfront with a model law and have a framework in place rather than having a wild-west atmosphere resulting in state legislators and regulators have to corral it all. Cmsr. Nickel stated that it would be ideal for NCOIL to continue its work and have something ready for adoption by the NCOIL Annual Meeting in December. Cmsr. Nickel further stated that it would be great to have more direct writers in the marketplace, and he has heard from his own agents that they would love to have more direct writers and more options for consumers. Ultimately, this is about protecting consumers and enabling them to have more options to purchase flood products at prices they can afford. The private flood insurance market can meet those goals.

Lisa Miller, President of Lisa Miller & Associates and former Florida Deputy Insurance Commissioner, stated that in June of last year several interested parties who were involved in passing the Florida private flood insurance legislation met and adjusted that legislation into the proposed amendments that are currently before this Committee. Ms. Miller stated that she recently met with catastrophe model representatives which resulted in making some suggested changes to the proposed amendments which she will send to Rep. Santiago for consideration.

Ms. Miller stated that with regard to the discussion about agent requirements, Florida started with a requirement for agents to have a conversation with a customer of that customer was in a special flood-hazard area. There was significant pushback to that which was troubling because many believed that the requirement would separate the profession into two buckets: those that are meeting their responsibilities as an agent and leading their communities in understanding risk; and those that are scared of such requirements. Ms. Miller stated that she is hopeful she can work with IIABA and stated that requirements are not burdens but rather responsibilities and many agents take those professional responsibilities very seriously. Ms. Miller further stated that she believes the proposed amendments have a chance to make a difference in the marketplace and that prior form approval would give regulators the ability to better protect consumers.

#### ANY OTHER BUSINESS

Sen. Morrish then announced the appointment of North Carolina Senator Vickie Sawyer as Chair of the Committee for the remainder of the year. Sen. Morrish stated that he is very excited to have Sen. Sawyer Chair the Committee as she is a very active and dedicated legislator.

Sen. Sawyer thanked Sen. Morrish and stated that she is looking forward to this opportunity. Sen. Sawyer stated that as a retail insurance agent and as a state Senator from a state that has been hit hard by flood events these issues are very important to her.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 11:00 a.m.