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HEADLINE: Smith seeks to toughen state law regarding flood insurance carriers;
Stone bill would require Redmer to up standards;
GENERAL ASSEMBLY

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BODY:

After complaining for two months that the Maryland Insurance Administration should do more to help Tropical Storm Isabel victims, Baltimore County Executive James T. Smith Jr. is now pushing for a change in state law that he says would force the agency to more aggressively police flood insurance carriers.

At Smith's request, Sen. Norman R. Stone Jr., a Dundalk Democrat, has introduced a bill that would require the state insurance commissioner to hold flood insurance carriers to the same standards of conduct that he does for other types of coverage.

"I think (the bill) is going to give the Maryland Insurance Administration the authority they said they don't think they have to help people," Smith said. "This will clarify that and allow them to become more active now on behalf of people who feel they have been unfairly treated."

Insurance Commissioner Alfred W. Redmer Jr. has said that he does not have the power to regulate flood insurance the way he does homeowners or auto insurance policies because it is a federal program.

The assistant attorney general's opinion Redmer released two weeks ago to explain his stance does not point to state law in drawing its conclusion. Instead, the analysis, written by Assistant Attorney General Kathleen A. Birrane, relies entirely on federal law, which Stone's bill does not address.

Birrane told legislators last month that if Redmer tried to regulate flood insurance carriers as the Smith administration wants it to, "they would sue, and we would lose."

Redmer declined to comment on the bill, saying he needs more time to study it.

The bill, filed last week, is the latest episode in a dispute between Smith and Redmer about whether the commissioner has done everything he should to help Isabel victims, hundreds of whom have still not returned to their

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homes nearly six months after the storm.

In December, Smith hired Redmer's predecessor, Steven B. Larsen, to study the federally operated National Flood Insurance Program and the response of the private insurance companies, which sell and service most flood policies, to the storm. At the time, he criticized Redmer's oversight of the flood insurance companies.

Six weeks later, Larsen issued a report concluding, in part, that the insurance administration has the authority to hold flood insurance carriers to Maryland's Unfair Claims Settlement Practices Act, which would allow Redmer to assess fines for such offenses as misrepresenting provisions of their policies and refusing to pay claims for arbitrary reasons.

Stone's bill would specify that flood insurance is subject to the Unfair Claims Settlement Practices Act. Smith acknowledged that the bill would not solve many of the Isabel victims' problems and would require federal intervention. But he said the bill would force the insurance commissioner to consider complaints immediately.

"It will give relief now. We need relief now," Smith said.

The General Assembly is considering several bills to aid Isabel victims and to ensure that the government and insurance carriers respond better to future storms. Earlier this month, Senate President Thomas V. Mike Miller introduced a bill that would create a people's counsel for insurance issues.

In an interview two weeks ago, Redmer said his staff has been handling complaints about unfair claims practices since the storm. He said that although he believes he cannot levy fines or impose other penalties on flood insurance carriers, staff members have been able to use their expertise and relationships with insurance companies in the state to resolve many problems.

Redmer said that he would meet with his staff to discuss the bill on Friday.

Michael Greenberger, a Constitutional law professor at the University of Maryland Law School, said that Maryland couldn't clear up conflicts with federal regulations by changing its own laws. However, he said in an uncertain case like this one, the state law change could give Redmer cover.

"If there is an open question as to whether the federal law preempts, the commissioner could in good faith take action that is consistent with state mandates," Greenberger said. "But there is nothing the state can do to soften the impact of preemption if there is found to be a direct conflict between the federal and state law."

Stone, an attorney, said he believes the question of whether federal flood insurance regulations supersede state insurance law is unresolved. Pursuing a bill may settle the matter, he said.

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