

1 A bill to be entitled
 2 An act relating to the Florida Insurance Guaranty
 3 Association; amending s. 631.57, F.S.; revising the
 4 duties of the association; authorizing the association
 5 to certify regular assessments to be collected by
 6 member insurers and collected from policyholders under
 7 certain circumstances; authorizing the association to
 8 levy emergency assessments to be collected by member
 9 insurers and collected from policyholders under
 10 certain circumstances; making technical and
 11 grammatical corrections; providing for applicability;
 12 providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

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 16 Section 1. Subsections (2) and (3) of section 631.57,
 17 Florida Statutes, are amended to read:

18 631.57 Powers and duties of the association.—

19 (2) The association may:

20 (a) Employ or retain such persons as are necessary to
 21 handle claims and perform other duties of the association;

22 (b) Borrow funds necessary to effect the purposes of this
 23 part in accord with the plan of operation, including borrowing
 24 necessary to ensure that its cash flow needs are timely met to
 25 pay covered claims when regular and emergency assessments are
 26 levied on policyholders under subsection (3);

27 (c) Sue or be sued, provided that service of process is
 28 ~~shall be~~ made upon the person registered with the department as

29 agent for the receipt of service of process; and

30 (d) Negotiate and become a party to such contracts as are
 31 necessary to carry out the purpose of this part. ~~Additionally,~~
 32 The association may also enter into such contracts with a
 33 municipality, a county, or a legal entity created pursuant to s.
 34 163.01(7)(g) ~~as are necessary~~ in order for the municipality,
 35 county, or legal entity to issue bonds under s. 631.695. In
 36 connection with the issuance of ~~any~~ such bonds and the entering
 37 into of ~~any~~ such ~~necessary~~ contracts, the association may agree
 38 to such terms and conditions as the association deems necessary
 39 and proper.

40 (3) (a) To the extent necessary to secure ~~the~~ funds for the
 41 respective accounts paying for ~~the payment of~~ covered claims, to
 42 pay the reasonable costs to administer such accounts ~~the same,~~
 43 and ~~to the extent necessary~~ to secure ~~the~~ funds for the account
 44 specified in s. 631.55(2)(b) or to retire indebtedness,
 45 including, without limitation, the principal, redemption
 46 premium, if any, and interest on, and related costs of issuance
 47 of, bonds issued under s. 631.695 and the funding of any
 48 reserves and other payments required under the bond resolution
 49 or trust indenture pursuant to which such bonds have been
 50 issued, the office, upon certification of the board of
 51 directors, shall levy regular assessments in the proportion that
 52 each insurer's net direct written premiums in this state in the
 53 classes protected by the account bears to the total of the said
 54 net direct written premiums received in this state by all such
 55 insurers for the preceding calendar year for the kinds of
 56 insurance included within such account. Regular assessments

57 | shall be remitted to and administered by the board of directors
58 | in the manner specified by the approved plan. Each insurer so
59 | assessed has ~~shall have~~ at least 30 days' written notice as to
60 | the date the assessment is due and payable. ~~Every assessment~~
61 | ~~shall be made as a uniform percentage applicable to the net~~
62 | ~~direct written premiums of each insurer in the kinds of~~
63 | ~~insurance included within the account in which the assessment is~~
64 | ~~made.~~ The regular assessments levied against an any insurer may
65 | ~~shall~~ not ~~exceed~~ in any one year exceed ~~more than~~ 2 percent of
66 | that insurer's net direct written premiums in this state for the
67 | kinds of insurance included within such account during the
68 | calendar year next preceding the date of such assessments. The
69 | Legislature finds and declares that regular assessments paid by
70 | an insurer or insurer group as a result of a levy by the office
71 | constitute advances of funds from the insurer to the
72 | association. An insurer may fully recoup regular assessments
73 | levied against prior year premiums by applying a separate
74 | recoupment factor to the premium of policies of the same kind or
75 | line as were considered by the office in determining the
76 | assessment liability of the insurer or insurer group.

77 | (b) In lieu of collecting the regular assessment under
78 | paragraph (a) from insurers, the association may certify all or
79 | part of the assessment to be collected by member insurers and
80 | collected from policyholders upon issuance or renewal of
81 | policies. If the association elects to direct insurers to
82 | collect the assessment directly from policyholders, the office
83 | shall issue an order specifying the date that the board requires
84 | the insurers to begin collecting the assessment, which must be

CS/CS/HB 211

2013

85 at least 90 days after the date that the board certifies the
86 assessment. The order must specify a uniform percentage
87 determined by the board, and verified by the office, of the
88 direct written premium for all lines of business in the
89 applicable accounts. The assessment certified in any one
90 calendar year may not exceed 2 percent of the premium. The
91 insurers shall collect such assessments without being affected
92 by any credit, limitation, exemption, or deferment. Assessments
93 collected under this paragraph shall be transferred regularly to
94 the association as set forth in the order levying the
95 assessment.

96 (c) (b) If sufficient funds from regular and emergency ~~such~~
97 assessments, together with funds previously raised, are not
98 available in any one year in the respective account to make all
99 the payments or reimbursements ~~then~~ owing to insurers, insureds,
100 or claimants, the funds available shall be prorated and the
101 unpaid portion ~~shall be paid as soon thereafter~~ as funds become
102 available.

103 ~~(c) The Legislature finds and declares that all~~
104 ~~assessments paid by an insurer or insurer group as a result of a~~
105 ~~levy by the office, including assessments levied pursuant to~~
106 ~~paragraph (a) and emergency assessments, constitute advances of~~
107 ~~funds from the insurer to the association. An insurer may fully~~
108 ~~recoup such advances by applying a separate recoupment factor to~~
109 ~~the premium of policies of the same kind or line as were~~
110 ~~considered by the office in determining the assessment liability~~
111 ~~of the insurer or insurer group.~~

112 (d) ~~No~~ State funds may not ~~of any kind shall~~ be allocated

113 or paid to the ~~said~~ association or any of its accounts.

114 (e)~~1.a.~~ In addition to regular assessments ~~otherwise~~
115 authorized under ~~in~~ paragraph (a), and to the extent necessary
116 to secure ~~the~~ funds for the account specified in s. 631.55(2)(b)
117 for the direct payment of covered claims of insurers rendered
118 insolvent by the effects of a hurricane and to pay the
119 reasonable costs to administer such claims, or to retire
120 indebtedness, including, without limitation, the principal,
121 redemption premium, if any, and interest on, and related costs
122 of issuance of, bonds issued under s. 631.695 and the funding of
123 any reserves and other payments required under the bond
124 resolution or trust indenture pursuant to which such bonds have
125 been issued, the office, upon certification of the board of
126 directors, shall levy emergency assessments to be collected by
127 member insurers and collected from policyholders upon issuance
128 or renewal of policies upon insurers holding a certificate of
129 authority. Pursuant to such levy, the office shall issue an
130 order specifying the date the board requires the insurers to
131 begin collecting the assessment, which must be at least 90 days
132 after the date the office levies the assessment. The order must
133 specify a uniform percentage determined by the board, and
134 verified by the office, of the direct written premium for all
135 lines of business in the applicable accounts. The assessment
136 certified in any one calendar year may not exceed 2 percent of
137 the premium. The insurers shall collect such assessments without
138 being affected by any credit, limitation, exemption, or
139 deferment. Assessments collected by insurers under this
140 paragraph shall be transferred regularly to the association as

141 set forth in the order levying the assessment.

142 1. If, after consultation with its financial advisor, the
 143 board determines that it must immediately begin paying the
 144 covered claims of one or more insolvent insurers and financing
 145 is not reasonably available, it may certify the emergency
 146 assessment on insurers in the same manner as set forth in
 147 paragraph (a), except that an emergency assessment may be paid
 148 by the insurer in a single payment or, at the option of the
 149 association, in 12 monthly installments with the first
 150 installment being due and payable at the end of the month after
 151 the emergency assessment is levied and subsequent installments
 152 being due by the end of each succeeding month. ~~The emergency~~
 153 ~~assessments payable under this paragraph by any insurer shall~~
 154 ~~not exceed in any single year more than 2 percent of that~~
 155 ~~insurer's direct written premiums, net of refunds, in this state~~
 156 ~~during the preceding calendar year for the kinds of insurance~~
 157 ~~within the account specified in s. 631.55(2)(b).~~

158 2.b. ~~Any~~ Emergency assessments ~~authorized under this~~
 159 ~~paragraph~~ shall be levied by the office only ~~upon insurers~~
 160 ~~referred to in sub-subparagraph a.,~~ upon certification as to the
 161 need for such assessments by the board of directors. If ~~In the~~
 162 ~~event~~ the board ~~of directors~~ participates in the issuance of
 163 bonds in accordance with s. 631.695, emergency assessments shall
 164 be levied in each year that bonds issued under s. 631.695 and
 165 secured by such emergency assessments are outstanding, ~~in such~~
 166 amounts up to such 2 percent ~~2-percent~~ limit as required in
 167 order to provide for the full and timely payment of the
 168 principal of, redemption premium, if any, and interest on, and

169 related costs of issuance of, such bonds. The emergency
170 assessments ~~provided for in this paragraph~~ are assigned and
171 pledged to the municipality, county, or legal entity issuing
172 bonds under s. 631.695 for the benefit of the holders of such
173 bonds, in order to enable such municipality, county, or legal
174 entity to provide for the payment of the principal of,
175 redemption premium, if any, and interest on such bonds, the cost
176 of issuance of such bonds, and the funding of any reserves and
177 other payments required under the bond resolution or trust
178 indenture pursuant to which such bonds have been issued, without
179 the necessity for ~~of~~ any further action by the association, the
180 office, or any other party. If ~~To the extent~~ bonds are issued
181 under s. 631.695 and the association secures ~~determines to~~
182 ~~secure~~ such bonds by a pledge of revenues received from the
183 emergency assessments, such bonds, upon such pledge of revenues,
184 shall be secured by and payable from the proceeds of such
185 emergency assessments, and the proceeds of emergency assessments
186 levied under this paragraph shall be remitted directly to and
187 administered by the trustee or custodian appointed for the
188 payment of such bonds.

189 ~~e. Emergency assessments under this paragraph may be~~
190 ~~payable in a single payment or, at the option of the~~
191 ~~association, may be payable in 12 monthly installments with the~~
192 ~~first installment being due and payable at the end of the month~~
193 ~~after an emergency assessment is levied and subsequent~~
194 ~~installments being due not later than the end of each succeeding~~
195 ~~month.~~

196 3.d. If emergency assessments are imposed, the report

CS/CS/HB 211

2013

197 required by s. 631.695(7) must ~~shall~~ include an analysis of the
198 revenues generated from the emergency assessments imposed under
199 this paragraph.

200 ~~4.e.~~ If emergency assessments are imposed, the references
201 in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to
202 regular assessments levied under paragraph (a) must ~~shall~~
203 include emergency assessments imposed under this paragraph.

204 ~~5.2.~~ If the board of directors participates in the
205 issuance of bonds in accordance with s. 631.695, an emergency
206 ~~annual~~ assessment under this paragraph must ~~shall~~ continue while
207 the bonds issued with respect to which the assessment was
208 imposed are outstanding, including any bonds the proceeds of
209 which were used to refund bonds issued pursuant to s. 631.695,
210 unless adequate provision has been made for the payment of the
211 bonds in the documents authorizing the issuance of such bonds.

212 ~~6.3.~~ Emergency assessments under this paragraph are not
213 premium and are not subject to the premium tax, to any fees, or
214 to any commissions. An insurer is liable for all emergency
215 assessments that the insurer collects and shall treat the
216 failure of an insured to pay an emergency assessment as a
217 failure to pay the premium. An insurer is not liable for
218 uncollectible emergency assessments.

219 (f) The recoupment factor applied to policies in
220 accordance with paragraph (a) or subparagraph (e)1. ~~paragraph~~
221 ~~(e)~~ shall be selected by the insurer or insurer group ~~so as to~~
222 provide for the probable recoupment of ~~both assessments levied~~
223 ~~pursuant to paragraph (a) and emergency~~ assessments over a
224 period of 12 months, unless the insurer or insurer group, at its

225 option, elects to recoup the assessment over a longer period.
226 The recoupment factor applies ~~shall apply~~ to all policies of the
227 same kind or line as were considered by the office in
228 determining the assessment liability of the insurer or insurer
229 group issued or renewed during a 12-month period.

230 1. If the insurer or insurer group does not collect the
231 full amount of the assessment during one 12-month period, the
232 insurer or insurer group may apply recalculated recoupment
233 factors to policies issued or renewed during one or more
234 succeeding 12-month periods.

235 2. If, at the end of a 12-month period, the insurer or
236 insurer group has collected from the combined kinds or lines of
237 policies subject to assessment more than the total amount of the
238 assessment paid by the insurer or insurer group, the excess
239 amount shall be disbursed as follows:

240 a.1. If the excess amount does not exceed 15 percent of
241 the total assessment paid by the insurer or insurer group, the
242 excess amount shall be remitted to the association within 60
243 days after the end of the 12-month period in which the excess
244 recoupment charges were collected.

245 b.2. If the excess amount exceeds 15 percent of the total
246 assessment paid by the insurer or insurer group, the excess
247 amount shall be returned to the insurer's or insurer group's
248 current policyholders by refunds or premium credits. The
249 association shall use any remitted excess recoupment amounts to
250 reduce future assessments.

251 3. ~~(g)~~ Amounts recouped pursuant to this paragraph
252 ~~subsection~~ for assessments levied under paragraph (a) due to

253 insolvencies on or after July 1, 2010, are considered premium
254 solely for premium tax purposes and are not subject to fees or
255 commissions. However, insurers shall treat the failure of an
256 insured to pay a recoupment charge as a failure to pay the
257 premium.

258 4.(h) At least 15 days before applying the recoupment
259 factor to any policies, the insurer or insurer group shall file
260 with the office a statement for informational purposes only
261 setting forth the amount of the recoupment factor and an
262 explanation of how the recoupment factor will be applied. Such
263 statement must ~~shall~~ include documentation of the assessment
264 paid by the insurer or insurer group and the arithmetic
265 calculations supporting the recoupment factor. The insurer or
266 insurer group may use the recoupment factor at any time after
267 the expiration of the 15-day period. The insurer or insurer
268 group need submit only one informational statement for all lines
269 of business using the same recoupment factor.

270 5.(i) Within ~~No later than~~ 90 days after the insurer or
271 insurer group has completed the recoupment process, the insurer
272 or insurer group shall file with the office, for information
273 purposes only, a final accounting report documenting the
274 recoupment. The report must ~~shall~~ provide the amounts of
275 assessments paid by the insurer or insurer group, the amounts
276 and percentages recouped by year from each affected line of
277 business, and the direct written premium subject to recoupment
278 by year. The insurer or insurer group need submit only one
279 report for all lines of business using the same recoupment
280 factor.

CS/CS/HB 211

2013

281 Section 2. This act shall take effect July 1, 2013, and
282 applies to any assessment certified and levied after that date
283 regardless of when the insolvency or insolvencies occurred.