

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

1 Committee/Subcommittee hearing bill: Insurance & Banking  
 2 Subcommittee  
 3 Representative Raburn offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (2) and (3) of section 631.57,

8 Florida Statutes, are amended to read:

9 631.57 Powers and duties of the association.—

10 (2) The association may:

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

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

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18 (c) Sue or be sued, provided that service of process is  
19 ~~shall be~~ made upon the person registered with the department as  
20 agent for the receipt of service of process; and

21 (d) Negotiate and become a party to such contracts as are  
22 necessary to carry out the purpose of this part. ~~Additionally,~~  
23 The association may also enter into such contracts with a  
24 municipality, a county, or a legal entity created pursuant to s.  
25 163.01(7)(g) ~~as are necessary~~ in order for the municipality,  
26 county, or legal entity to issue bonds under s. 631.695. In  
27 connection with the issuance of ~~any~~ such bonds and the entering  
28 into of ~~any~~ such ~~necessary~~ contracts, the association may agree  
29 to such terms and conditions as the association deems necessary  
30 and proper.

31 (3) (a) To the extent necessary to secure ~~the~~ funds for the  
32 respective accounts paying for ~~the payment of~~ covered claims, to  
33 pay the reasonable costs to administer such accounts ~~the same,~~  
34 and ~~to the extent necessary~~ to secure ~~the~~ funds for the account  
35 specified in s. 631.55(2)(b) or to retire indebtedness,  
36 including, without limitation, the principal, redemption  
37 premium, if any, and interest on, and related costs of issuance  
38 of, bonds issued under s. 631.695 and the funding of any  
39 reserves and other payments required under the bond resolution  
40 or trust indenture pursuant to which such bonds have been  
41 issued, the office, upon certification of the board of  
42 directors, shall levy regular assessments in the proportion that  
43 each insurer's net direct written premiums in this state in the

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44 classes protected by the account bears to the total of the said  
45 net direct written premiums received in this state by all such  
46 insurers for the preceding calendar year for the kinds of  
47 insurance included within such account. Regular assessments  
48 shall be remitted to and administered by the board of directors  
49 in the manner specified by the approved plan. Each insurer so  
50 assessed has ~~shall have~~ at least 30 days' written notice as to  
51 the date the assessment is due and payable. ~~Every assessment~~  
52 ~~shall be made as a uniform percentage applicable to the net~~  
53 ~~direct written premiums of each insurer in the kinds of~~  
54 ~~insurance included within the account in which the assessment is~~  
55 ~~made.~~ The regular assessments levied against an any insurer may  
56 ~~shall~~ not ~~exceed~~ in any one year exceed ~~more than~~ 2 percent of  
57 that insurer's net direct written premiums in this state for the  
58 kinds of insurance included within such account during the  
59 calendar year next preceding the date of such assessments. The  
60 Legislature finds and declares that regular assessments paid by  
61 an insurer or insurer group as a result of a levy by the office  
62 constitute advances of funds from the insurer to the  
63 association. An insurer may fully recoup regular assessments  
64 levied against prior year premiums by applying a separate  
65 recoupment factor to the premium of policies of the same kind or  
66 line as were considered by the office in determining the  
67 assessment liability of the insurer or insurer group.

68 (b) In lieu of collecting the regular assessment under  
69 paragraph (a) from insurers, the association may certify all or

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70 part of the assessment to be collected by member insurers and  
71 collected from policyholders upon issuance or renewal of  
72 policies. If the association elects to direct insurers to  
73 collect the assessment directly from policyholders, the office  
74 shall issue an order specifying the date that the board requires  
75 the insurers to begin collecting the assessment, which must be  
76 at least 90 days after the date that the board certifies the  
77 assessment. The order must specify a uniform percentage  
78 determined by the board, and verified by the office, of the  
79 direct written premium for all lines of business in the  
80 applicable accounts. The assessment certified in any one  
81 calendar year may not exceed 2 percent of the premium. The  
82 insurers shall collect such assessments without being affected  
83 by any credit, limitation, exemption, or deferment. Assessments  
84 collected under this paragraph shall be transferred regularly to  
85 the association as set forth in the order levying the  
86 assessment.

87 (c) ~~(b)~~ If sufficient funds from regular and emergency such  
88 assessments, together with funds previously raised, are not  
89 available in any one year in the respective account to make all  
90 the payments or reimbursements then owing to insurers, insureds,  
91 or claimants, the funds available shall be prorated and the  
92 unpaid portion shall be paid as soon thereafter as funds become  
93 available.

94 ~~(c) The Legislature finds and declares that all~~  
95 ~~assessments paid by an insurer or insurer group as a result of a~~

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96 ~~levy by the office, including assessments levied pursuant to~~  
97 ~~paragraph (a) and emergency assessments, constitute advances of~~  
98 ~~funds from the insurer to the association. An insurer may fully~~  
99 ~~recoup such advances by applying a separate recoupment factor to~~  
100 ~~the premium of policies of the same kind or line as were~~  
101 ~~considered by the office in determining the assessment liability~~  
102 ~~of the insurer or insurer group.~~

103 (d) ~~No~~ State funds may not ~~of any kind shall~~ be allocated  
104 or paid to the ~~said~~ association or any of its accounts.

105 (e) ~~1.a.~~ In addition to regular assessments ~~otherwise~~  
106 authorized under ~~in~~ paragraph (a), and to the extent necessary  
107 to secure ~~the~~ funds for the account specified in s. 631.55(2)(b)  
108 for the direct payment of covered claims of insurers rendered  
109 insolvent by the effects of a hurricane and to pay the  
110 reasonable costs to administer such claims, or to retire  
111 indebtedness, including, without limitation, the principal,  
112 redemption premium, if any, and interest on, and related costs  
113 of issuance of, bonds issued under s. 631.695 and the funding of  
114 any reserves and other payments required under the bond  
115 resolution or trust indenture pursuant to which such bonds have  
116 been issued, the office, upon certification of the board of  
117 directors, shall levy emergency assessments to be collected by  
118 member insurers and collected from policyholders upon issuance  
119 or renewal of policies upon insurers holding a certificate of  
120 authority. Pursuant to such levy, the office shall issue an  
121 order specifying the date the board requires the insurers to

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122 begin collecting the assessment, which must be at least 90 days  
123 after the date the office levies the assessment. The order must  
124 specify a uniform percentage determined by the board, and  
125 verified by the office, of the direct written premium for all  
126 lines of business in the applicable accounts. The assessment  
127 certified in any one calendar year may not exceed 2 percent of  
128 the premium. The insurers shall collect such assessments without  
129 being affected by any credit, limitation, exemption, or  
130 deferment. Assessments collected by insurers under this  
131 paragraph shall be transferred regularly to the association as  
132 set forth in the order levying the assessment.

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

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148 ~~within the account specified in s. 631.55(2)(b).~~

149 2.b. Any Emergency assessments ~~authorized under this~~

150 ~~paragraph~~ shall be levied by the office only ~~upon insurers~~

151 ~~referred to in sub-subparagraph a.,~~ upon certification as to the

152 need for such assessments by the board of directors. If ~~In the~~

153 ~~event~~ the board ~~of directors~~ participates in the issuance of

154 bonds in accordance with s. 631.695, emergency assessments shall

155 be levied in each year that bonds issued under s. 631.695 and

156 secured by such emergency assessments are outstanding, ~~in such~~

157 amounts up to such 2 percent ~~2 percent~~ limit as required in

158 order to provide for the full and timely payment of the

159 principal of, redemption premium, if any, and interest on, and

160 related costs of issuance of, such bonds. The emergency

161 assessments ~~provided for in this paragraph~~ are assigned and

162 pledged to the municipality, county, or legal entity issuing

163 bonds under s. 631.695 for the benefit of the holders of such

164 bonds, in order to enable such municipality, county, or legal

165 entity to provide for the payment of the principal of,

166 redemption premium, if any, and interest on such bonds, the cost

167 of issuance of such bonds, and the funding of any reserves and

168 other payments required under the bond resolution or trust

169 indenture pursuant to which such bonds have been issued, without

170 the necessity for ~~of~~ any further action by the association, the

171 office, or any other party. If ~~To the extent~~ bonds are issued

172 under s. 631.695 and the association secures ~~determines to~~

173 ~~secure~~ such bonds by a pledge of revenues received from the

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174 emergency assessments, such bonds, upon such pledge of revenues,  
175 shall be secured by and payable from the proceeds of such  
176 emergency assessments, and the proceeds of emergency assessments  
177 levied under this paragraph shall be remitted directly to and  
178 administered by the trustee or custodian appointed for the  
179 payment of such bonds.

180 ~~e. Emergency assessments under this paragraph may be~~  
181 ~~payable in a single payment or, at the option of the~~  
182 ~~association, may be payable in 12 monthly installments with the~~  
183 ~~first installment being due and payable at the end of the month~~  
184 ~~after an emergency assessment is levied and subsequent~~  
185 ~~installments being due not later than the end of each succeeding~~  
186 ~~month.~~

187 3.d. If emergency assessments are imposed, the report  
188 required by s. 631.695(7) must ~~shall~~ include an analysis of the  
189 revenues generated from the emergency assessments imposed under  
190 this paragraph.

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

195 5.2. If the board of directors participates in the  
196 issuance of bonds in accordance with s. 631.695, an emergency  
197 ~~annual~~ assessment under this paragraph must ~~shall~~ continue while  
198 the bonds issued with respect to which the assessment was  
199 imposed are outstanding, including any bonds the proceeds of



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200 which were used to refund bonds issued pursuant to s. 631.695,  
201 unless adequate provision has been made for the payment of the  
202 bonds in the documents authorizing the issuance of such bonds.

203 ~~6.3. Emergency Assessments~~ assessments under this  
204 ~~subsection paragraph~~ are not premium and are not subject to the  
205 premium tax, to any fees, or to any commissions. An insurer is  
206 liable for all ~~emergency~~ assessments that the insurer collects  
207 and shall treat the failure of an insured to pay an ~~emergency~~  
208 assessment as a failure to pay the premium. An insurer is not  
209 liable for uncollectible ~~emergency~~ assessments.

210 (f) The recoupment factor applied to policies in  
211 accordance with ~~paragraph (a) or subparagraph (e)~~ 1. paragraph  
212 ~~(e)~~ shall be selected by the insurer or insurer group ~~so as to~~  
213 provide for the probable recoupment of ~~both assessments levied~~  
214 ~~pursuant to paragraph (a) and emergency~~ assessments over a  
215 period of 12 months, unless the insurer or insurer group, at its  
216 option, elects to recoup the assessment over a longer period.  
217 The recoupment factor applies ~~shall apply~~ to all policies of the  
218 same kind or line as were considered by the office in  
219 determining the assessment liability of the insurer or insurer  
220 group issued or renewed during a 12-month period.

221 1. If the insurer or insurer group does not collect the  
222 full amount of the assessment during one 12-month period, the  
223 insurer or insurer group may apply recalculated recoupment  
224 factors to policies issued or renewed during one or more  
225 succeeding 12-month periods.

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226       2. If, at the end of a 12-month period, the insurer or  
227 insurer group has collected from the combined kinds or lines of  
228 policies subject to assessment more than the total amount of the  
229 assessment paid by the insurer or insurer group, the excess  
230 amount shall be disbursed as follows:

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

236       b.2. If the excess amount exceeds 15 percent of the total  
237 assessment paid by the insurer or insurer group, the excess  
238 amount shall be returned to the insurer's or insurer group's  
239 current policyholders by refunds or premium credits. The  
240 association shall use any remitted excess recoupment amounts to  
241 reduce future assessments.

242       3.(g) ~~Amounts recouped pursuant to this subsection for~~  
243 ~~assessments levied under paragraph (a) due to insolvencies on or~~  
244 ~~after July 1, 2010, are considered premium solely for premium~~  
245 ~~tax purposes and are not subject to fees or commissions.~~

246 ~~However,~~ Insurers ~~insurers~~ shall treat the failure of an insured  
247 to pay a recoupment charge as a failure to pay the premium.

248       4.(h) At least 15 days before applying the recoupment  
249 factor to any policies, the insurer or insurer group shall file  
250 with the office a statement for informational purposes only  
251 setting forth the amount of the recoupment factor and an

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252 explanation of how the recoupment factor will be applied. Such  
253 statement must ~~shall~~ include documentation of the assessment  
254 paid by the insurer or insurer group and the arithmetic  
255 calculations supporting the recoupment factor. The insurer or  
256 insurer group may use the recoupment factor at any time after  
257 the expiration of the 15-day period. The insurer or insurer  
258 group need submit only one informational statement for all lines  
259 of business using the same recoupment factor.

260 5.(i) Within ~~No later than~~ 90 days after the insurer or  
261 insurer group has completed the recoupment process, the insurer  
262 or insurer group shall file with the office, for information  
263 purposes only, a final accounting report documenting the  
264 recoupment. The report must ~~shall~~ provide the amounts of  
265 assessments paid by the insurer or insurer group, the amounts  
266 and percentages recouped by year from each affected line of  
267 business, and the direct written premium subject to recoupment  
268 by year. The insurer or insurer group need submit only one  
269 report for all lines of business using the same recoupment  
270 factor.

271 Section 2. This act shall take effect July 1, 2014.  
272  
273

274 -----  
275 **T I T L E A M E N D M E N T**

276 Remove everything before the enacting clause and insert:

277 A bill to be entitled

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278 An act relating to the Florida Insurance Guaranty Association;  
279 amending s. 631.57, F.S.; revising the duties of the  
280 association; authorizing the association to certify regular  
281 assessments to be collected by member insurers and collected  
282 from policyholders under certain circumstances; authorizing the  
283 association to levy emergency assessments to be collected by  
284 member insurers and collected from policyholders under certain  
285 circumstances; clarifying that assessments are not considered  
286 premium tax purposes; making technical and grammatical  
287 corrections; providing for applicability; providing an effective  
288 date.