

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 collect regular assessments directly from  
 6           policyholders; authorizing the association to collect  
 7           emergency assessments from insurers under certain  
 8           circumstances; making technical and grammatical  
 9           corrections; providing for applicability; providing an  
 10          effective date.

11  
 12   Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1. Subsections (2) and (3) of section 631.57,  
 15   Florida Statutes, are amended to read:

16           631.57 Powers and duties of the association.—

17           (2) The association may:

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

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

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

28           (d) Negotiate and become a party to such contracts as are

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

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

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

75 | (b) In lieu of collecting the regular assessment under  
76 | paragraph (a) from insurers, the association may collect all or  
77 | part of the assessment directly from policyholders. If the  
78 | association elects to collect the assessment directly from  
79 | policyholders, the office shall issue an order specifying the  
80 | date that the board requires the insurers to begin collecting  
81 | the assessment, which must be at least 90 days after the date  
82 | that the board certifies the assessment. The order must specify  
83 | a uniform percentage determined by the board, and verified by  
84 | the office, of the direct written premium for all lines of

85 business in the applicable accounts. The assessment certified in  
 86 any one calendar year may not exceed 2 percent of the premium.  
 87 The insurers shall collect such assessments without being  
 88 affected by any credit, limitation, exemption, or deferment.  
 89 Assessments collected under this paragraph shall be transferred  
 90 regularly to the association as set forth in the order levying  
 91 the assessment.

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

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

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

110 (e) ~~1.a.~~ In addition to regular assessments ~~otherwise~~  
 111 authorized under ~~in~~ paragraph (a), and to the extent necessary  
 112 to secure ~~the~~ funds for the account specified in s. 631.55(2)(b)

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

137 1. If, after consultation with its financial advisor, the  
138 board determines that it must immediately begin paying the  
139 covered claims of one or more insolvent insurers and financing  
140 is not reasonably available, it may certify the emergency

141 assessment on insurers in the same manner as set forth in  
142 paragraph (a), except that an emergency assessment may be paid  
143 by the insurer in a single payment or, at the option of the  
144 association, in 12 monthly installments with the first  
145 installment being due and payable at the end of the month after  
146 the emergency assessment is levied and subsequent installments  
147 being due by the end of each succeeding month. The emergency  
148 ~~assessments payable under this paragraph by any insurer shall~~  
149 ~~not exceed in any single year more than 2 percent of that~~  
150 ~~insurer's direct written premiums, net of refunds, in this state~~  
151 ~~during the preceding calendar year for the kinds of insurance~~  
152 ~~within the account specified in s. 631.55(2)(b).~~

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

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

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

191 3.d. If emergency assessments are imposed, the report  
192 required by s. 631.695(7) must ~~shall~~ include an analysis of the  
193 revenues generated from the emergency assessments imposed under  
194 this paragraph.

195 4.e. If emergency assessments are imposed, the references  
196 in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to

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197 | regular assessments levied under paragraph (a) must ~~shall~~  
198 | include emergency assessments imposed under this paragraph.

199 | ~~5.2.~~ If the board of directors participates in the  
200 | issuance of bonds in accordance with s. 631.695, an emergency  
201 | ~~annual~~ assessment under this paragraph must ~~shall~~ continue while  
202 | the bonds issued with respect to which the assessment was  
203 | imposed are outstanding, including any bonds the proceeds of  
204 | which were used to refund bonds issued pursuant to s. 631.695,  
205 | unless adequate provision has been made for the payment of the  
206 | bonds in the documents authorizing the issuance of such bonds.

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

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

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225 |       1. If the insurer or insurer group does not collect the  
226 | full amount of the assessment during one 12-month period, the  
227 | insurer or insurer group may apply recalculated recoupment  
228 | factors to policies issued or renewed during one or more  
229 | succeeding 12-month periods.

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

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

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

246 |       3.(g) Amounts recouped pursuant to this paragraph  
247 | ~~subsection~~ for assessments levied under paragraph (a) due to  
248 | insolvencies on or after July 1, 2010, are considered premium  
249 | solely for premium tax purposes and are not subject to fees or  
250 | commissions. However, insurers shall treat the failure of an  
251 | insured to pay a recoupment charge as a failure to pay the  
252 | premium.

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

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

276        Section 2. This act shall take effect July 1, 2013, and  
277 applies to any assessment certified and levied after that date  
278 regardless of when the insolvency or insolvencies occurred.  
279