



484256

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
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	.	

The Committee on Banking and Insurance (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (2) of section 631.57, Florida Statutes, is amended, and subsection (3) of that section is reordered and amended, to read:

631.57 Powers and duties of the association.—

(2) The association may:

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



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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);

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



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42 directors, shall levy regular assessments in the proportion that
43 each insurer's net direct written premiums in this state in the
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 collect all or
70 part of the assessment directly from policyholders. If the



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

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

92 ~~(c) The Legislature finds and declares that all assessments~~
93 ~~paid by an insurer or insurer group as a result of a levy by the~~
94 ~~office, including assessments levied pursuant to paragraph (a)~~
95 ~~and emergency assessments, constitute advances of funds from the~~
96 ~~insurer to the association. An insurer may fully recoup such~~
97 ~~advances by applying a separate recoupment factor to the premium~~
98 ~~of policies of the same kind or line as were considered by the~~
99 ~~office in determining the assessment liability of the insurer or~~



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100 ~~insurer group.~~

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

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



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129 as set forth in the order levying the assessment.

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

146 ~~2.b. Any~~ Emergency assessments authorized under this
147 ~~paragraph shall be levied by the office only upon insurers~~
148 ~~referred to in sub-subparagraph a.7, upon certification as to the~~
149 need for such assessments by the board of directors. If ~~In the~~
150 ~~event~~ the board ~~of directors~~ participates in the issuance of
151 bonds in accordance with s. 631.695, emergency assessments shall
152 be levied in each year that bonds issued under s. 631.695 and
153 secured by such emergency assessments are outstanding, ~~in such~~
154 amounts up to such 2 percent ~~2-percent~~ limit as required in
155 order to provide for the full and timely payment of the
156 principal of, redemption premium, if any, and interest on, and
157 related costs of issuance of, such bonds. The emergency



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158 assessments ~~provided for in this paragraph~~ are assigned and
159 pledged to the municipality, county, or legal entity issuing
160 bonds under s. 631.695 for the benefit of the holders of such
161 bonds, in order to enable such municipality, county, or legal
162 entity to provide for the payment of the principal of,
163 redemption premium, if any, and interest on such bonds, the cost
164 of issuance of such bonds, and the funding of any reserves and
165 other payments required under the bond resolution or trust
166 indenture pursuant to which such bonds have been issued, without
167 the necessity for ~~of~~ any further action by the association, the
168 office, or any other party. If ~~To the extent~~ bonds are issued
169 under s. 631.695 and the association secures ~~determines to~~
170 ~~secure~~ such bonds by a pledge of revenues received from the
171 emergency assessments, such bonds, upon such pledge of revenues,
172 shall be secured by and payable from the proceeds of such
173 emergency assessments, and the proceeds of emergency assessments
174 levied under this paragraph shall be remitted directly to and
175 administered by the trustee or custodian appointed for the
176 payment of such bonds.

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

184 3.d. If emergency assessments are imposed, the report
185 required by s. 631.695(7) must ~~shall~~ include an analysis of the
186 revenues generated from the emergency assessments imposed under



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187 this paragraph.

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

192 ~~5.2.~~ If the board of directors participates in the issuance
193 of bonds in accordance with s. 631.695, an emergency ~~annual~~
194 assessment under this paragraph must ~~shall~~ continue while the
195 bonds issued with respect to which the assessment was imposed
196 are outstanding, including any bonds the proceeds of which were
197 used to refund bonds issued pursuant to s. 631.695, unless
198 adequate provision has been made for the payment of the bonds in
199 the documents authorizing the issuance of such bonds.

200 ~~6.3.~~ Emergency assessments under this paragraph are not
201 premium and are not subject to the premium tax, to any fees, or
202 to any commissions. An insurer is liable for all emergency
203 assessments that the insurer collects and shall treat the
204 failure of an insured to pay an emergency assessment as a
205 failure to pay the premium. An insurer is not liable for
206 uncollectible emergency assessments.

207 ~~(d)(f)~~ The recoupment factor applied to policies in
208 accordance with paragraph (a) or subparagraph (c)1. ~~paragraph~~
209 ~~(e)~~ shall be selected by the insurer or insurer group ~~so as~~ to
210 provide for the probable recoupment of ~~both assessments levied~~
211 ~~pursuant to paragraph (a) and emergency~~ assessments over a
212 period of 12 months, unless the insurer or insurer group, at its
213 option, elects to recoup the assessment over a longer period.
214 The recoupment factor applies ~~shall apply~~ to all policies of the
215 same kind or line as were considered by the office in



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216 determining the assessment liability of the insurer or insurer
217 group issued or renewed during a 12-month period.

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

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

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

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

239 3. ~~(g)~~ Amounts recouped pursuant to this paragraph
240 ~~subsection~~ for assessments levied under paragraph (a) due to
241 insolvencies on or after July 1, 2010, are considered premium
242 solely for premium tax purposes and are not subject to fees or
243 commissions. However, insurers shall treat the failure of an
244 insured to pay a recoupment charge as a failure to pay the



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245 premium.

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

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

269 Section 2. This act shall take effect July 1, 2013, and
270 shall apply to any assessment certified and levied after that
271 date regardless of when the insolvency or insolvencies occurred.
272

273 ===== T I T L E A M E N D M E N T =====



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274 And the title is amended as follows:

275 Delete everything before the enacting clause
276 and insert:

277 A bill to be entitled

278 An act relating to the Florida Insurance Guaranty
279 Association; reordering and amending s. 631.57, F.S.;
280 revising the duties of the association; authorizing
281 the association to collect regular assessments
282 directly from policyholders; authorizing the
283 association to collect emergency assessments from
284 insurers under certain circumstances; making technical
285 and grammatical corrections; providing an effective
286 date.