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LEGISLATIVE ACTION

Senate	.	House
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Floor: WD/2R	.	
04/26/2013 12:30 PM	.	
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Senator Brandes moved the following:

Senate Amendment (with title amendment)

Between lines 2034 and 2035
insert:

Section 52. Effective July 1, 2013, subsections (2) and (3)
of section 631.57, Florida Statutes, are 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;

(b) Borrow funds necessary to effect the purposes of this
part in accord with the plan of operation, including borrowing
necessary to ensure that its cash flow needs are timely met to



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14 pay covered claims when regular and emergency assessments are
15 levied on policyholders under subsection (3);

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

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

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



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

66 (b) In lieu of collecting the regular assessment under
67 paragraph (a) from insurers, the association may certify all or
68 part of the assessment to be collected by member insurers and
69 collected from policyholders upon issuance or renewal of
70 policies. If the association elects to direct insurers to
71 collect the assessment directly from policyholders, the office



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72 shall issue an order specifying the date that the board requires
73 the insurers to begin collecting the assessment, which must be
74 at least 90 days after the date that the board certifies the
75 assessment. The order must specify a uniform percentage
76 determined by the board, and verified by the office, of the
77 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 (c) ~~(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~~
100 ~~insurer group.~~



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101 (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 (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 to be collected by
116 member insurers and collected from policyholders upon issuance
117 or renewal of policies upon insurers holding a certificate of
118 authority. Pursuant to such levy, the office shall issue an
119 order specifying the date the board requires the insurers to
120 begin collecting the assessment, which must be at least 90 days
121 after the date the office levies the assessment. The order must
122 specify a uniform percentage determined by the board, and
123 verified by the office, of the direct written premium for all
124 lines of business in the applicable accounts. The assessment
125 certified in any one calendar year may not exceed 2 percent of
126 the premium. The insurers shall collect such assessments without
127 being affected by any credit, limitation, exemption, or
128 deferment. Assessments collected by insurers under this
129 paragraph shall be transferred regularly to the association as



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130 set forth in the order levying the assessment.

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

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



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

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

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



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188 this paragraph.

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

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

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

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



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

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

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

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

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

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



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246 premium.

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

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

270 Section 53. The amendments to s. 631.57 made by this act
271 are applicable to any assessment certified and levied after July
272 1, 2013, regardless of when the insolvency or insolvencies
273 occurred.

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

276 And the title is amended as follows:

277 Between lines 225 and 226

278 insert:

279 amending s. 631.57, F.S.; revising the duties of the
280 Florida Insurance Guaranty Association; authorizing
281 the association to certify regular assessments to be
282 collected by member insurers and collected from
283 policyholders under certain circumstances; authorizing
284 the association to levy emergency assessments to be
285 collected by member insurers and collected from
286 policyholders under certain circumstances; making
287 technical and grammatical corrections; providing for
288 applicability;