

Amendment No. sa1

COMMITTEE/SUBCOMMITTEE ACTION

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WITHDRAWN	—	(Y/N)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

1 Committee/Subcommittee hearing bill: Insurance & Banking  
2 Subcommittee

3 Representative Broxson offered the following:

4  
5 **Substitute Amendment for Amendment (031061) by**  
6 **Representative Raburn (with title amendment)**

7 Remove everything after the enacting clause and insert:

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

10 631.57 Powers and duties of the association.—

11 (2) The association may:

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

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

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18 are levied on policyholders under subsection (3);

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

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

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

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

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69       (b) In lieu of collecting the regular assessment under  
70 paragraph (a) from insurers, the association may collect all or  
71 part of the assessment directly from policyholders. If the  
72 association elects to collect the assessment directly from  
73 policyholders, the office shall, upon certification of the board  
74 of directors, issue an order specifying the date the board  
75 requires the insurers to begin collecting the assessment, which  
76 must be at least 90 days after the date the office levies 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 for a uniform period of  
83 12 months as specified in the order. The insurers shall collect  
84 such assessments without being affected by any credit,  
85 limitation, exemption, or deferment. Assessments collected under  
86 this paragraph shall be transferred regularly to the association  
87 as set forth in the order levying the assessment.

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

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

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

117       (e)~~1.a.~~ In addition to regular assessments otherwise  
118       authorized in paragraphs ~~paragraph~~ (a) and (b) and to the extent  
119       necessary to secure the funds for the account specified in s.  
120       631.55(2) (b) for the direct payment of covered claims of  
121       insurers rendered insolvent by the effects of a hurricane and to  
122       pay the reasonable costs to administer such claims, or to retire  
123       indebtedness, including, without limitation, the principal,  
124       redemption premium, if any, and interest on, and related costs  
125       of issuance of, bonds issued under s. 631.695 and the funding of  
126       any reserves and other payments required under the bond  
127       resolution or trust indenture pursuant to which such bonds have  
128       been issued, the office, upon certification of the board of  
129       directors, shall levy emergency assessments upon insurers  
130       holding a certificate of authority. The emergency assessments

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121 payable under this paragraph by any insurer shall not exceed in  
122 any single year more than 2 percent of that insurer's direct  
123 written premiums, net of refunds, in this state during the  
124 preceding calendar year for the kinds of insurance within the  
125 account specified in s. 631.55(2) (b). The Legislature finds and  
126 declares that emergency assessments paid by an insurer or  
127 insurer group as a result of a levy by the office constitute  
128 advances of funds from the insurer to the association. An  
129 insurer may fully recoup emergency assessments levied against  
130 prior year premiums by applying a separate recoupment factor to  
131 the premium of policies of the same kind or line as were  
132 considered by the office in determining the assessment liability  
133 of the insurer or insurer group.

134 1. In lieu of collecting the emergency assessment under  
135 paragraph (e) from insurers, the association may collect all or  
136 part of the assessment directly from policyholders. If the  
137 association elects to collect the assessment directly from  
138 policyholders, the office shall issue an order specifying the  
139 date the board requires the insurers to begin collecting the  
140 assessment, which must be at least 90 days after the date the  
141 office levies the assessment. The order must specify a uniform  
142 percentage determined by the board, and verified by the office,  
143 of the direct written premium for all lines of business in the  
144 applicable accounts. The assessment certified in any one  
145 calendar year may not exceed 2 percent of the premium. The  
146 insurers shall collect such assessments without being affected

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147 by any credit, limitation, exemption, or deferment. Assessments  
148 collected under this paragraph shall be transferred regularly to  
149 the association as set forth in the order levying the  
150 assessment.

151 2.b. Emergency ~~Any emergency assessments authorized under~~  
152 ~~this paragraph~~ shall be levied by the office only ~~upon insurers~~  
153 ~~referred to in sub-subparagraph a.,~~ upon certification as to the  
154 need for such assessments by the board of directors. If ~~In~~ the  
155 event the board ~~of directors~~ participates in the issuance of  
156 bonds in accordance with s. 631.695, emergency assessments shall  
157 be levied in each year that bonds issued under s. 631.695 and  
158 secured by such emergency assessments are outstanding, ~~in such~~  
159 amounts up to such 2-percent limit as required in order to  
160 provide for the full and timely payment of the principal of,  
161 redemption premium, if any, and interest on, and related costs  
162 of issuance of, such bonds. The emergency assessments ~~provided~~  
163 ~~for in this paragraph~~ are assigned and pledged to the  
164 municipality, county, or legal entity issuing bonds under s.  
165 631.695 for the benefit of the holders of such bonds, ~~in order~~  
166 ~~to enable such municipality, county, or legal entity~~ to provide  
167 for the payment of the principal of, redemption premium, if any,  
168 and interest on such bonds, the cost of issuance of such bonds,  
169 and the funding of any reserves and other payments required  
170 under the bond resolution or trust indenture pursuant to which  
171 such bonds have been issued, ~~without the necessity of any~~  
172 further action by the association, the office, or any other

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173 party. ~~If To the extent~~ bonds are issued under s. 631.695 and  
174 the association secures ~~determines to secure~~ such bonds by a  
175 pledge of revenues received from the emergency assessments, ~~such~~  
176 ~~bonds, upon such pledge of revenues, shall be secured by and~~  
177 ~~payable from the proceeds of such emergency assessments, and the~~  
178 proceeds of emergency assessments levied under this paragraph  
179 shall be remitted directly to and administered by the trustee or  
180 custodian appointed for the payment of such bonds.

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

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

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

196 ~~5.2.~~ If the board of directors participates in the  
197 issuance of bonds in accordance with s. 631.695, an emergency  
198 ~~annual~~ assessment under this paragraph must ~~shall~~ continue while



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199 the bonds issued with respect to which the assessment was  
200 imposed are outstanding, including any bonds the proceeds of  
201 which were used to refund bonds issued pursuant to s. 631.695,  
202 unless adequate provision has been made for the payment of the  
203 bonds in the documents authorizing the issuance of such bonds.

204 (f)3. Assessments ~~Emergency assessments~~ under this  
205 subsection paragraph are not premium and are not subject to the  
206 premium tax, to any fees, or to any commissions. An insurer is  
207 liable for all ~~emergency~~ assessments that the insurer collects  
208 and shall treat the failure of an insured to pay an ~~emergency~~  
209 assessment as a failure to pay the premium. An insurer is not  
210 liable for uncollectible ~~emergency~~ assessments.

211 (g) The provisions of this paragraph shall only apply if  
212 the board levies assessments on insurers, but shall not apply if  
213 the board levies assessments on policyholders.

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

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225       2. 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       3. 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       ~~(g) Amounts recouped pursuant to this subsection for~~  
247 ~~assessments levied under paragraph (a) due to insolvencies on or~~  
248 ~~after July 1, 2010, are considered premium solely for premium~~  
249 ~~tax purposes and are not subject to fees or commissions.~~

250       4. Insurers ~~However, insurers~~ shall treat the failure of an

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251 insured to pay a recoupment charge as a failure to pay the  
252 premium.

253 ~~5.(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 shall include documentation of the assessment paid by  
259 the insurer or insurer group and the arithmetic calculations  
260 supporting the recoupment factor. The insurer or insurer group  
261 may use the recoupment factor at any time after the expiration  
262 of the 15-day period. The insurer or insurer group need submit  
263 only one informational statement for all lines of business using  
264 the same recoupment factor.

265 ~~6.(i)~~ No later than 90 days after the insurer or insurer  
266 group has completed the recoupment process, the insurer or  
267 insurer group shall file with the office, for information  
268 purposes only, a final accounting report documenting the  
269 recoupment. The report shall provide the amounts of assessments  
270 paid by the insurer or insurer group, the amounts and  
271 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, 2014.

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**T I T L E   A M E N D M E N T**

Remove everything before the enacting clause and insert:

A bill to be entitled

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