

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 and emergency assessments directly
 6 from policyholders; clarifying that assessments are
 7 not considered premium for premium tax purposes;
 8 making technical and grammatical corrections;
 9 providing an effective date.

10

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

12

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

15 631.57 Powers and duties of the association.—

16 (2) The association may:

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

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

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

27 (d) Negotiate and become a party to such contracts as are
 28 necessary to carry out the purpose of this part. ~~Additionally,~~

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

37 | (3)(a) To the extent necessary to secure ~~the~~ funds for the
 38 | respective accounts paying for ~~the payment of~~ covered claims, to
 39 | pay the reasonable costs to administer such accounts ~~the same~~,
 40 | and ~~to the extent necessary~~ to secure ~~the~~ funds for the account
 41 | specified in s. 631.55(2)(b) or to retire indebtedness,
 42 | including, without limitation, the principal, redemption
 43 | premium, if any, and interest on, and related costs of issuance
 44 | of, bonds issued under s. 631.695 and the funding of any
 45 | reserves and other payments required under the bond resolution
 46 | or trust indenture pursuant to which such bonds have been
 47 | issued, the office, upon certification of the board of
 48 | directors, shall levy regular assessments directly upon
 49 | policyholders, which shall be collected by insurers holding a
 50 | certificate of authority. The office shall issue an order
 51 | specifying the date that the board requires the insurers to
 52 | begin collecting the assessment, which must be at least 90 days
 53 | after the date that the board certifies the assessment. The
 54 | order must specify a uniform percentage determined by the board,
 55 | and verified by the office, of the direct written premium for
 56 | all lines of business in the applicable accounts. The assessment

57 collected may not exceed 2 percent of the premium in any one
58 year. The insurers shall collect such assessments without being
59 affected by any credit, limitation, exemption, or deferment.
60 Assessments collected by insurers from insureds under this
61 paragraph shall be transferred regularly to the association as
62 set forth in the order levying the assessment in the proportion
63 that each insurer's net direct written premiums in this state in
64 the classes protected by the account bears to the total of said
65 net direct written premiums received in this state by all such
66 insurers for the preceding calendar year for the kinds of
67 insurance included within such account. Assessments shall be
68 remitted to and administered by the board of directors in the
69 manner specified by the approved plan. Each insurer so assessed
70 shall have at least 30 days' written notice as to the date the
71 assessment is due and payable. Every assessment shall be made as
72 a uniform percentage applicable to the net direct written
73 premiums of each insurer in the kinds of insurance included
74 within the account in which the assessment is made. The
75 assessments levied against any insurer shall not exceed in any
76 one year more than 2 percent of that insurer's net direct
77 written premiums in this state for the kinds of insurance
78 included within such account during the calendar year next
79 preceding the date of such assessments.

80 ~~(c) The Legislature finds and declares that all~~
81 ~~assessments paid by an insurer or insurer group as a result of a~~
82 ~~levy by the office, including assessments levied pursuant to~~
83 ~~paragraph (a) and emergency assessments, constitute advances of~~
84 ~~funds from the insurer to the association. An insurer may fully~~

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85 ~~recoup such advances by applying a separate recoupment factor to~~
86 ~~the premium of policies of the same kind or line as were~~
87 ~~considered by the office in determining the assessment liability~~
88 ~~of the insurer or insurer group.~~

89 (b)1.(e)1.a. In addition to regular assessments otherwise
90 authorized under ~~in~~ paragraph (a), and to the extent necessary
91 to secure the funds for the account specified in s. 631.55(2) (b)
92 for the direct payment of covered claims of insurers rendered
93 insolvent by the effects of a hurricane and to pay the
94 reasonable costs to administer such claims, or to retire
95 indebtedness, including, without limitation, the principal,
96 redemption premium, if any, and interest on, and related costs
97 of issuance of, bonds issued under s. 631.695 and the funding of
98 any reserves and other payments required under the bond
99 resolution or trust indenture pursuant to which such bonds have
100 been issued, the office, ~~upon certification of the board of~~
101 ~~directors,~~ shall levy emergency assessments directly upon
102 policyholders, which shall be collected by insurers holding a
103 certificate of authority. The office shall issue an order
104 specifying the date that the board requires the insurers to
105 begin collecting the assessment, which must be at least 90 days
106 after the date that the board certifies the assessment. The
107 order must specify a uniform percentage determined by the board,
108 and verified by the office, of the direct written premium for
109 all lines of business in the applicable accounts. The assessment
110 collected may not exceed 2 percent of the premium in any one
111 year. The insurers shall collect such assessments without being
112 affected by any credit, limitation, exemption, or deferment.

113 Assessments collected under this paragraph shall be transferred
114 regularly to the association as set forth in the order levying
115 the assessment ~~The emergency assessments payable under this~~
116 ~~paragraph by any insurer shall not exceed in any single year~~
117 ~~more than 2 percent of that insurer's direct written premiums,~~
118 ~~net of refunds, in this state during the preceding calendar year~~
119 ~~for the kinds of insurance within the account specified in s.~~
120 ~~631.55(2)(b).~~

121 2.b. ~~Any Emergency assessments authorized under this~~
122 ~~paragraph shall be levied by the office only upon insurers~~
123 ~~referred to in sub-subparagraph a.,~~ upon certification as to the
124 need for such assessments by the board of directors. If ~~In the~~
125 ~~event~~ the board ~~of directors~~ participates in the issuance of
126 bonds in accordance with s. 631.695, emergency assessments shall
127 be levied in each year that bonds issued under s. 631.695 and
128 secured by such emergency assessments are outstanding, ~~in such~~
129 amounts up to such 2-percent limit as required in order to
130 provide for the full and timely payment of the principal of,
131 redemption premium, if any, and interest on, and related costs
132 of issuance of, such bonds. The emergency assessments ~~provided~~
133 ~~for in this paragraph~~ are assigned and pledged to the
134 municipality, county, or legal entity issuing bonds under s.
135 631.695 for the benefit of the holders of such bonds, ~~in order~~
136 ~~to enable such municipality, county, or legal entity~~ to provide
137 for the payment of the principal of, redemption premium, if any,
138 and interest on such bonds, the cost of issuance of such bonds,
139 and the funding of any reserves and other payments required
140 under the bond resolution or trust indenture pursuant to which

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141 such bonds have been issued, without the necessity for ~~of~~ any
142 further action by the association, the office, or any other
143 party. If ~~To the extent~~ bonds are issued under s. 631.695 and
144 the association secures ~~determines to secure~~ such bonds by a
145 pledge of revenues received from the emergency assessments, such
146 ~~bonds, upon such pledge of revenues, shall be secured by and~~
147 ~~payable from the proceeds of such emergency assessments, and the~~
148 proceeds of emergency assessments levied under this paragraph
149 shall be remitted directly to and administered by the trustee or
150 custodian appointed for the payment of such bonds.

151 ~~e. Emergency assessments under this paragraph may be~~
152 ~~payable in a single payment or, at the option of the~~
153 ~~association, may be payable in 12 monthly installments with the~~
154 ~~first installment being due and payable at the end of the month~~
155 ~~after an emergency assessment is levied and subsequent~~
156 ~~installments being due not later than the end of each succeeding~~
157 ~~month.~~

158 ~~3.d.~~ If emergency assessments are imposed, the report
159 required by s. 631.695(7) must ~~shall~~ include an analysis of the
160 revenues generated from the emergency assessments imposed under
161 this paragraph.

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

166 ~~5.2.~~ If the board of directors participates in the
167 issuance of bonds in accordance with s. 631.695, an emergency
168 ~~annual~~ assessment under this paragraph must ~~shall~~ continue while

169 the bonds issued with respect to which the assessment was
170 imposed are outstanding, including any bonds the proceeds of
171 which were used to refund bonds issued pursuant to s. 631.695,
172 unless adequate provision has been made for the payment of the
173 bonds in the documents authorizing the issuance of such bonds.

174 (c)3. ~~Emergency~~ Assessments under this subsection
175 ~~paragraph~~ are not premium and are not subject to the premium
176 tax, to any fees, or to any commissions. An insurer is liable
177 for all ~~emergency~~ assessments that the insurer collects and
178 shall treat the failure of an insured to pay an ~~emergency~~
179 assessment as a failure to pay the premium. An insurer is not
180 liable for uncollectible ~~emergency~~ assessments.

181 (d)1. ~~(f)~~ The recoupment factor applied to policies in
182 accordance with paragraph (a) or paragraph (b) ~~(e)~~ shall be
183 selected by the board and verified by the office insurer or
184 ~~insurer group so as to provide for the probable recoupment of~~
185 ~~both assessments levied pursuant to paragraph (a) and emergency~~
186 ~~assessments over a period of 12 months, unless the insurer or~~
187 ~~insurer group, at its option, elects to recoup the assessment~~
188 ~~over a longer period.~~ The recoupment factor applies ~~shall apply~~
189 to all policies of the same kind or line as were considered by
190 the office in determining the assessment liability ~~of the~~
191 ~~insurer or insurer group issued or renewed during a 12-month~~
192 ~~period.~~ If the recoupment factor ~~insurer or insurer group~~ does
193 not collect the full amount needed ~~of the assessment~~ during one
194 12-month period, the board ~~insurer or insurer group~~ may apply
195 recalculated recoupment factors to policies issued or renewed
196 during one or more succeeding 12-month periods under paragraphs

197 | (a) and (b).

198 | 2. If, at the end of a 12-month period, the association
 199 | ~~insurer or insurer group~~ has collected from the combined kinds
 200 | or lines of policies subject to assessment more than the total
 201 | amount of the assessment needed, ~~paid by the insurer or insurer~~
 202 | ~~group~~, the excess amount shall be disbursed as follows:

203 | ~~1.~~ If the excess amount does not exceed 15 percent of the
 204 | ~~total assessment paid by the insurer or insurer group~~, the
 205 | ~~excess amount shall be remitted to the association within 60~~
 206 | ~~days after the end of the 12-month period in which the excess~~
 207 | ~~recoupment charges were collected.~~

208 | ~~2.~~ If the excess amount exceeds 15 percent of the total
 209 | ~~assessment paid by the insurer or insurer group~~, the excess
 210 | ~~amount shall be returned to the insurer's or insurer group's~~
 211 | ~~current policyholders by refunds or premium credits.~~ the
 212 | association shall use any remitted excess recoupment amounts to
 213 | reduce future assessments.

214 | ~~(e)-(d)~~ No State funds may not ~~of any kind shall~~ be
 215 | allocated or paid to the ~~said~~ association or any of its
 216 | accounts.

217 | ~~(f)-(b)~~ If sufficient funds from regular and emergency ~~such~~
 218 | assessments, together with funds previously raised, are not
 219 | available in any one year in the respective account to make all
 220 | the payments or reimbursements then owing to insurers, the funds
 221 | available shall be prorated and the unpaid portion ~~shall be~~ paid
 222 | as soon ~~thereafter~~ as funds become available.

223 | ~~(g)~~ Amounts recouped pursuant to this subsection for
 224 | ~~assessments levied under paragraph (a) due to insolvencies on or~~

225 ~~after July 1, 2010, are considered premium solely for premium~~
226 ~~tax purposes and are not subject to fees or commissions.~~
227 ~~However, insurers shall treat the failure of an insured to pay a~~
228 ~~recoupment charge as a failure to pay the premium.~~

229 ~~(h) At least 15 days before applying the recoupment factor~~
230 ~~to any policies, the insurer or insurer group shall file with~~
231 ~~the office a statement for informational purposes only setting~~
232 ~~forth the amount of the recoupment factor and an explanation of~~
233 ~~how the recoupment factor will be applied. Such statement shall~~
234 ~~include documentation of the assessment paid by the insurer or~~
235 ~~insurer group and the arithmetic calculations supporting the~~
236 ~~recoupment factor. The insurer or insurer group may use the~~
237 ~~recoupment factor at any time after the expiration of the 15-day~~
238 ~~period. The insurer or insurer group need submit only one~~
239 ~~informational statement for all lines of business using the same~~
240 ~~recoupment factor.~~

241 ~~(i) No later than 90 days after the insurer or insurer~~
242 ~~group has completed the recoupment process, the insurer or~~
243 ~~insurer group shall file with the office, for information~~
244 ~~purposes only, a final accounting report documenting the~~
245 ~~recoupment. The report shall provide the amounts of assessments~~
246 ~~paid by the insurer or insurer group, the amounts and~~
247 ~~percentages recouped by year from each affected line of~~
248 ~~business, and the direct written premium subject to recoupment~~
249 ~~by year. The insurer or insurer group need submit only one~~
250 ~~report for all lines of business using the same recoupment~~
251 ~~factor.~~

252 Section 2. This act shall take effect July 1, 2014.