



191314

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2014	.	
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The Committee on Banking and Insurance (Lee) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsections (2) through (9) of section 631.54, Florida Statutes, are renumbered as subsections (3) through (10), respectively, and a new subsection (2) is added to that section, to read:

631.54 Definitions.—As used in this part:

(2) "Assessment year" means the 12-month period specified



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11 in an order issued by the office directing insurers to pay an  
12 assessment to the association. Upon entry of the order, insurers  
13 may begin collecting assessments from policyholders for the  
14 assessment year. The assessment year begins on the first day of  
15 each quarter, beginning January 1.

16 Section 2. Subsection (3) of section 631.57, Florida  
17 Statutes, is amended to read:

18 631.57 Powers and duties of the association.—

19 (3) (a) To the extent necessary to secure ~~the~~ funds for the  
20 respective accounts for the payment of covered claims, to pay  
21 the reasonable costs to administer such accounts ~~the same~~, and  
22 ~~to the extent necessary~~ to secure ~~the~~ funds for the account  
23 specified in s. 631.55(2) (b) or to retire indebtedness,  
24 including, without limitation, the principal, redemption  
25 premium, if any, and interest on, and related costs of issuance  
26 of, bonds issued under s. 631.695 and the funding of ~~any~~  
27 reserves and other payments required under the bond resolution  
28 or trust indenture pursuant to which such bonds have been  
29 issued, the office, upon certification of the board of  
30 directors, shall levy assessments initially estimated in the  
31 proportion that each insurer's net direct written premiums in  
32 this state in the classes protected by the account bears to the  
33 total of said net direct written premiums received in this state  
34 by all such insurers for the preceding calendar year for the  
35 kinds of insurance included within such account. Assessments  
36 shall be remitted to and administered by the board of directors  
37 in the manner specified by the approved plan and paragraph (f).  
38 Each insurer so assessed shall have at least 30 days' written  
39 notice as to the date the initial assessment payment is due and



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40 payable. Every assessment shall be ~~made as~~ a uniform percentage  
41 applicable to the net direct written premiums of each insurer in  
42 the kinds of insurance included within the account in which the  
43 assessment is made. The assessments levied against any insurer  
44 may shall not exceed in any one year more than 2 percent of that  
45 insurer's net direct written premiums in this state for the  
46 kinds of insurance included within such account during the  
47 calendar year next preceding the date of such assessments.

48 (b) If sufficient funds from such assessments, together  
49 with funds previously raised, are not available in any one year  
50 in the respective account to make all the payments or  
51 reimbursements then owing to insurers, the funds available shall  
52 be prorated and the unpaid portion ~~shall be~~ paid as soon  
53 ~~thereafter~~ as funds become available.

54 (c) The Legislature finds and declares that all assessments  
55 paid by an insurer or insurer group as a result of a levy by the  
56 office, including assessments levied pursuant to paragraph (a)  
57 and emergency assessments levied pursuant to paragraph (e),  
58 constitute advances of funds from the insurer to the  
59 association. An insurer may fully recoup such advances by  
60 applying the uniform assessment percentage levied by the office  
61 to all a separate recoupment factor to the premium of policies  
62 of the same kind or line as were considered by the office in  
63 determining the assessment liability of the insurer or insurer  
64 group as set forth in paragraph (f).

65 1. Assessments levied under subparagraph (f)1. are paid  
66 before policy surcharges are collected and result in a  
67 receivable for policy surcharges collected in the future. This  
68 amount, to the extent it is likely that it will be realized,



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69 meets the definition of an admissible asset as specified in the  
70 National Association of Insurance Commissioners' Statement of  
71 Statutory Accounting Principles No. 4. The asset shall be  
72 established and recorded separately from the liability  
73 regardless of whether it is based on a retrospective or  
74 prospective premium-based assessment. If an insurer is unable to  
75 fully recoup the amount of the assessment because of a reduction  
76 in writings or withdrawal from the market, the amount recorded  
77 as an asset shall be reduced to the amount reasonably expected  
78 to be recouped.

79 2. Assessments levied under subparagraph (f)2. are paid  
80 after policy surcharges are collected so that the recognition of  
81 assets is based on actual premium written offset by the  
82 obligation to the association.

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

85 (e)1.a. In addition to assessments ~~otherwise~~ authorized in  
86 paragraph (a), and to the extent necessary to secure the funds  
87 for the account specified in s. 631.55(2)(b) for the direct  
88 payment of covered claims of insurers rendered insolvent by the  
89 effects of a hurricane and to pay the reasonable costs to  
90 administer such claims, or to retire indebtedness, including,  
91 without limitation, the principal, redemption premium, if any,  
92 and interest on, and related costs of issuance of, bonds issued  
93 under s. 631.695 and the funding of any reserves and other  
94 payments required under the bond resolution or trust indenture  
95 pursuant to which such bonds have been issued, the office, upon  
96 certification of the board of directors, shall levy emergency  
97 assessments upon insurers holding a certificate of authority.



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98 The emergency assessments payable under this paragraph by any  
99 insurer may ~~shall~~ not exceed in any single year more than 2  
100 percent of that insurer's direct written premiums, net of  
101 refunds, in this state during the preceding calendar year for  
102 the kinds of insurance within the account specified in s.  
103 631.55(2) (b) .

104 ~~2.b. Any~~ Emergency assessments authorized under this  
105 paragraph shall be levied by the office upon insurers referred  
106 to in subparagraph 1. ~~sub-subparagraph a.~~, upon certification as  
107 to the need for such assessments by the board of directors. If  
108 ~~In the event~~ the board ~~of directors~~ participates in the issuance  
109 of bonds in accordance with s. 631.695, emergency assessments  
110 shall be levied in each year that bonds issued under s. 631.695  
111 and secured by such emergency assessments are outstanding, in  
112 ~~such~~ amounts up to such 2-percent limit as required in order to  
113 provide for the full and timely payment of the principal of,  
114 redemption premium, if any, and interest on, and related costs  
115 of issuance of, such bonds. The emergency assessments ~~provided~~  
116 ~~for in this paragraph~~ are assigned and pledged to the  
117 municipality, county, or legal entity issuing bonds under s.  
118 631.695 for the benefit of the holders of such bonds, in order  
119 ~~to enable such municipality, county, or legal entity~~ to provide  
120 for the payment of the principal of, redemption premium, if any,  
121 and interest on such bonds, the cost of issuance of such bonds,  
122 and the funding of any reserves and other payments required  
123 under the bond resolution or trust indenture pursuant to which  
124 such bonds have been issued, without ~~the necessity of any~~  
125 further action by the association, the office, or any other  
126 party. If ~~To the extent~~ bonds are issued under s. 631.695 and



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127 the association determines to secure such bonds by a pledge of  
128 revenues received from the emergency assessments, such bonds,  
129 upon such pledge of revenues, shall be secured by and payable  
130 from the proceeds of such emergency assessments, and the  
131 proceeds of emergency assessments levied under this paragraph  
132 shall be remitted directly to and administered by the trustee or  
133 custodian appointed for such bonds.

134 ~~3.e.~~ Emergency assessments used to defease bonds issued  
135 under this part paragraph may be payable in a single payment or,  
136 at the option of the association, may be payable in 12 monthly  
137 installments with the first installment being due and payable at  
138 the end of the month after an emergency assessment is levied and  
139 subsequent installments being due by ~~not later than~~ the end of  
140 each succeeding month.

141 ~~4.d.~~ If emergency assessments are imposed, the report  
142 required by s. 631.695(7) must ~~shall~~ include an analysis of the  
143 revenues generated from the emergency assessments imposed under  
144 this paragraph.

145 ~~5.e.~~ If emergency assessments are imposed, the references  
146 in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to  
147 assessments levied under paragraph (a) must ~~shall~~ include  
148 emergency assessments imposed under this paragraph.

149 ~~6.2.~~ If the board of directors participates in the issuance  
150 of bonds in accordance with s. 631.695, an annual assessment  
151 under this paragraph shall continue while the bonds issued with  
152 respect to which the assessment was imposed are outstanding,  
153 including any bonds the proceeds of which were used to refund  
154 bonds issued pursuant to s. 631.695, unless adequate provision  
155 has been made for the payment of the bonds in the documents



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156 authorizing the issuance of such bonds.

157 ~~7.3.~~ Emergency assessments under this paragraph are not  
158 premium and are not subject to the premium tax, to any fees, or  
159 to any commissions. An insurer is liable for all emergency  
160 assessments that the insurer collects and shall treat the  
161 failure of an insured to pay an emergency assessment as a  
162 failure to pay the premium. An insurer is not liable for  
163 uncollectible emergency assessments.

164 ~~(f) The recoupment factor applied to policies in accordance~~  
165 ~~with paragraph (c) shall be selected by the insurer or insurer~~  
166 ~~group so as to provide for the probable recoupment of both~~  
167 ~~assessments levied pursuant to paragraph (a) and emergency~~  
168 ~~assessments over a period of 12 months, unless the insurer or~~  
169 ~~insurer group, at its option, elects to recoup the assessment~~  
170 ~~over a longer period. The recoupment factor shall apply to all~~  
171 ~~policies of the same kind or line as were considered by the~~  
172 ~~office in determining the assessment liability of the insurer or~~  
173 ~~insurer group issued or renewed during a 12-month period. If the~~  
174 ~~insurer or insurer group does not collect the full amount of the~~  
175 ~~assessment during one 12-month period, the insurer or insurer~~  
176 ~~group may apply recalculated recoupment factors to policies~~  
177 ~~issued or renewed during one or more succeeding 12-month~~  
178 ~~periods. If, at the end of a 12-month period, the insurer or~~  
179 ~~insurer group has collected from the combined kinds or lines of~~  
180 ~~policies subject to assessment more than the total amount of the~~  
181 ~~assessment paid by the insurer or insurer group, the excess~~  
182 ~~amount shall be disbursed as follows:~~

183 1. The association, office, and insurers remitting  
184 assessments pursuant to paragraph (a) or (e) must comply with



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185 the following:

186 a. In the order levying an assessment, the office shall  
187 specify the actual percentage amount to be collected uniformly  
188 from all the policyholders of insurers subject to the assessment  
189 and the date on which the assessment year begins, which may not  
190 begin before 90 days after the association board certifies such  
191 an assessment.

192 b. Insurers shall make an initial payment to the  
193 association before the beginning of the assessment year, on or  
194 before the date specified in the order of the office.

195 c. Insurers that have written insurance in the calendar  
196 year before the year in which the assessment is certified by the  
197 board shall make an initial payment based on the net direct  
198 written premium amount from the prior calendar year as set forth  
199 in the insurers annual statement, multiplied by the uniform  
200 percentage of premium specified in the order issued by the  
201 office. Insurers that have not written insurance in the prior  
202 calendar year in any of the lines under the account which are  
203 being assessed, but which are writing insurance as of, or after,  
204 the date the board certifies the assessment to the office, shall  
205 pay an amount based on a good faith estimate of the amount of  
206 net direct written premium anticipated to be written in the  
207 subject lines of business for the assessment year, multiplied by  
208 the uniform percentage of premium specified in the order issued  
209 by the office.

210 d. Insurers shall file a reconciliation report with the  
211 association within 45 days after the end of the assessment year  
212 which indicates the amount of the initial payment to the  
213 association before the assessment year, whether such amount was





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214 based on net direct written premium contained in a prior  
215 calendar year annual statement or a good faith projection, the  
216 amount actually collected during the assessment year, and such  
217 other information contained on a form adopted by the association  
218 and provided to the insurers in advance. If the insurer  
219 collected from policyholders more than the amount initially  
220 paid, the insurer shall pay the excess amount to the  
221 association. If the insurer collected from policyholders an  
222 amount which is less than the amount initially paid to the  
223 association, the association shall credit the insurer that  
224 amount against future assessments. Such payment reconciliation  
225 report, and any payment of excess amounts collected from  
226 policyholders, shall be completed and remitted to the  
227 association within 90 days after the end of the assessment year.  
228 The association shall send a final reconciliation report on all  
229 insurers to the office within 120 days after each assessment  
230 year.

231 e. Insurers remitting reconciliation reports under this  
232 paragraph to the association are subject to s. 626.9541(1)(e).

233 f. Assessments levied under this subsection are levied upon  
234 insurers. This subsection does not create a cause of action by a  
235 policyholder with respect to the levying of, or a policyholder's  
236 duty to pay, such assessments. ~~If the excess amount does not~~  
237 ~~exceed 15 percent of the total assessment paid by the insurer or~~  
238 ~~insurer group, the excess amount shall be remitted to the~~  
239 ~~association within 60 days after the end of the 12-month period~~  
240 ~~in which the excess recoupment charges were collected.~~

241 2. The association may use a monthly installment method  
242 instead of the method described in sub-subparagraphs (f)1.b and



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243 c. or in combination thereof based on the association's  
244 projected cash flow. If the association projects that it has  
245 cash on hand for the payment of anticipated claims in the  
246 applicable account for at least 6 months, the board may make an  
247 estimate of the assessment needed and may recommend to the  
248 office the assessment percentage that may be collected as a  
249 monthly assessment. The office may, in the order levying the  
250 assessment on insurers, specify that the assessment is due and  
251 payable monthly as the funds are collected from insureds  
252 throughout the assessment year, in which case the assessment  
253 shall be a uniform percentage of premium collected during the  
254 assessment year and shall be collected from all policyholders  
255 with policies in the classes protected by the account. All  
256 insurers shall collect the assessment without regard to whether  
257 the insurers reported premium in the year preceding the  
258 assessment. Insurers are not required to advance funds if the  
259 association and the office elect to use the monthly installment  
260 option. All funds collected shall be retained by the association  
261 for the payment of current or future claims. ~~If the excess~~  
262 ~~amount exceeds 15 percent of the total assessment paid by the~~  
263 ~~insurer or insurer group, the excess amount shall be returned to~~  
264 ~~the insurer's or insurer group's current policyholders by~~  
265 ~~refunds or premium credits. The association shall use any~~  
266 ~~remitted excess recoupment amounts to reduce future assessments.~~

267 (g) Amounts recouped pursuant to this subsection for  
268 assessments levied under paragraph (a) due to insolvencies on or  
269 after July 1, 2010, are considered premium solely for premium  
270 tax purposes and are not subject to fees or commissions.  
271 However, insurers shall treat the failure of an insured to pay a



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272 recoupment charge as a failure to pay the premium.

273 ~~(h) At least 15 days before applying the recoupment factor~~  
274 ~~to any policies, the insurer or insurer group shall file with~~  
275 ~~the office a statement for informational purposes only setting~~  
276 ~~forth the amount of the recoupment factor and an explanation of~~  
277 ~~how the recoupment factor will be applied. Such statement shall~~  
278 ~~include documentation of the assessment paid by the insurer or~~  
279 ~~insurer group and the arithmetic calculations supporting the~~  
280 ~~recoupment factor. The insurer or insurer group may use the~~  
281 ~~recoupment factor at any time after the expiration of the 15-day~~  
282 ~~period. The insurer or insurer group need submit only one~~  
283 ~~informational statement for all lines of business using the same~~  
284 ~~recoupment factor.~~

285 (h)-(i) Within ~~No later than~~ 90 days after the insurer or  
286 insurer group has completed the recoupment process, the insurer  
287 or insurer group shall file with the office, for information  
288 purposes only, a final accounting report documenting the  
289 recoupment. The report must ~~shall~~ provide the amounts of  
290 assessments paid by the insurer or insurer group, the amounts  
291 and percentages recouped by year from each affected line of  
292 business, and the direct written premium subject to recoupment  
293 by year. The insurer or insurer group need submit only one  
294 report for all lines of business using the same recoupment  
295 factor.

296 Section 3. Section 631.64, Florida Statutes, is amended to  
297 read:

298 631.64 Recognition of assessments in rates.—The rates and  
299 premiums charged for insurance policies to which this part  
300 applies may include separate amounts sufficient to recoup a sum



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301 equal to the amounts paid or payable to the association by the  
302 member insurer less any amounts returned to the member insurer  
303 by the association, and such rates may ~~shall~~ not be deemed  
304 excessive because they contain an amount reasonably calculated  
305 to recoup assessments paid by the member insurer. Charges or  
306 recoupments shall be separately displayed on premium bills to  
307 enable policyholders to determine the amount charged for  
308 association assessments, and may not be included in rates filed  
309 and approved by the office.

310 Section 4. Subsection (5) of section 627.727, Florida  
311 Statutes, is amended to read:

312 627.727 Motor vehicle insurance; uninsured and underinsured  
313 vehicle coverage; insolvent insurer protection.-

314 (5) Any person having a claim against an insolvent insurer  
315 as defined in s. 631.54(6) under ~~the provisions of~~ this section  
316 shall present such claim for payment to the Florida Insurance  
317 Guaranty Association only. In the event of a payment to a any  
318 person in settlement of a claim arising under ~~the provisions of~~  
319 this section, the association is not subrogated or entitled to  
320 ~~any~~ recovery against the claimant's insurer. The association,  
321 however, has the rights of recovery as set forth in chapter 631  
322 in the proceeds recoverable from the assets of the insolvent  
323 insurer.

324 Section 5. Subsection (1) of section 631.55, Florida  
325 Statutes, is amended to read:

326 631.55 Creation of the association.-

327 (1) There is created a nonprofit corporation to be known as  
328 the "Florida Insurance Guaranty Association, Incorporated." All  
329 insurers defined as member insurers in s. 631.54(7) shall be



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330 members of the association as a condition of their authority to  
331 transact insurance in this state, and, further, as a condition  
332 of such authority, an insurer must ~~shall~~ agree to reimburse the  
333 association for all claim payments the association makes on the  
334 ~~said~~ insurer's behalf if such insurer is subsequently  
335 rehabilitated. The association shall perform its functions under  
336 a plan of operation established and approved under s. 631.58 and  
337 shall exercise its powers through a board of directors  
338 established under s. 631.56. The corporation shall have all  
339 those powers granted or permitted nonprofit corporations, as  
340 provided in chapter 617.

341 Section 6. This act shall take effect July 1, 2014.

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343  
344 ===== T I T L E A M E N D M E N T =====

345 And the title is amended as follows:

346 Delete everything before the enacting clause  
347 and insert:

348 A bill to be entitled  
349 An act relating to the Florida Insurance Guaranty  
350 Association; amending s. 631.54, F.S.; defining the  
351 term "assessment year"; amending s. 631.57, F.S.;  
352 revising provisions relating to the levying of  
353 assessments on insurers; specifying the conditions  
354 under which such assessments are paid; revising  
355 procedures and timeframes for levying the assessments;  
356 amending s. 631.64, F.S.; requiring charges or  
357 recoupments to be displayed separately on premium  
358 bills to policyholders and prohibiting their inclusion



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in rates; amending ss. 627.727 and 631.55, F.S.;  
conforming cross-references; providing an effective  
date.