

By Senator Lee

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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 reordered and 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

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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.

51 1. The office shall issue an order specifying the date that
52 the board requires such insurers to begin collecting the
53 assessment, which must be at least 90 days after the date that
54 the board certifies the assessment.

55 2. The order must specify a uniform percentage of the
56 direct written premium for all lines of business in the
57 applicable accounts, which may not exceed 2 percent of the
58 premium in any one year. Such percentage shall be determined by

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59 the board and verified by the office.

60 3. The insurers shall collect such assessments without
61 being affected by any credit, limitation, exemption, or
62 deferment.

63 4. Assessments collected by insurers shall be transferred
64 regularly to the association as set forth in the order levying
65 the assessment in the proportion that each insurer's net direct
66 written premiums in this state in the classes protected by the
67 account bears to the total of said net direct written premiums
68 received in this state by all such insurers for the preceding
69 calendar year for the kinds of insurance included within such
70 account. Assessments shall be remitted to and administered by
71 the board of directors in the manner specified by the approved
72 plan. Each insurer so assessed shall have at least 30 days'
73 written notice as to the date the assessment is due and payable.
74 Every assessment shall be made as a uniform percentage
75 applicable to the net direct written premiums of each insurer in
76 the kinds of insurance included within the account in which the
77 assessment is made. The assessments levied against any insurer
78 shall not exceed in any one year more than 2 percent of that
79 insurer's net direct written premiums in this state for the
80 kinds of insurance included within such account during the
81 calendar year next preceding the date of such assessments.

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

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

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

100 ~~(b)(e)1.a.~~ In addition to regular assessments ~~otherwise~~
101 ~~authorized under in~~ paragraph (a), and to the extent necessary
102 to secure ~~the~~ funds for the account specified in s. 631.55(2)(b)
103 for the direct payment of covered claims of insurers rendered
104 insolvent by the effects of a hurricane and to pay the
105 reasonable costs to administer such claims, or to retire
106 indebtedness, including, without limitation, the principal,
107 redemption premium, if any, and interest on, and related costs
108 of issuance of, bonds issued under s. 631.695 and the funding of
109 any reserves and other payments required under the bond
110 resolution or trust indenture pursuant to which such bonds have
111 been issued, the office, ~~upon certification of the board of~~
112 ~~directors,~~ shall levy emergency assessments directly upon
113 policyholders, which shall be collected by insurers holding a
114 certificate of authority.

115 1. The office shall issue an order specifying the date on
116 which the board will require such insurers to begin collecting

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117 the assessment, which must be at least 90 days after the date on
118 which the board certifies the assessment. The order must specify
119 a uniform percentage of the direct written premium for all lines
120 of business in the applicable accounts, which may not exceed 2
121 percent of the premium in any one year. Such percentage shall be
122 determined by the board and verified by the office. The insurers
123 shall collect such assessments without being affected by any
124 credit, limitation, exemption, or deferment. Assessments
125 collected shall be transferred regularly to the association as
126 specified in the order levying the assessment ~~The emergency~~
127 ~~assessments payable under this paragraph by any insurer shall~~
128 ~~not exceed in any single year more than 2 percent of that~~
129 ~~insurer's direct written premiums, net of refunds, in this state~~
130 ~~during the preceding calendar year for the kinds of insurance~~
131 ~~within the account specified in s. 631.55(2)(b).~~

132 ~~2.b. Any~~ Emergency assessments ~~authorized under this~~
133 ~~paragraph~~ shall be levied by the office only upon insurers
134 ~~referred to in sub-subparagraph a.7,~~ upon certification as to the
135 need for such assessments by the board of directors. If ~~In the~~
136 ~~event~~ the board ~~of directors~~ participates in the issuance of
137 bonds in accordance with s. 631.695, emergency assessments shall
138 be levied in each year that bonds issued under s. 631.695 and
139 secured by such emergency assessments are outstanding~~7~~ in ~~such~~
140 amounts up to such 2-percent limit as required in order to
141 provide for the full and timely payment of the principal of,
142 redemption premium, if any, and interest on, and related costs
143 of issuance of, such bonds. The emergency assessments ~~provided~~
144 ~~for in this paragraph~~ are assigned and pledged to the
145 municipality, county, or legal entity issuing bonds under s.

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146 631.695 for the benefit of the holders of such bonds, ~~in order~~
147 ~~to enable such municipality, county, or legal entity~~ to provide
148 for the payment of the principal of, redemption premium, if any,
149 and interest on such bonds, the cost of issuance of such bonds,
150 and the funding of any reserves and other payments required
151 under the bond resolution or trust indenture pursuant to which
152 such bonds have been issued, without ~~the necessity of any~~
153 further action by the association, the office, or any other
154 party. If ~~To the extent~~ bonds are issued under s. 631.695 and
155 the association secures ~~determines to secure~~ such bonds by a
156 pledge of revenues received from the emergency assessments, ~~such~~
157 ~~bonds, upon such pledge of revenues, shall be secured by and~~
158 ~~payable from the proceeds of such emergency assessments, and the~~
159 proceeds of emergency assessments levied under this paragraph
160 shall be remitted directly to and administered by the trustee or
161 custodian appointed for the payment of such bonds.

162 ~~e. Emergency assessments under this paragraph may be~~
163 ~~payable in a single payment or, at the option of the~~
164 ~~association, may be payable in 12 monthly installments with the~~
165 ~~first installment being due and payable at the end of the month~~
166 ~~after an emergency assessment is levied and subsequent~~
167 ~~installments being due not later than the end of each succeeding~~
168 ~~month.~~

169 3.d. If emergency assessments are imposed, the report
170 required under ~~by~~ s. 631.695(7) must ~~shall~~ include an analysis
171 of the revenues generated from the emergency assessments imposed
172 under this paragraph.

173 4.e. If emergency assessments are imposed, the references
174 in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to

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175 regular assessments levied under paragraph (a) must ~~shall~~
176 include emergency assessments imposed under this paragraph.

177 ~~5.2.~~ If the board of directors participates in the issuance
178 of bonds in accordance with s. 631.695, an emergency ~~annual~~
179 assessment under this paragraph must ~~shall~~ continue while the
180 bonds issued with respect to which the assessment was imposed
181 are outstanding, including any bonds the proceeds of which were
182 used to refund bonds issued pursuant to s. 631.695, unless
183 adequate provision has been made for the payment of the bonds in
184 the documents authorizing the issuance of such bonds.

185 ~~(c)3.~~ Emergency Assessments under this subsection ~~paragraph~~
186 are not premium and are not subject to the premium tax, to any
187 fees, or to any commissions. An insurer is liable for all
188 ~~emergency~~ assessments that the insurer collects and shall treat
189 the failure of an insured to pay an ~~emergency~~ assessment as a
190 failure to pay the premium. An insurer is not liable for
191 uncollectible ~~emergency~~ assessments.

192 ~~(d)(f)~~ The recoupment factor applied to policies in
193 accordance with paragraph (a) or paragraph (b) ~~(e)~~ shall be
194 selected by the board and verified by the office ~~insurer or~~
195 ~~insurer group so as to provide for the probable recoupment of~~
196 ~~both assessments levied pursuant to paragraph (a) and emergency~~
197 ~~assessments over a period of 12 months, unless the insurer or~~
198 ~~insurer group, at its option, elects to recoup the assessment~~
199 ~~over a longer period.~~ The recoupment factor applies ~~shall apply~~
200 to all policies of the same kind or line as were considered by
201 the office in determining the assessment liability ~~of the~~
202 ~~insurer or insurer group issued or renewed during a 12-month~~
203 ~~period.~~

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204 1. If the recoupment factor ~~insurer or insurer group~~ does
205 not collect the full amount needed ~~of the assessment~~ during one
206 12-month period, the board ~~insurer or insurer group~~ may apply
207 recalculated recoupment factors to policies issued or renewed
208 during one or more succeeding 12-month periods.

209 2. If, at the end of a 12-month period, the association
210 ~~insurer or insurer group~~ has collected from the combined kinds
211 or lines of policies subject to assessment more than the total
212 amount of the assessment needed, ~~paid by the insurer or insurer~~
213 ~~group, the excess amount shall be disbursed as follows:~~

214 1. ~~If the excess amount does not exceed 15 percent of the~~
215 ~~total assessment paid by the insurer or insurer group, the~~
216 ~~excess amount shall be remitted to the association within 60~~
217 ~~days after the end of the 12-month period in which the excess~~
218 ~~recoupment charges were collected.~~

219 2. ~~If the excess amount exceeds 15 percent of the total~~
220 ~~assessment paid by the insurer or insurer group, the excess~~
221 ~~amount shall be returned to the insurer's or insurer group's~~
222 ~~current policyholders by refunds or premium credits. the~~
223 ~~association shall use any remitted excess recoupment amounts to~~
224 ~~reduce future assessments.~~

225 ~~(g) Amounts recouped pursuant to this subsection for~~
226 ~~assessments levied under paragraph (a) due to insolvencies on or~~
227 ~~after July 1, 2010, are considered premium solely for premium~~
228 ~~tax purposes and are not subject to fees or commissions.~~
229 ~~However, insurers shall treat the failure of an insured to pay a~~
230 ~~recoupment charge as a failure to pay the premium.~~

231 ~~(h) At least 15 days before applying the recoupment factor~~
232 ~~to any policies, the insurer or insurer group shall file with~~

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233 ~~the office a statement for informational purposes only setting~~
234 ~~forth the amount of the recoupment factor and an explanation of~~
235 ~~how the recoupment factor will be applied. Such statement shall~~
236 ~~include documentation of the assessment paid by the insurer or~~
237 ~~insurer group and the arithmetic calculations supporting the~~
238 ~~recoupment factor. The insurer or insurer group may use the~~
239 ~~recoupment factor at any time after the expiration of the 15-day~~
240 ~~period. The insurer or insurer group need submit only one~~
241 ~~informational statement for all lines of business using the same~~
242 ~~recoupment factor.~~

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

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