

By the Committee on Banking and Insurance; and Senator Brandes

597-03441-13

2013324c1

1 A bill to be entitled

2 An act relating to the Florida Insurance Guaranty
3 Association; reordering and amending s. 631.57, F.S.;
4 revising the duties of the association; authorizing
5 the association to collect regular assessments
6 directly from policyholders; authorizing the
7 association to collect emergency assessments from
8 insurers under certain circumstances; making technical
9 and grammatical corrections; providing an effective
10 date.

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

13
14 Section 1. Subsection (2) of section 631.57, Florida
15 Statutes, is amended, and subsection (3) of that section is
16 reordered and amended, to read:

17 631.57 Powers and duties of the association.—

18 (2) The association may:

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

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

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

29 (d) Negotiate and become a party to such contracts as are

597-03441-13

2013324c1

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

39 (3) (a) To the extent necessary to secure ~~the~~ funds for the
40 respective accounts paying for ~~the payment of~~ covered claims, to
41 pay the reasonable costs to administer such accounts ~~the same,~~
42 and ~~to the extent necessary~~ to secure ~~the~~ funds for the account
43 specified in s. 631.55(2)(b) or to retire indebtedness,
44 including, without limitation, the principal, redemption
45 premium, if any, and interest on, and related costs of issuance
46 of, bonds issued under s. 631.695 and the funding of any
47 reserves and other payments required under the bond resolution
48 or trust indenture pursuant to which such bonds have been
49 issued, the office, upon certification of the board of
50 directors, shall levy regular assessments in the proportion that
51 each insurer's net direct written premiums in this state in the
52 classes protected by the account bears to the total of the said
53 net direct written premiums received in this state by all such
54 insurers for the preceding calendar year for the kinds of
55 insurance included within such account. Regular assessments
56 shall be remitted to and administered by the board of directors
57 in the manner specified by the approved plan. Each insurer so
58 assessed has ~~shall have~~ at least 30 days' written notice as to

597-03441-13

2013324c1

59 the date the assessment is due and payable. ~~Every assessment~~
60 ~~shall be made as a uniform percentage applicable to the net~~
61 ~~direct written premiums of each insurer in the kinds of~~
62 ~~insurance included within the account in which the assessment is~~
63 ~~made.~~ The regular assessments levied against an any insurer may
64 shall not exceed in any one year exceed more than 2 percent of
65 that insurer's net direct written premiums in this state for the
66 kinds of insurance included within such account during the
67 calendar year next preceding the date of such assessments. The
68 Legislature finds and declares that regular assessments paid by
69 an insurer or insurer group as a result of a levy by the office
70 constitute advances of funds from the insurer to the
71 association. An insurer may fully recoup regular assessments
72 levied against prior year premiums by applying a separate
73 recoupment factor to the premium of policies of the same kind or
74 line as were considered by the office in determining the
75 assessment liability of the insurer or insurer group.

76 (b) In lieu of collecting the regular assessment under
77 paragraph (a) from insurers, the association may collect all or
78 part of the assessment directly from policyholders. If the
79 association elects to collect the assessment directly from
80 policyholders, the office shall issue an order specifying the
81 date the board requires the insurers to begin collecting the
82 assessment, which must be at least 90 days after the date the
83 office levies the assessment. The order must specify a uniform
84 percentage determined by the board, and verified by the office,
85 of the direct written premium for all lines of business in the
86 applicable accounts. The assessment certified in any one
87 calendar year may not exceed 2 percent of the premium. The

597-03441-13

2013324c1

88 insurers shall collect such assessments without being affected
89 by any credit, limitation, exemption, or deferment. Assessments
90 collected under this paragraph shall be transferred regularly to
91 the association as set forth in the order levying the
92 assessment.

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

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

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

111 (c) ~~(e)~~ 1.a. In addition to regular assessments ~~otherwise~~
112 authorized under ~~in~~ paragraph (a), and to the extent necessary
113 to secure ~~the~~ funds for the account specified in s. 631.55(2)(b)
114 for the direct payment of covered claims of insurers rendered
115 insolvent by the effects of a hurricane and to pay the
116 reasonable costs to administer such claims, or to retire

597-03441-13

2013324c1

117 indebtedness, including, without limitation, the principal,
118 redemption premium, if any, and interest on, and related costs
119 of issuance of, bonds issued under s. 631.695 and the funding of
120 any reserves and other payments required under the bond
121 resolution or trust indenture pursuant to which such bonds have
122 been issued, the office, upon certification of the board of
123 directors, shall levy emergency assessments directly upon
124 policyholders, which shall be collected by insurers holding a
125 certificate of authority. Pursuant to such levy, the office
126 shall issue an order specifying the date the board requires the
127 insurers to begin collecting the assessment, which must be at
128 least 90 days after the date the office levies the assessment.
129 The order must specify a uniform percentage determined by the
130 board, and verified by the office, of the direct written premium
131 for all lines of business in the applicable accounts. The
132 assessment certified in any one calendar year collected may not
133 exceed 2 percent of the premium. The insurers shall collect such
134 assessments without being affected by any credit, limitation,
135 exemption, or deferment. Assessments collected by insurers under
136 this paragraph shall be transferred regularly to the association
137 as set forth in the order levying the assessment.

138 1. If, after consultation with its financial advisor, the
139 board determines that it must immediately begin paying the
140 covered claims of one or more insolvent insurers and financing
141 is not reasonably available, it may certify the emergency
142 assessment on insurers in the same manner as set forth in
143 paragraph (a), except that an emergency assessment may be paid
144 by the insurer in a single payment or, at the option of the
145 association, in 12 monthly installments with the first

597-03441-13

2013324c1

146 installment being due and payable at the end of the month after
147 the emergency assessment is levied and subsequent installments
148 being due by the end of each succeeding month. ~~The emergency~~
149 assessments payable under this paragraph by any insurer shall
150 not exceed in any single year more than 2 percent of that
151 insurer's direct written premiums, net of refunds, in this state
152 during the preceding calendar year for the kinds of insurance
153 within the account specified in s. 631.55(2)(b).

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

597-03441-13

2013324c1

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

185 ~~e. Emergency assessments under this paragraph may be~~
186 ~~payable in a single payment or, at the option of the~~
187 ~~association, may be payable in 12 monthly installments with the~~
188 ~~first installment being due and payable at the end of the month~~
189 ~~after an emergency assessment is levied and subsequent~~
190 ~~installments being due not later than the end of each succeeding~~
191 ~~month.~~

192 ~~3.d.~~ If emergency assessments are imposed, the report
193 required by s. 631.695(7) must ~~shall~~ include an analysis of the
194 revenues generated from the emergency assessments imposed under
195 this paragraph.

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

200 ~~5.2.~~ If the board of directors participates in the issuance
201 of bonds in accordance with s. 631.695, an emergency ~~annual~~
202 assessment under this paragraph must ~~shall~~ continue while the
203 bonds issued with respect to which the assessment was imposed

597-03441-13

2013324c1

204 are outstanding, including any bonds the proceeds of which were
205 used to refund bonds issued pursuant to s. 631.695, unless
206 adequate provision has been made for the payment of the bonds in
207 the documents authorizing the issuance of such bonds.

208 ~~6.3.~~ Emergency assessments under this paragraph are not
209 premium and are not subject to the premium tax, to any fees, or
210 to any commissions. An insurer is liable for all emergency
211 assessments that the insurer collects and shall treat the
212 failure of an insured to pay an emergency assessment as a
213 failure to pay the premium. An insurer is not liable for
214 uncollectible emergency assessments.

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

226 1. If the insurer or insurer group does not collect the
227 full amount of the assessment during one 12-month period, the
228 insurer or insurer group may apply recalculated recoupment
229 factors to policies issued or renewed during one or more
230 succeeding 12-month periods.

231 2. If, at the end of a 12-month period, the insurer or
232 insurer group has collected from the combined kinds or lines of

597-03441-13

2013324c1

233 policies subject to assessment more than the total amount of the
234 assessment paid by the insurer or insurer group, the excess
235 amount shall be disbursed as follows:

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

241 b.2- If the excess amount exceeds 15 percent of the total
242 assessment paid by the insurer or insurer group, the excess
243 amount shall be returned to the insurer's or insurer group's
244 current policyholders by refunds or premium credits. The
245 association shall use any remitted excess recoupment amounts to
246 reduce future assessments.

247 3.(g) Amounts recouped pursuant to this paragraph
248 ~~subsection~~ for assessments levied under paragraph (a) due to
249 insolvencies on or after July 1, 2010, are considered premium
250 solely for premium tax purposes and are not subject to fees or
251 commissions. However, insurers shall treat the failure of an
252 insured to pay a recoupment charge as a failure to pay the
253 premium.

254 4.(h) At least 15 days before applying the recoupment
255 factor to any policies, the insurer or insurer group shall file
256 with the office a statement for informational purposes only
257 setting forth the amount of the recoupment factor and an
258 explanation of how the recoupment factor will be applied. Such
259 statement must ~~shall~~ include documentation of the assessment
260 paid by the insurer or insurer group and the arithmetic
261 calculations supporting the recoupment factor. The insurer or

597-03441-13

2013324c1

262 insurer group may use the recoupment factor at any time after
263 the expiration of the 15-day period. The insurer or insurer
264 group need submit only one informational statement for all lines
265 of business using the same recoupment factor.

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

277 Section 2. This act shall take effect July 1, 2013, and
278 shall apply to any assessment certified and levied after that
279 date regardless of when the insolvency or insolvencies occurred.