

Amendment No. 2

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 WITHDRAWN _____ (Y/N)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 Raburn offered the following:

Amendment (with title amendment)

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

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18 Section 2. Subsections (3) and (4) of section 631.57,
19 Florida Statutes, are amended to read:

20 631.57 Powers and duties of the association.—

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

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44 the kinds of insurance included within the account in which the
45 assessment is made. The assessments levied against any insurer
46 ~~may shall~~ not exceed in any one year more than 2 percent of that
47 insurer's net direct written premiums in this state for the
48 kinds of insurance included within such account during the
49 calendar year next preceding the date of such assessments.

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

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

67 1. Assessments levied under subparagraph (f)1. are paid
68 before policy surcharges are collected and result in a
69 receivable for policy surcharges collected in the future. This

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

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

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

87 (e)1.a. In addition to assessments ~~otherwise~~ authorized in
88 paragraph (a), and to the extent necessary to secure the funds
89 for the account specified in s. 631.55(2)(b) for the direct
90 payment of covered claims of insurers rendered insolvent by the
91 effects of a hurricane and to pay the reasonable costs to
92 administer such claims, or to retire indebtedness, including,
93 without limitation, the principal, redemption premium, if any,
94 and interest on, and related costs of issuance of, bonds issued
95 under s. 631.695 and the funding of any reserves and other

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96 payments required under the bond resolution or trust indenture
97 pursuant to which such bonds have been issued, the office, upon
98 certification of the board of directors, shall levy emergency
99 assessments upon insurers holding a certificate of authority.
100 The emergency assessments payable under this paragraph by any
101 insurer may ~~shall~~ not exceed in any single year more than 2
102 percent of that insurer's direct written premiums, net of
103 refunds, in this state during the preceding calendar year for
104 the kinds of insurance within the account specified in s.
105 631.55(2) (b).

106 ~~2.b.~~ Any Emergency assessments authorized under this
107 paragraph shall be levied by the office upon insurers referred
108 to in subparagraph 1. ~~sub-subparagraph a.~~, upon certification as
109 to the need for such assessments by the board of directors. If
110 ~~In the event~~ the board ~~of directors~~ participates in the issuance
111 of bonds in accordance with s. 631.695, emergency assessments
112 shall be levied in each year that bonds issued under s. 631.695
113 and secured by such emergency assessments are outstanding, in
114 ~~such~~ amounts up to such 2-percent limit as required in order to
115 provide for the full and timely payment of the principal of,
116 redemption premium, if any, and interest on, and related costs
117 of issuance of, such bonds. The emergency assessments ~~provided~~
118 ~~for in this paragraph~~ are assigned and pledged to the
119 municipality, county, or legal entity issuing bonds under s.
120 631.695 for the benefit of the holders of such bonds, in order
121 ~~to enable such municipality, county, or legal entity to provide~~

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122 for the payment of the principal of, redemption premium, if any,
123 and interest on such bonds, the cost of issuance of such bonds,
124 and the funding of any reserves and other payments required
125 under the bond resolution or trust indenture pursuant to which
126 such bonds have been issued, without ~~the necessity of any~~
127 further action by the association, the office, or any other
128 party. If ~~To the extent~~ bonds are issued under s. 631.695 and
129 the association determines to secure such bonds by a pledge of
130 revenues received from the emergency assessments, such bonds,
131 upon such pledge of revenues, shall be secured by and payable
132 from the proceeds of such emergency assessments, and the
133 proceeds of emergency assessments levied under this paragraph
134 shall be remitted directly to and administered by the trustee or
135 custodian appointed for such bonds.

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

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

147 ~~5.e.~~ If emergency assessments are imposed, the references

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148 in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to
149 assessments levied under paragraph (a) must ~~shall~~ include
150 emergency assessments imposed under this paragraph.

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

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

166 (f) ~~The recoupment factor applied to policies in~~
167 ~~accordance with paragraph (c) shall be selected by the insurer~~
168 ~~or insurer group so as to provide for the probable recoupment of~~
169 ~~both assessments levied pursuant to paragraph (a) and emergency~~
170 ~~assessments over a period of 12 months, unless the insurer or~~
171 ~~insurer group, at its option, elects to recoup the assessment~~
172 ~~over a longer period. The recoupment factor shall apply to all~~
173 ~~policies of the same kind or line as were considered by the~~

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174 ~~office in determining the assessment liability of the insurer or~~
175 ~~insurer group issued or renewed during a 12-month period. If the~~
176 ~~insurer or insurer group does not collect the full amount of the~~
177 ~~assessment during one 12-month period, the insurer or insurer~~
178 ~~group may apply recalculated recoupment factors to policies~~
179 ~~issued or renewed during one or more succeeding 12-month~~
180 ~~periods. If, at the end of a 12-month period, the insurer or~~
181 ~~insurer group has collected from the combined kinds or lines of~~
182 ~~policies subject to assessment more than the total amount of the~~
183 ~~assessment paid by the insurer or insurer group, the excess~~
184 ~~amount shall be disbursed as follows:~~

185 1. The association, office, and insurers remitting
186 assessments pursuant to paragraph (a) or (e) must comply with
187 the following:

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

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

197 c. Insurers that have written insurance in the calendar
198 year before the year in which the assessment is certified by the
199 board shall make an initial payment based on the net direct

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

212 d. Insurers shall file a reconciliation report with the
213 association within 45 days after the end of the assessment year
214 which indicates the amount of the initial payment to the
215 association before the assessment year, whether such amount was
216 based on net direct written premium contained in a prior
217 calendar year annual statement or a good faith projection, the
218 amount actually collected during the assessment year, and such
219 other information contained on a form adopted by the association
220 and provided to the insurers in advance. If the insurer
221 collected from policyholders more than the amount initially
222 paid, the insurer shall pay the excess amount to the
223 association. If the insurer collected from policyholders an
224 amount which is less than the amount initially paid to the
225 association, the association shall credit the insurer that

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226 amount against future assessments. Such payment reconciliation
227 report, and any payment of excess amounts collected from
228 policyholders, shall be completed and remitted to the
229 association within 90 days after the end of the assessment year.
230 The association shall send a final reconciliation report on all
231 insurers to the office within 120 days after each assessment
232 year.

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

235 ~~f. Assessments levied under this subsection are levied~~
236 ~~upon insurers. This subsection does not create a cause of action~~
237 ~~by a policyholder with respect to the levying of, or a~~
238 ~~policyholder's duty to pay, such assessments. If the excess~~
239 ~~amount does not exceed 15 percent of the total assessment paid~~
240 ~~by the insurer or insurer group, the excess amount shall be~~
241 ~~remitted to the association within 60 days after the end of the~~
242 ~~12-month period in which the excess recoupment charges were~~
243 ~~collected.~~

244 2. The association may use a monthly installment method
245 instead of the method described in sub-subparagraphs (f)1.b and
246 c. or in combination thereof based on the association's
247 projected cash flow. If the association projects that it has
248 cash on hand for the payment of anticipated claims in the
249 applicable account for at least 6 months, the board may make an
250 estimate of the assessment needed and may recommend to the
251 office the assessment percentage that may be collected as a

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252 monthly assessment. The office may, in the order levying the
253 assessment on insurers, specify that the assessment is due and
254 payable monthly as the funds are collected from insureds
255 throughout the assessment year, in which case the assessment
256 shall be a uniform percentage of premium collected during the
257 assessment year and shall be collected from all policyholders
258 with policies in the classes protected by the account. All
259 insurers shall collect the assessment without regard to whether
260 the insurers reported premium in the year preceding the
261 assessment. Insurers are not required to advance funds if the
262 association and the office elect to use the monthly installment
263 option. All funds collected shall be retained by the association
264 for the payment of current or future claims. Nothing herein
265 shall change the obligation of an insurer to remit assessments
266 levied pursuant to this subsection the association. ~~If the~~
267 ~~excess amount exceeds 15 percent of the total assessment paid by~~
268 ~~the insurer or insurer group, the excess amount shall be~~
269 ~~returned to the insurer's or insurer group's current~~
270 ~~policyholders by refunds or premium credits. The association~~
271 ~~shall use any remitted excess recoupment amounts to reduce~~
272 ~~future assessments.~~

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

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278 recoupment charge as a failure to pay the premium.

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

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

302 (i) Assessments levied under this subsection are levied
303 upon insurers. This subsection does not create a cause of

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304 action by a policyholder with respect to the levying of, or a
305 policyholder's duty to pay, such assessments.

306 (4) The office ~~department~~ may exempt or temporarily defer
307 any insurer from any regular or emergency assessment if the
308 office finds that the insurer is impaired or insolvent or if an
309 assessment would result in such insurer's financial statement
310 reflecting an amount of capital or surplus less than the sum of
311 the minimum amount required by any jurisdiction in which the
312 insurer is authorized to transact insurance.

313 Section 3. Section 631.64, Florida Statutes, is amended to
314 read:

315 631.64 Recognition of assessments ~~in rates. The rates and~~
316 ~~premiums charged for insurance policies to which this part~~
317 ~~applies may include amounts sufficient to recoup a sum equal to~~
318 ~~the amounts paid to the association by the member insurer less~~
319 ~~any amounts returned to the member insurer by the association,~~
320 ~~and such rates shall not be deemed excessive because they~~
321 ~~contain an amount reasonably calculated to recoup assessments~~
322 ~~paid by the member insurer. Charges or recoupments shall be~~
323 separately displayed on premium bills to enable policyholders to
324 determine the amount charged for association assessments, and
325 may not be included in rates filed and approved by the office.

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

328 627.727 Motor vehicle insurance; uninsured and
329 underinsured vehicle coverage; insolvent insurer protection.-

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330 (5) Any person having a claim against an insolvent insurer
331 as defined in s. 631.54(6) under ~~the provisions of~~ this section
332 shall present such claim for payment to the Florida Insurance
333 Guaranty Association only. In the event of a payment to a ~~any~~
334 person in settlement of a claim arising under ~~the provisions of~~
335 this section, the association is not subrogated or entitled to
336 ~~any~~ recovery against the claimant's insurer. The association,
337 however, has the rights of recovery as set forth in chapter 631
338 in the proceeds recoverable from the assets of the insolvent
339 insurer.

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

342 631.55 Creation of the association.—

343 (1) There is created a nonprofit corporation to be known
344 as the "Florida Insurance Guaranty Association, Incorporated."
345 All insurers defined as member insurers in s. 631.54(7) shall be
346 members of the association as a condition of their authority to
347 transact insurance in this state, and, further, as a condition
348 of such authority, an insurer must ~~shall~~ agree to reimburse the
349 association for all claim payments the association makes on the
350 ~~said~~ insurer's behalf if such insurer is subsequently
351 rehabilitated. The association shall perform its functions under
352 a plan of operation established and approved under s. 631.58 and
353 shall exercise its powers through a board of directors
354 established under s. 631.56. The corporation shall have all
355 those powers granted or permitted nonprofit corporations, as

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356 provided in chapter 617.

357 Section 6. 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

362

Remove everything before the enacting clause and insert:

363

A bill to be entitled

364

An act relating to the Florida Insurance Guaranty Association;

365

amending s. 631.54, F.S.; defining the term "assessment year";

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amending s. 631.57, F.S.; revising provisions relating to the

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levying of assessments on insurers; specifying the conditions

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under which such assessments are paid; revising procedures and

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timeframes for levying the assessments; revising an exemption

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for assessments; amending s. 631.64, F.S.; requiring charges or

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recoupments to be displayed separately on premium bills to

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policyholders and prohibiting their inclusion in rates; amending

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ss. 627.727 and 631.55, F.S.; conforming cross-references;

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providing an effective date.