

1 A bill to be entitled
2 An act relating to local government revenue bonds for
3 hurricane recovery; amending s. 631.54, F.S.; revising a
4 definition; amending s. 631.57, F.S.; providing
5 requirements and limitations for the Florida Insurance
6 Guaranty Association, Inc., relating to emergency
7 assessments for covered claims payable from revenue bonds
8 issued by counties or municipalities; authorizing the
9 association to contract with counties and municipalities
10 to issue revenue bonds for certain purposes; requiring the
11 Department of Financial Services to levy emergency
12 assessments on certain insurers for bond repayment
13 purposes; providing requirements for the department in
14 levying and administering such assessments; providing
15 requirements for use of bond proceeds; requiring the
16 association to issue an annual report relating to use of
17 bond proceeds and payment of claims; providing insurer
18 rate filing requirements relating to emergency
19 assessments; providing requirements for terms and
20 liability of assessments; specifying assessments as not
21 premium and not subject to tax, fees, or commissions;
22 providing for insurer liability for emergency assessments;
23 creating s. 631.695, F.S.; providing legislative findings
24 and purposes; providing for issuance of revenue bonds
25 through counties and municipalities to fund assistance
26 programs for paying covered claims for hurricane damage;
27 providing procedures, requirements, and limitations for
28 counties, municipalities, and the Florida Insurance

29 Guaranty Association, Inc., relating to issuance and
 30 validation of such bonds; providing for payments on and
 31 retirement of such bonds from certain emergency
 32 assessments; prohibiting pledging the funds, credit,
 33 property, and taxing power of the state, counties, and
 34 municipalities for payment of bonds; specifying authorized
 35 uses of bond proceeds; limiting the term of bonds;
 36 specifying a state covenant to protect bondholders from
 37 adverse actions relating to such bonds; specifying
 38 exemptions for bonds, notes, and other obligations of
 39 counties and municipalities from certain taxes or
 40 assessments on property and revenues; authorizing counties
 41 and municipalities to create a legal entity to exercise
 42 certain powers; prohibiting repeal of certain provisions
 43 relating to certain bonds under certain circumstances;
 44 providing severability; providing an effective date.

45

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

47

48 Section 1. Subsection (3) of section 631.54, Florida
 49 Statutes, is amended to read:

50 631.54 Definitions.--As used in this part:

51 (3) "Covered claim" means an unpaid claim, including one
 52 of unearned premiums, which arises out of, and is within the
 53 coverage, and not in excess of, the applicable limits of an
 54 insurance policy to which this part applies, issued by an
 55 insurer, if such insurer becomes an insolvent insurer and the
 56 claimant or insured is a resident of this state at the time of

57 | the insured event or the property from which the claim arises is
 58 | permanently located in this state. For entities other than an
 59 | individual, the residence of a claimant, insured, or
 60 | policyholder is the state in which the entity's principal place
 61 | of business is located at the time of the insured event.

62 | "Covered claim" shall not include:

63 | (a) Any amount due any reinsurer, insurer, insurance pool,
 64 | or underwriting association, sought directly or indirectly
 65 | through a third party, as subrogation, contribution,
 66 | indemnification, or otherwise; or

67 | (b) Any claim that would otherwise be a covered claim
 68 | under this part that has been rejected by any other state
 69 | guaranty fund on the grounds that an insured's net worth is
 70 | greater than that allowed under that state's guaranty law.
 71 | Member insurers shall have no right of subrogation,
 72 | contribution, indemnification, or otherwise, sought directly or
 73 | indirectly through a third party, against the insured of any
 74 | insolvent member.

75 | Section 2. Paragraph (a) of subsection (1) and paragraph
 76 | (d) of subsection (2) of section 631.57, Florida Statutes, are
 77 | amended, and paragraph (e) is added to subsection (3) of said
 78 | section, to read:

79 | 631.57 Powers and duties of the association.--

80 | (1) The association shall:

81 | (a)1. Be obligated to the extent of the covered claims
 82 | existing:

83 | a. Prior to adjudication of insolvency and arising within
 84 | 30 days after the determination of insolvency;

85 b. Before the policy expiration date if less than 30 days
86 after the determination; or

87 c. Before the insured replaces the policy or causes its
88 cancellation, if she or he does so within 30 days of the
89 determination.

90 2.a. The obligation under subparagraph 1. shall include
91 only that amount of each covered claim which is in excess of
92 \$100 and is less than \$300,000, except with respect to policies
93 covering condominium associations or homeowners' associations,
94 which associations have a responsibility to provide insurance
95 coverage on residential units within the association, the
96 obligation shall include that amount of each covered property
97 insurance claim which is less than \$100,000 multiplied by the
98 number of condominium units or other residential units; however,
99 as to homeowners' associations, this sub-subparagraph
100 ~~subparagraph~~ applies only to claims for damage or loss to
101 residential units and structures attached to residential units.

102 b. Notwithstanding sub-subparagraph a., the association
103 has no obligation to pay covered claims that are to be paid from
104 the proceeds of bonds issued under s. 631.695. However, the
105 association shall cause emergency assessments to be made under
106 paragraph (3)(e) for such covered claims, and such emergency
107 assessments shall be assigned and pledged under paragraph (3)(e)
108 to or on behalf of the issuer of such bonds for the benefit of
109 the holders of such bonds. The association shall administer any
110 such covered claims and present valid covered claims for payment
111 in accordance with the provisions of the assistance program in
112 connection with which such bonds have been issued.

113 3. In no event shall the association be obligated to a
 114 policyholder or claimant in an amount in excess of the
 115 obligation of the insolvent insurer under the policy from which
 116 the claim arises.

117 (2) The association may:

118 (d) Negotiate and become a party to such contracts as are
 119 necessary to carry out the purpose of this part. Additionally,
 120 the association may enter into such contracts with a
 121 municipality or county or such legal entity created pursuant to
 122 s. 163.01(7)(g) as are necessary in order for the municipality
 123 or county or such legal entity to issue bonds under s. 631.695.
 124 In connection with the issuance of any such bonds and the
 125 entering into of any such necessary contracts, the association
 126 may agree to such terms and conditions as the association deems
 127 necessary and proper.

128 (3)

129 (e)1.a. In addition to assessments otherwise authorized in
 130 paragraph (a) and to the extent necessary to secure the funds
 131 for the account specified in s. 631.55(2)(c), or to retire
 132 indebtedness, including, without limitation, the principal,
 133 redemption premium, if any, and interest on, and related costs
 134 of issuance of, bonds issued under s. 631.695, and the funding
 135 of any reserves and other payments required under the bond
 136 resolution or trust indenture pursuant to which such bonds have
 137 been issued, the department, upon certification of the board of
 138 directors, shall levy emergency assessments upon insurers
 139 holding a certificate of authority as set forth in this
 140 paragraph. The emergency assessments payable under this

141 paragraph by any insurer shall not exceed in any single year
 142 more than 2 percent of that insurer's direct written premiums,
 143 net of refunds, in this state during the preceding calendar year
 144 for the kinds of insurance within the account specified in s.
 145 631.55(2)(c).

146 b. Any emergency assessments authorized under this
 147 paragraph shall be levied by the department upon insurers
 148 referred to in sub-subparagraph a., upon certification as to the
 149 need for such assessments by the board of directors, in each
 150 year that bonds issued under s. 631.695 are outstanding, in such
 151 amounts up to such 2-percent limit as required in order to
 152 provide for the full and timely payment of the principal,
 153 redemption premium, if any, and interest on, and related costs
 154 of issuance of bonds issued under s. 631.695. The emergency
 155 assessments provided for in this paragraph are assigned and
 156 pledged to the municipality, county, or legal entity issuing
 157 bonds under s. 631.695 for the benefit of the holders of such
 158 bonds in order to enable such municipality, county, or legal
 159 entity to provide for the payment of the principal, redemption
 160 premium, if any, and interest on such bonds, the cost of
 161 issuance of such bonds, and the funding of any reserves and
 162 other payments required under the bond resolution or trust
 163 indenture pursuant to which such bonds have been issued, without
 164 the necessity of any further action by the association, the
 165 department, or any other party. To the extent bonds are issued
 166 under s. 631.695, the proceeds of emergency assessments levied
 167 under this paragraph shall be remitted directly to and

168 administered by the trustee or custodian appointed for such
 169 bonds.

170 c. Emergency assessments under this paragraph may be
 171 payable in a single payment or, at the option of the
 172 association, payable in 12 monthly installments with the first
 173 installment due and payable at the end of the month after an
 174 emergency assessment is levied and subsequent installments being
 175 due not later than the end of each succeeding month.

176 d. The association shall issue an annual report on the
 177 status of the use of the bond proceeds as related to
 178 insolvencies caused by hurricanes. The report must contain the
 179 number and amount of claims paid. The association shall also
 180 include an analysis of the revenue generated from the additional
 181 assessment levied under this paragraph. The association shall
 182 submit a copy of the report to the President of the Senate, the
 183 Speaker of the House of Representatives, and the Chief Financial
 184 Officer within 90 days after the end of each calendar year in
 185 which bonds were outstanding.

186 2. In order to ensure that insurers paying emergency
 187 assessments levied under this paragraph continue to charge rates
 188 that are not inadequate or excessive, within 90 days after being
 189 notified of such assessments, each insurer that is to be
 190 assessed pursuant to this paragraph shall make a rate filing for
 191 coverage included within the account specified in s.
 192 631.55(2)(c) and for which rates are required to be filed under
 193 s. 627.062. If the filing reflects a rate change that, as a
 194 percentage, is equal to the difference between the rate of such
 195 assessment and the rate of the previous year's assessment under

196 this paragraph, the filing shall consist of a certification so
 197 stating and shall be deemed approved when made. Any rate change
 198 of a different percentage shall be subject to the standards and
 199 procedures of s. 627.062.

200 3. An annual assessment under this paragraph shall
 201 continue until the bonds issued with respect to which the
 202 assessment was imposed are outstanding, including any bonds the
 203 proceeds of which were used to refund bonds issued pursuant to
 204 s. 631.695, unless adequate provision has been made for the
 205 payment of the bonds under the documents authorizing the
 206 issuance of such bonds.

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

214 Section 3. Section 631.695, Florida Statutes, is created
 215 to read:

216 631.695 Revenue bond issuance through counties or
 217 municipalities.--

218 (1) The Legislature finds:

219 (a) The potential for widespread and massive damage to
 220 persons and property caused by hurricanes making landfall in
 221 this state can generate insurance claims of such a number as to
 222 render numerous insurers operating within this state insolvent
 223 and therefore unable to satisfy covered claims.

224 (b) The inability of insureds within this state to receive
225 payment of covered claims or to receive such payment on a timely
226 basis creates financial and other hardships for such insureds
227 and places undue burdens on the state, the affected units of
228 local government, and the community at large.

229 (c) In addition, the failure of insurers to pay covered
230 claims or to pay such claims on a timely basis due to the
231 insolvency of such insurers can undermine the public's
232 confidence in insurers operating within this state, thereby
233 adversely affecting the stability of the insurance industry in
234 this state.

235 (d) The state has previously taken action to address these
236 problems by adopting the Florida Insurance Guaranty Association
237 Act, which, among other things, provides a mechanism for the
238 payment of covered claims under certain insurance policies to
239 avoid excessive delay in payment and to avoid financial loss to
240 claimants or policyholders because of the insolvency of an
241 insurer.

242 (e) In the wake of the unprecedented destruction caused by
243 various hurricanes that have made landfall in this state, the
244 resultant covered claims, and the number of insurers rendered
245 insolvent thereby, it is evident that alternative programs must
246 be developed to allow the Florida Insurance Guaranty
247 Association, Inc., to more expeditiously and effectively provide
248 for the payment of covered claims.

249 (f) It is therefore determined to be in the best interests
250 of, and necessary for, the protection of the public health,
251 safety, and general welfare of the residents of this state, and

252 for the protection and preservation of the economic stability of
 253 insurers operating in this state, and it is declared to be an
 254 essential public purpose, to permit certain municipalities and
 255 counties to take such actions as will provide relief to
 256 claimants and policyholders having covered claims against
 257 insolvent insurers operating in this state by expediting the
 258 handling and payment of covered claims.

259 (g) To achieve the foregoing purposes, it is proper to
 260 authorize municipalities and counties of this state
 261 substantially affected by the landfall of a category 1 or
 262 greater hurricane to issue bonds to assist the Florida Insurance
 263 Guaranty Association, Inc., in expediting the handling and
 264 payment of covered claims of insolvent insurers.

265 (h) In order to avoid the needless and indiscriminate
 266 proliferation, duplication, and fragmentation of such assistance
 267 programs, it is in the best interests of the residents of this
 268 state to authorize municipalities and counties severely affected
 269 by a category 1 or greater hurricane to provide for the payment
 270 of covered claims beyond their territorial limits in the
 271 implementation of such programs.

272 (i) It is a paramount public purpose for municipalities
 273 and counties substantially affected by the landfall of a
 274 category 1 or greater hurricane to be able to issue bonds for
 275 the purposes described in this section. Such issuance shall
 276 provide assistance to citizens located within said
 277 municipalities and counties, as well as to other residents of
 278 this state.

279 (2) The governing body of any municipality or county the
 280 residents of which have been substantially affected by a
 281 category 1 or greater hurricane may issue bonds to fund an
 282 assistance program in conjunction with, and with the consent of,
 283 the Florida Insurance Guaranty Association, Inc., for the
 284 purpose of paying claimants' or policyholders' covered claims as
 285 defined in s. 631.54 arising through the insolvency of an
 286 insurer, which insolvency is determined by the Florida Insurance
 287 Guaranty Association, Inc., to have been a result of a category
 288 1 or greater hurricane, regardless of whether such claimants or
 289 policyholders are residents of such municipality or county or
 290 the property to which such claim relates is located within or
 291 outside the territorial jurisdiction of such municipality or
 292 county. The power of a municipality or county to issue bonds as
 293 described in this section is in addition to any powers granted
 294 by law and may not be abrogated or restricted by any provisions
 295 in such municipality's or county's charter. A municipality or
 296 county issuing bonds for this purpose shall enter into such
 297 contracts with the Florida Insurance Guaranty Association, Inc.,
 298 or any entity acting on behalf of the Florida Insurance Guaranty
 299 Association, Inc., as are necessary to implement the assistance
 300 program. Any bonds issued by a municipality or county or
 301 combination thereof under this subsection shall be payable from
 302 and secured by moneys received by or on behalf of the
 303 municipality or county from emergency assessments levied under
 304 s. 631.57(3)(e) and assigned and pledged to or on behalf of the
 305 municipality or county for the benefit of the holders of such
 306 bonds in connection with such assistance program. The funds,

307 credit, property, and taxing power of the state or any
 308 municipality or county shall not be pledged for the payment of
 309 such bonds.

310 (3) Bonds may be validated by such municipality or county
 311 pursuant to chapter 75. The proceeds of such bonds may be used
 312 to pay covered claims of insolvent insurers; to refinance or
 313 replace previously existing borrowings or financial
 314 arrangements; to pay interest on bonds; to fund reserves for the
 315 bonds; to pay expenses incident to the issuance or sale of any
 316 bond issued under this section, including costs of validating,
 317 printing, and delivering the bonds, costs of printing the
 318 official statement, costs of publishing notices of sale of the
 319 bonds, costs of obtaining credit enhancement or liquidity
 320 support, and related administrative expenses; or for such other
 321 purposes related to the financial obligations of the fund as the
 322 association may determine. The term of the bonds may not exceed
 323 30 years.

324 (4) The state covenants with holders of bonds of the
 325 assistance program that the state will not take any action which
 326 will have a material adverse affect on such holders and will not
 327 repeal or abrogate the power of the board of directors of the
 328 association to direct the Office of Insurance Regulation to levy
 329 the assessments and to collect the proceeds of the revenues
 330 pledged to the payment of such bonds as long as any such bonds
 331 remain outstanding unless adequate provision has been made for
 332 the payment of such bonds pursuant to the documents authorizing
 333 the issuance of such bonds.

334 (5) The accomplishment of the authorized purposes of such
335 municipality or county under this section is in all respects for
336 the benefit of the people of the state, for the increase of
337 their commerce and prosperity, and for the improvement of their
338 health and living conditions. Such municipality or county, in
339 performing essential governmental functions in accomplishing its
340 purposes, is not required to pay any taxes or assessments of any
341 kind whatsoever upon any property acquired or used by the county
342 or municipality for such purposes or upon any revenues at any
343 time received by the county or municipality. The bonds, notes,
344 and other obligations of such municipality or county, and the
345 transfer of and income from such bonds, notes, and other
346 obligations, including any profits made on the sale of such
347 bonds, notes, and other obligations, are exempt from taxation of
348 any kind by the state or by any political subdivision or other
349 agency or instrumentality of the state. The exemption granted in
350 this subsection is not applicable to any tax imposed by chapter
351 220 on interest, income, or profits on debt obligations owned by
352 corporations.

353 (6) Two or more municipalities or counties the residents
354 of which have been substantially affected by a category 1 or
355 greater hurricane may create a legal entity pursuant to s.
356 163.01(7)(g) to exercise the powers described in this section as
357 well as those powers granted in s. 163.01(7)(g). Reference in
358 this section to a municipality or county includes such legal
359 entity.

360 Section 4. No provision of s. 631.57 or s. 166.111,
361 Florida Statutes, shall be repealed until such time as the

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362 principal, redemption premium, if any, and interest on all bonds
363 issued under s. 166.111, Florida Statutes, payable and secured
364 from assessments levied under s. 631.57(3)(e), Florida Statutes,
365 have been paid in full or adequate provision for such payment
366 has been made in accordance with the bond resolution or trust
367 indenture pursuant to which such bonds were issued.

368 Section 5. If any provision of this act or the application
369 thereof to any person or circumstance is held invalid, the
370 invalidity shall not affect other provisions or applications of
371 the act which can be given effect without the invalid provision
372 or application, and to this end the provisions of this act are
373 declared severable.

374 Section 6. This act shall take effect upon becoming a law.