

CHAMBER ACTION

1 The Insurance Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to insurer insolvency; amending s.  
7 627.727, F.S.; correcting a cross reference; amending s.  
8 631.181, F.S.; providing an exception to certain  
9 requirements for a signed statement for certain claims;  
10 providing requirements; amending s. 631.54, F.S.; revising  
11 and providing definitions; amending s. 631.55, F.S.;  
12 correcting a cross reference; amending s. 631.57, F.S.;  
13 revising requirements and limitations for obligations of  
14 the Florida Insurance Guaranty Association, Inc., for  
15 covered claims; providing requirements and limitations for  
16 the association relating to emergency assessments for  
17 covered claims payable from revenue bonds issued by  
18 counties or municipalities; authorizing the association to  
19 contract with counties and municipalities to issue revenue  
20 bonds for certain purposes; requiring the Office of  
21 Insurance Regulation to levy emergency assessments on  
22 certain insurers for bond repayment purposes; providing  
23 requirements for the office in levying and administering

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24 such assessments; providing requirements for use of bond  
25 proceeds; requiring the association to issue an annual  
26 report relating to use of bond proceeds and payment of  
27 claims; providing insurer rate filing requirements  
28 relating to emergency assessments; providing requirements  
29 for terms and liability of assessments; specifying  
30 assessments as not premium and not subject to tax, fees,  
31 or commissions; providing for insurer liability for  
32 emergency assessments; creating s. 631.695, F.S. ;  
33 providing legislative findings and purposes; providing for  
34 issuance of revenue bonds through counties and  
35 municipalities to fund assistance programs for paying  
36 covered claims for hurricane damage; providing procedures,  
37 requirements, and limitations for counties,  
38 municipalities, and the Florida Insurance Guaranty  
39 Association, Inc., relating to issuance and validation of  
40 such bonds; providing for payments on and retirement of  
41 such bonds from certain emergency assessments; prohibiting  
42 pledging the funds, credit, property, and taxing power of  
43 the state, counties, and municipalities for payment of  
44 bonds; specifying authorized uses of bond proceeds;  
45 limiting the term of bonds; specifying a state covenant to  
46 protect bondholders from adverse actions relating to such  
47 bonds; specifying exemptions for bonds, notes, and other  
48 obligations of counties and municipalities from certain  
49 taxes or assessments on property and revenues; authorizing  
50 counties and municipalities to create a legal entity to  
51 exercise certain powers; prohibiting repeal of certain

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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52 provisions relating to certain bonds under certain  
53 circumstances; creating s. 631.1915, F.S.; providing  
54 requirements for policyholder collateral, deductible  
55 reimbursements, and other policyholder obligations;  
56 specifying that certain collateral held by an insurer or a  
57 receiver to secure policyholder obligations under a  
58 deductible agreement are not an estate asset; requiring  
59 use of such collateral to secure policyholder obligations  
60 under such agreement; requiring a receiver to use such  
61 collateral to pay noncovered claims under certain  
62 circumstances; providing for certain claims to be claims  
63 against an insurer's estate under certain circumstances;  
64 requiring a receiver to allocate collateral among certain  
65 obligations and administer such collateral; authorizing a  
66 receiver to continue and enforce certain alternative  
67 policyholder claim funding contractual agreements;  
68 specifying certain actions as a bar to certain claims and  
69 an extinguishment of certain obligations; requiring a  
70 guaranty association to bill a policyholder for certain  
71 reimbursement amounts for certain claims; specifying  
72 policyholder obligation for certain amounts; prohibiting  
73 certain defenses; requiring a receiver to use certain  
74 collateral for certain purposes; requiring a receiver to  
75 prorate certain funds of an estate under certain  
76 circumstances; authorizing a guaranty association to  
77 deduct certain expenses; requiring a guaranty association  
78 to provide a complete accounting of certain billing and  
79 collection activities; authorizing a guaranty association

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80 | to contract for certain collections; providing for claims  
 81 | against an insolvent insurer's estate for certain  
 82 | unreimbursed claims payments; requiring a receiver to  
 83 | annually adjust collateral held pursuant to a deductible  
 84 | agreement; specifying jurisdiction of a state court to  
 85 | resolve disputes; preserving rights of a guaranty  
 86 | association to reimbursement for certain claims; providing  
 87 | application to certain orders of liquidation; providing  
 88 | definitions; providing for nonapplication to certain  
 89 | claims; providing severability; providing an effective  
 90 | date.

91

92 | Be It Enacted by the Legislature of the State of Florida:

93

94 | Section 1. Subsection (5) of section 627.727, Florida  
 95 | Statutes, is amended to read:

96 | 627.727 Motor vehicle insurance; uninsured and  
 97 | underinsured vehicle coverage; insolvent insurer protection.--

98 | (5) Any person having a claim against an insolvent insurer  
 99 | as defined in s. 631.54(6)~~(5)~~ under the provisions of this  
 100 | section shall present such claim for payment to the Florida  
 101 | Insurance Guaranty Association only. In the event of a payment  
 102 | to any person in settlement of a claim arising under the  
 103 | provisions of this section, the association is not subrogated or  
 104 | entitled to any recovery against the claimant's insurer. The  
 105 | association, however, has the rights of recovery as set forth in  
 106 | chapter 631 in the proceeds recoverable from the assets of the  
 107 | insolvent insurer.

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108 Section 2. Paragraph (f) is added to subsection (2) of  
109 section 631.181, Florida Statutes, to read:

110 631.181 Filing and proof of claim.--  
111 (2)

112 (f) The signed statement required by this section shall  
113 not be required, at the option of a guaranty fund, on claims for  
114 which adequate claims file documentation exists within the  
115 records of the insolvent insurer. Claims for payment of unearned  
116 premium shall not be required to use the signed statement  
117 required by this section if the receiver certifies to the  
118 guaranty fund that the records of the insolvent insurer are  
119 sufficient to determine the amount of unearned premium owed to  
120 each policyholder of the insured and such information is  
121 remitted to the guaranty fund by the receiver in electronic or  
122 other mutually agreed upon format.

123 Section 3. Subsection (3) of section 631.54, Florida  
124 Statutes, is amended, subsections (5) through (8) of said  
125 section are renumbered as subsections (6) through (9),  
126 respectively, and a new subsection (5) is added to said section,  
127 to read:

128 631.54 Definitions.--As used in this part:

129 (3) "Covered claim" means an unpaid claim, including one  
130 of unearned premiums, which arises out of, and is within the  
131 coverage, and not in excess of, the applicable limits of an  
132 insurance policy to which this part applies, issued by an  
133 insurer, if such insurer becomes an insolvent insurer and the  
134 claimant or insured is a resident of this state at the time of  
135 the insured event or the property from which the claim arises is

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136 | permanently located in this state. For an entity other than an  
 137 | individual, the state of residence of a claimant, insured, or  
 138 | policyholder is the state in which the entity's principal place  
 139 | of business is located at the time of the insured event.

140 | "Covered claim" shall not include:

141 |       (a) Any amount due any reinsurer, insurer, insurance pool,  
 142 | or underwriting association, sought directly or indirectly  
 143 | through a third party, as subrogation, contribution,  
 144 | indemnification, or otherwise; or

145 |       (b) Any claim that would otherwise be a covered claim  
 146 | under this part that has been rejected by any other state  
 147 | guaranty fund on the grounds that an insured's net worth is  
 148 | greater than that allowed under that state's guaranty law.  
 149 | Member insurers shall have no right of subrogation,  
 150 | contribution, indemnification, or otherwise, sought directly or  
 151 | indirectly through a third party, against the insured of any  
 152 | insolvent member.

153 |       (5) "Homeowner's insurance" means personal lines  
 154 | residential property insurance coverage, which consists of the  
 155 | type of coverage provided under homeowner's, dwelling, and  
 156 | similar policies, for repair or replacement of the insured  
 157 | structure and contents, which are written directly to the  
 158 | individual homeowner. Residential coverage for personal lines as  
 159 | set forth in this section includes policies that provide  
 160 | coverage for particular perils such as windstorm and hurricane  
 161 | coverage but excludes all coverage for mobile homes, renter's  
 162 | insurance, or tenant's coverage. Homeowner's insurance excludes  
 163 | commercial residential policies covering condominium

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164 associations or homeowners' associations, which associations  
 165 have a responsibility to provide insurance coverage on  
 166 residential units within the association, and also excludes  
 167 coverage for the common elements of a homeowners' association.

168 Section 4. Subsection (1) of section 631.55, Florida  
 169 Statutes, is amended to read:

170 631.55 Creation of the association.--

171 (1) There is created a nonprofit corporation to be known  
 172 as the "Florida Insurance Guaranty Association, Incorporated."  
 173 All insurers defined as member insurers in s. 631.54~~(7)~~<sup>(6)</sup> shall  
 174 be members of the association as a condition of their authority  
 175 to transact insurance in this state, and, further, as a  
 176 condition of such authority, an insurer shall agree to reimburse  
 177 the association for all claim payments the association makes on  
 178 said insurer's behalf if such insurer is subsequently  
 179 rehabilitated. The association shall perform its functions under  
 180 a plan of operation established and approved under s. 631.58 and  
 181 shall exercise its powers through a board of directors  
 182 established under s. 631.56. The corporation shall have all  
 183 those powers granted or permitted nonprofit corporations, as  
 184 provided in chapter 617.

185 Section 5. Paragraph (a) of subsection (1) and paragraph  
 186 (d) of subsection (2) of section 631.57, Florida Statutes, are  
 187 amended, and paragraph (e) is added to subsection (3) of said  
 188 section, to read:

189 631.57 Powers and duties of the association.--

190 (1) The association shall:

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191 (a)1. Be obligated to the extent of the covered claims  
192 existing:

193 a. Prior to adjudication of insolvency and arising within  
194 30 days after the determination of insolvency;

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

197 c. Before the insured replaces the policy or causes its  
198 cancellation, if she or he does so within 30 days of the  
199 determination.

200 2. The obligation under subparagraph 1. shall include only  
201 that amount of each covered claim which is in excess of \$100 and  
202 is less than \$300,000, except policies providing coverage for  
203 homeowner's insurance shall provide for an additional \$200,000  
204 for that portion of a covered claim that relates to the damage  
205 to the structure and contents only.

206 3.2- Notwithstanding subparagraph 2., the obligation under  
207 subparagraph 1. for ~~shall include only that amount of each~~  
208 ~~covered claim which is in excess of \$100 and is less than~~  
209 ~~\$300,000, except with respect to~~ policies covering condominium  
210 associations or homeowners' associations, which associations  
211 have a responsibility to provide insurance coverage on  
212 residential units within the association, ~~the obligation~~ shall  
213 include that amount of each covered property insurance claim  
214 which is less than \$100,000 multiplied by the number of  
215 condominium units or other residential units; however, as to  
216 homeowners' associations, this subparagraph applies only to  
217 claims for damage or loss to residential units and structures  
218 attached to residential units.



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219        4. Notwithstanding subparagraph 2., the association has no  
 220 obligation to pay covered claims that are to be paid from the  
 221 proceeds of bonds issued under s. 631.695. However, the  
 222 association shall cause emergency assessments to be made under  
 223 paragraph (3)(e) for such covered claims, and such emergency  
 224 assessments shall be assigned and pledged under paragraph (3)(e)  
 225 to or on behalf of the issuer of such bonds for the benefit of  
 226 the holders of such bonds. The association shall administer any  
 227 such covered claims and present valid covered claims for payment  
 228 in accordance with the provisions of the assistance program in  
 229 connection with which such bonds have been issued.

230        ~~5.3-~~ In no event shall the association be obligated to a  
 231 policyholder or claimant in an amount in excess of the  
 232 obligation of the insolvent insurer under the policy from which  
 233 the claim arises.

234        (2) The association may:

235        (d) Negotiate and become a party to such contracts as are  
 236 necessary to carry out the purpose of this part. Additionally,  
 237 the association may enter into such contracts with a  
 238 municipality or county or such legal entity created pursuant to  
 239 s. 163.01(7)(g) as are necessary in order for the municipality  
 240 or county or such legal entity to issue bonds under s. 631.695.  
 241 In connection with the issuance of any such bonds and the  
 242 entering into of any such necessary contracts, the association  
 243 may agree to such terms and conditions as the association deems  
 244 necessary and proper.

245        (3)

246       (e)1.a. In addition to assessments otherwise authorized in  
 247 paragraph (a) and to the extent necessary to secure the funds  
 248 for the account specified in s. 631.55(2)(c), or to retire  
 249 indebtedness, including, without limitation, the principal,  
 250 redemption premium, if any, and interest on, and related costs  
 251 of issuance of, bonds issued under s. 631.695, and the funding  
 252 of any reserves and other payments required under the bond  
 253 resolution or trust indenture pursuant to which such bonds have  
 254 been issued, the Office of Insurance Regulation, upon  
 255 certification of the board of directors, shall levy emergency  
 256 assessments upon insurers holding a certificate of authority as  
 257 set forth in this paragraph. The emergency assessments payable  
 258 under this paragraph by any insurer shall not exceed in any  
 259 single year more than 2 percent of that insurer's direct written  
 260 premiums, net of refunds, in this state during the preceding  
 261 calendar year for the kinds of insurance within the account  
 262 specified in s. 631.55(2)(c).

263       b. Any emergency assessments authorized under this  
 264 paragraph shall be levied by the Office of Insurance Regulation  
 265 upon insurers referred to in sub-subparagraph a., upon  
 266 certification as to the need for such assessments by the board  
 267 of directors, in each year that bonds issued under s. 631.695  
 268 are outstanding, in such amounts up to such 2-percent limit as  
 269 required in order to provide for the full and timely payment of  
 270 the principal, redemption premium, if any, and interest on, and  
 271 related costs of issuance of bonds issued under s. 631.695. The  
 272 emergency assessments provided for in this paragraph are  
 273 assigned and pledged to the municipality, county, or legal

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274 entity issuing bonds under s. 631.695 for the benefit of the  
 275 holders of such bonds in order to enable such municipality,  
 276 county, or legal entity to provide for the payment of the  
 277 principal, redemption premium, if any, and interest on such  
 278 bonds, the cost of issuance of such bonds, and the funding of  
 279 any reserves and other payments required under the bond  
 280 resolution or trust indenture pursuant to which such bonds have  
 281 been issued, without the necessity of any further action by the  
 282 association, the Office of Insurance Regulation, or any other  
 283 party. To the extent bonds are issued under s. 631.695, the  
 284 proceeds of emergency assessments levied under this paragraph  
 285 shall be remitted directly to and administered by the trustee or  
 286 custodian appointed for such bonds.

287 c. Emergency assessments under this paragraph may be  
 288 payable in a single payment or, at the option of the  
 289 association, payable in 12 monthly installments with the first  
 290 installment due and payable at the end of the month after an  
 291 emergency assessment is levied and subsequent installments being  
 292 due not later than the end of each succeeding month.

293 d. The association shall issue an annual report on the  
 294 status of the use of the bond proceeds as related to  
 295 insolvencies caused by hurricanes. The report must contain the  
 296 number and amount of claims paid. The association shall also  
 297 include an analysis of the revenue generated from the additional  
 298 assessment levied under this paragraph. The association shall  
 299 submit a copy of the report to the President of the Senate, the  
 300 Speaker of the House of Representatives, and the Chief Financial

301 Officer within 90 days after the end of each calendar year in  
 302 which bonds were outstanding.

303 2. In order to ensure that insurers paying emergency  
 304 assessments levied under this paragraph continue to charge rates  
 305 that are not inadequate or excessive, within 90 days after being  
 306 notified of such assessments, each insurer that is to be  
 307 assessed pursuant to this paragraph shall make a rate filing for  
 308 coverage included within the account specified in s.  
 309 631.55(2)(c) and for which rates are required to be filed under  
 310 s. 627.062. If the filing reflects a rate change that, as a  
 311 percentage, is equal to the difference between the rate of such  
 312 assessment and the rate of the previous year's assessment under  
 313 this paragraph, the filing shall consist of a certification so  
 314 stating and shall be deemed approved when made. Any rate change  
 315 of a different percentage shall be subject to the standards and  
 316 procedures of s. 627.062.

317 3. An annual assessment under this paragraph shall  
 318 continue until the bonds issued with respect to which the  
 319 assessment was imposed are outstanding, including any bonds the  
 320 proceeds of which were used to refund bonds issued pursuant to  
 321 s. 631.695, unless adequate provision has been made for the  
 322 payment of the bonds under the documents authorizing the  
 323 issuance of such bonds.

324 4. Emergency assessments under this paragraph are not  
 325 premium and are not subject to the premium tax, any fees, or any  
 326 commissions. An insurer is liable for all emergency assessments  
 327 that the insurer collects and must treat the failure of an  
 328 insured to pay an emergency assessment as a failure to pay the

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329 premium. An insurer is not liable for uncollectible emergency  
 330 assessments.

331 Section 6. Section 631.695, Florida Statutes, is created  
 332 to read:

333 631.695 Revenue bond issuance through counties or  
 334 municipalities.--

335 (1) The Legislature finds:

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

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

346 (c) In addition, the failure of insurers to pay covered  
 347 claims or to pay such claims on a timely basis due to the  
 348 insolvency of such insurers can undermine the public's  
 349 confidence in insurers operating within this state, thereby  
 350 adversely affecting the stability of the insurance industry in  
 351 this state.

352 (d) The state has previously taken action to address these  
 353 problems by adopting the Florida Insurance Guaranty Association  
 354 Act, which, among other things, provides a mechanism for the  
 355 payment of covered claims under certain insurance policies to  
 356 avoid excessive delay in payment and to avoid financial loss to

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357 claimants or policyholders because of the insolvency of an  
358 insurer.

359 (e) In the wake of the unprecedented destruction caused by  
360 various hurricanes that have made landfall in this state, the  
361 resultant covered claims, and the number of insurers rendered  
362 insolvent thereby, it is evident that alternative programs must  
363 be developed to allow the Florida Insurance Guaranty  
364 Association, Inc., to more expeditiously and effectively provide  
365 for the payment of covered claims.

366 (f) It is therefore determined to be in the best interests  
367 of, and necessary for, the protection of the public health,  
368 safety, and general welfare of the residents of this state, and  
369 for the protection and preservation of the economic stability of  
370 insurers operating in this state, and it is declared to be an  
371 essential public purpose, to permit certain municipalities and  
372 counties to take such actions as will provide relief to  
373 claimants and policyholders having covered claims against  
374 insolvent insurers operating in this state by expediting the  
375 handling and payment of covered claims.

376 (g) To achieve the foregoing purposes, it is proper to  
377 authorize municipalities and counties of this state  
378 substantially affected by the landfall of a category 1 or  
379 greater hurricane to issue bonds to assist the Florida Insurance  
380 Guaranty Association, Inc., in expediting the handling and  
381 payment of covered claims of insolvent insurers.

382 (h) In order to avoid the needless and indiscriminate  
383 proliferation, duplication, and fragmentation of such assistance  
384 programs, it is in the best interests of the residents of this

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385 state to authorize municipalities and counties severely affected  
 386 by a category 1 or greater hurricane to provide for the payment  
 387 of covered claims beyond their territorial limits in the  
 388 implementation of such programs.

389 (i) It is a paramount public purpose for municipalities  
 390 and counties substantially affected by the landfall of a  
 391 category 1 or greater hurricane to be able to issue bonds for  
 392 the purposes described in this section. Such issuance shall  
 393 provide assistance to citizens located within said  
 394 municipalities and counties, as well as to other residents of  
 395 this state.

396 (2) The governing body of any municipality or county the  
 397 residents of which have been substantially affected by a  
 398 category 1 or greater hurricane may issue bonds to fund an  
 399 assistance program in conjunction with, and with the consent of,  
 400 the Florida Insurance Guaranty Association, Inc., for the  
 401 purpose of paying claimants' or policyholders' covered claims as  
 402 defined in s. 631.54 arising through the insolvency of an  
 403 insurer, which insolvency is determined by the Florida Insurance  
 404 Guaranty Association, Inc., to have been a result of a category  
 405 1 or greater hurricane, regardless of whether such claimants or  
 406 policyholders are residents of such municipality or county or  
 407 the property to which such claim relates is located within or  
 408 outside the territorial jurisdiction of such municipality or  
 409 county. The power of a municipality or county to issue bonds as  
 410 described in this section is in addition to any powers granted  
 411 by law and may not be abrogated or restricted by any provisions  
 412 in such municipality's or county's charter. A municipality or

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413 county issuing bonds for this purpose shall enter into such  
 414 contracts with the Florida Insurance Guaranty Association, Inc.,  
 415 or any entity acting on behalf of the Florida Insurance Guaranty  
 416 Association, Inc., as are necessary to implement the assistance  
 417 program. Any bonds issued by a municipality or county or  
 418 combination thereof under this subsection shall be payable from  
 419 and secured by moneys received by or on behalf of the  
 420 municipality or county from emergency assessments levied under  
 421 s. 631.57(3)(e) and assigned and pledged to or on behalf of the  
 422 municipality or county for the benefit of the holders of such  
 423 bonds in connection with such assistance program. The funds,  
 424 credit, property, and taxing power of the state or any  
 425 municipality or county shall not be pledged for the payment of  
 426 such bonds.

427 (3) Bonds may be validated by such municipality or county  
 428 pursuant to chapter 75. The proceeds of such bonds may be used  
 429 to pay covered claims of insolvent insurers; to refinance or  
 430 replace previously existing borrowings or financial  
 431 arrangements; to pay interest on bonds; to fund reserves for the  
 432 bonds; to pay expenses incident to the issuance or sale of any  
 433 bond issued under this section, including costs of validating,  
 434 printing, and delivering the bonds, costs of printing the  
 435 official statement, costs of publishing notices of sale of the  
 436 bonds, costs of obtaining credit enhancement or liquidity  
 437 support, and related administrative expenses; or for such other  
 438 purposes related to the financial obligations of the fund as the  
 439 association may determine. The term of the bonds may not exceed  
 440 30 years.



441       (4) The state covenants with holders of bonds of the  
 442 assistance program that the state will not take any action which  
 443 will have a material adverse affect on such holders and will not  
 444 repeal or abrogate the power of the board of directors of the  
 445 association to direct the Office of Insurance Regulation to levy  
 446 the assessments and to collect the proceeds of the revenues  
 447 pledged to the payment of such bonds as long as any such bonds  
 448 remain outstanding unless adequate provision has been made for  
 449 the payment of such bonds pursuant to the documents authorizing  
 450 the issuance of such bonds.

451       (5) The accomplishment of the authorized purposes of such  
 452 municipality or county under this section is in all respects for  
 453 the benefit of the people of the state, for the increase of  
 454 their commerce and prosperity, and for the improvement of their  
 455 health and living conditions. Such municipality or county, in  
 456 performing essential governmental functions in accomplishing its  
 457 purposes, is not required to pay any taxes or assessments of any  
 458 kind whatsoever upon any property acquired or used by the county  
 459 or municipality for such purposes or upon any revenues at any  
 460 time received by the county or municipality. The bonds, notes,  
 461 and other obligations of such municipality or county, and the  
 462 transfer of and income from such bonds, notes, and other  
 463 obligations, including any profits made on the sale of such  
 464 bonds, notes, and other obligations, are exempt from taxation of  
 465 any kind by the state or by any political subdivision or other  
 466 agency or instrumentality of the state. The exemption granted in  
 467 this subsection is not applicable to any tax imposed by chapter

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468 220 on interest, income, or profits on debt obligations owned by  
469 corporations.

470 (6) Two or more municipalities or counties the residents  
471 of which have been substantially affected by a category 1 or  
472 greater hurricane may create a legal entity pursuant to s.  
473 163.01(7)(g) to exercise the powers described in this section as  
474 well as those powers granted in s. 163.01(7)(g). Reference in  
475 this section to a municipality or county includes such legal  
476 entity.

477 Section 7. No provision of s. 631.57 or s. 166.111,  
478 Florida Statutes, shall be repealed until such time as the  
479 principal, redemption premium, if any, and interest on all bonds  
480 issued under s. 166.111, Florida Statutes, payable and secured  
481 from assessments levied under s. 631.57(3)(e), Florida Statutes,  
482 have been paid in full or adequate provision for such payment  
483 has been made in accordance with the bond resolution or trust  
484 indenture pursuant to which such bonds were issued.

485 Section 8. Section 631.1915, Florida Statutes, is created  
486 to read:

487 631.1915 Policyholder collateral; deductible  
488 reimbursements; other policyholder obligations.--

489 (1) Any collateral held by or for the benefit of, or  
490 assigned to, the insurer or subsequently the receiver in order  
491 to secure the obligations of a policyholder under a deductible  
492 agreement shall not be considered an asset of the estate and  
493 shall be maintained and administered by the receiver as provided  
494 in this section, notwithstanding any other provision of law or  
495 contract to the contrary.

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496        (2) If the collateral is being held by or for the benefit  
497 of, or assigned to, the insurer or subsequently the receiver to  
498 secure obligations under a deductible agreement with a  
499 policyholder subject to the provisions of this section, the  
500 collateral shall be used to secure the policyholder's obligation  
501 to fund or reimburse claims payments within the agreed  
502 deductible amount.

503        (3) If a claim is subject to a deductible agreement and  
504 secured by collateral and is not covered by any guaranty  
505 association, the receiver shall adjust and pay the noncovered  
506 claim using the collateral, but only to the extent of the  
507 available collateral. A claim against the collateral by a third-  
508 party claimant is not a claim against the insolvent insurer's  
509 estate for purposes of s. 631.193. If the collateral is  
510 exhausted and the insured is not able to provide funds to pay  
511 the remaining claims within the deductible, the remaining claims  
512 shall be claims against the insurer's estate subject to  
513 complying with other provisions in this part for the filing and  
514 allowance of such claims.

515        (4) To the extent the receiver is holding collateral  
516 provided by a policyholder that was obtained to secure a  
517 deductible agreement and to secure other obligations of the  
518 policyholder, the receiver shall equitably allocate the  
519 collateral among such obligations and administer the collateral  
520 allocated to the deductible agreement pursuant to this section.  
521 The receiver shall inform the guaranty associations of the  
522 method and details of all the foregoing allocations.

523       (5) Regardless of whether there is collateral, if the  
 524 insurer has contractually agreed to allow the policyholder to  
 525 fund its own claims within the deductible amount pursuant to a  
 526 deductible agreement, through the policyholder's own  
 527 administration of its claims or through the policyholder  
 528 providing funds directly to a third-party administrator who  
 529 administers the claims, the receiver may allow such funding  
 530 arrangement to continue and, where applicable, shall enforce  
 531 such arrangements. The funding of such claims by the  
 532 policyholder within the deductible amount acts as a bar to any  
 533 claim for such amount in the liquidation proceeding, including,  
 534 but not limited to, any such claim by the policyholder or the  
 535 third-party claimant. The funding extinguishes both the  
 536 obligation, if any, of any guaranty association to pay such  
 537 claims within the deductible amount and the obligations, if any,  
 538 of the policyholder or third-party administrator to reimburse  
 539 the guaranty association. No charge of any kind shall be made  
 540 against any guaranty association on the basis of the  
 541 policyholder's funding of claims payment made pursuant to the  
 542 mechanism set forth in this subsection.

543       (6) If the insurer has not contractually agreed to allow  
 544 the policyholder to fund the policyholder's own claims within  
 545 the deductible amount, to the extent a guaranty association is  
 546 required by applicable state law to pay any claims for which the  
 547 insurer would have been entitled to reimbursement from the  
 548 policyholder under the terms of the deductible agreement and to  
 549 the extent the claims have not been paid by a policyholder or  
 550 third party, the guaranty association shall bill the

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551 policyholder for such reimbursement and the policyholder is  
 552 obligated to pay such amount to the guaranty association for the  
 553 benefit of the guaranty associations who paid such claims.  
 554 Neither the insolvency of the insurer nor its inability to  
 555 perform any of its obligations under the deductible agreement  
 556 shall be a defense to the policyholder's reimbursement  
 557 obligation under the deductible agreement. If the policyholder  
 558 fails to pay the amounts due within 60 days after the bill for  
 559 such reimbursements is due, the receiver shall use the  
 560 collateral to the extent necessary to reimburse the guaranty  
 561 association and, at the same time, the guaranty association may  
 562 pursue other collection efforts against the policyholder. If  
 563 more than one guaranty association has a claim against the same  
 564 collateral and the available collateral, after allocation under  
 565 subsection (4), together with billing and collection efforts,  
 566 are together insufficient to pay each guaranty association in  
 567 full, the receiver shall prorate payments to each guaranty  
 568 association based upon the relationship the amount of claims  
 569 each guaranty association has paid bears to the total of all  
 570 claims paid by such guaranty associations.

571 (7)(a) The guaranty association is entitled to deduct from  
 572 reimbursements owed to guaranty associations or collateral to be  
 573 returned to a policyholder reasonable actual expenses incurred  
 574 in fulfilling the responsibilities under this provision, not to  
 575 exceed 3 percent of the collateral or the total deductible  
 576 reimbursements actually collected by the guaranty association.

577 (b) With respect to claims payments made by any guaranty  
 578 association, the guaranty association shall provide the guaranty

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579 associations and the receiver with a complete accounting of the  
580 guaranty association's deductible billing and collection  
581 activities, including copies of the policyholder billings when  
582 rendered, the reimbursements collected, the available amounts  
583 and use of collateral for each account, and any proration of  
584 payments when such proration occurs. The cost of reports  
585 required pursuant to this subsection shall be considered part of  
586 the expenses of the guaranty association.

587 (c) The guaranty association may contract with the  
588 receiver for the direct collection from the policyholders on the  
589 same basis as the guaranty association and with the same rights  
590 and remedies. If so assigned, the receiver shall report any  
591 amounts so collected from each policyholder to the guaranty  
592 association.

593 (d) To the extent that guaranty associations pay claims  
594 within the deductible amount but are not reimbursed by the  
595 receiver under this section or by policyholder payments from the  
596 guaranty associations' own collection efforts, the guaranty  
597 association shall have a claim on the insolvent insurer's estate  
598 for such unreimbursed claims payments. The priority of such  
599 claim shall depend upon the nature of the payment that should  
600 have been reimbursed.

601 (e) At least annually, the receiver shall adjust the  
602 collateral being held pursuant to the deductible agreement. The  
603 receiver shall maintain adequate collateral to secure 110  
604 percent of the entire estimated obligation of the policyholder.  
605 The receiver shall provide a copy of its collateral review to  
606 any obligated guaranty association. Once all claims covered by

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607 the collateral have been paid and the receiver is satisfied that  
 608 no new claims can be presented, the receiver may release any  
 609 remaining collateral.

610 (8) The state court that has jurisdiction over the  
 611 liquidation proceedings shall have jurisdiction to resolve  
 612 disputes arising under this section.

613 (9) Nothing in this section limits or adversely affects  
 614 any right the guaranty associations may have under applicable  
 615 state law to obtain reimbursement from certain classes of  
 616 policyholders for claims payments made by such guaranty  
 617 associations under policies of the insolvent insurer or for  
 618 related expenses the guaranty associations incur.

619 (10) This section applies to all liquidations for which an  
 620 order is entered after October 1, 2005.

621 (11) For purposes of this section, the term:

622 (a) "Deductible agreement" means any combination of one or  
 623 more policies, endorsements, contracts, or security agreements  
 624 that provide for the policyholder to bear the risk of loss  
 625 within a specified amount per claim or occurrence covered under  
 626 a policy of insurance, and that may be subject to aggregate  
 627 limit of policyholder reimbursement obligations.

628 (b) "Noncovered claim" means a claim that is subject to a  
 629 deductible agreement, may be secured by collateral, and is not  
 630 covered by a guaranty association.

631 (12) This section does not apply to first-party claims.

632 Section 9. If any provision of this act or the application  
 633 thereof to any person or circumstance is held invalid, the  
 634 invalidity shall not affect other provisions or applications of

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635 | the act which can be given effect without the invalid provision  
636 | or application, and to this end the provisions of this act are  
637 | declared severable.

638 |         Section 10. This act shall take effect upon becoming a  
639 | law.