

Bill No. SB 2184

Barcode 591680

CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Baker) recommended the following amendment:

Senate Amendment (with title amendment)

On page 2, line 28, through
page 13, line 1, delete those lines

and insert:

Section 1. Paragraph (f) is added to subsection (2) of section 631.181, Florida Statutes, to read:

631.181 Filing and proof of claim.--

(2)

(f) The signed statement required by this section shall not be required, at the option of a guaranty fund, on claims for which adequate claims file documentation exists within the records of the insolvent insurer. Claims for payment of unearned premium shall not be required to use the signed statement required by this section if the receiver certifies to the guaranty fund that the records of the insolvent insurer are sufficient to determine the amount of unearned premium owed to each policyholder of the insured and

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1 such information is remitted to the guaranty fund by the
2 receiver in electronic or other mutually agreed upon format.

3 Section 2. Section 631.1915, Florida Statutes, is
4 created to read:

5 631.1915 Policyholder collateral; deductible
6 reimbursements; other policyholder obligations.--

7 (1) Any collateral held by or for the benefit of, or
8 assigned to, the insurer or subsequently the receiver in order
9 to secure the obligations of a policyholder under a deductible
10 agreement shall not be considered an asset of the estate and
11 shall be maintained and administered by the receiver as
12 provided in this section, notwithstanding any other provision
13 of law or contract to the contrary.

14 (2) If the collateral is being held by or for the
15 benefit of, or assigned to, the insurer or subsequently the
16 receiver to secure obligations under a deductible agreement
17 with a policyholder subject to the provisions of this section,
18 the collateral shall be used to secure the policyholder's
19 obligation to fund or reimburse claims payments within the
20 agreed deductible amount.

21 (3) If a claim is subject to a deductible agreement
22 and secured by collateral and is not covered by any guaranty
23 association, the receiver shall adjust and pay the noncovered
24 claim using the collateral, but only to the extent of the
25 available collateral. A claim against the collateral by a
26 third-party claimant is not a claim against the insolvent
27 insurer's estate for purposes of s. 631.193. If the collateral
28 is exhausted and the insured is not able to provide funds to
29 pay the remaining claims within the deductible, the remaining
30 claims shall be claims against the insurer's estate subject to
31 complying with other provisions in this part for the filing

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1 and allowance of such claims.

2 (4) To the extent the receiver is holding collateral
3 provided by a policyholder that was obtained to secure a
4 deductible agreement and to secure other obligations of the
5 policyholder, the receiver shall equitably allocate the
6 collateral among such obligations and administer the
7 collateral allocated to the deductible agreement pursuant to
8 this section. The receiver shall inform the guaranty
9 associations of the method and details of all the foregoing
10 allocations.

11 (5) Regardless of whether there is collateral, if the
12 insurer has contractually agreed to allow the policyholder to
13 fund its own claims within the deductible amount pursuant to a
14 deductible agreement, through the policyholder's own
15 administration of its claims or through the policyholder
16 providing funds directly to a third-party administrator who
17 administers the claims, the receiver may allow such funding
18 arrangement to continue and, where applicable, shall enforce
19 such arrangements. The funding of such claims by the
20 policyholder within the deductible amount acts as a bar to any
21 claim for such amount in the liquidation proceeding,
22 including, but not limited to, any such claim by the
23 policyholder or the third-party claimant. The funding
24 extinguishes both the obligation, if any, of any guaranty
25 association to pay such claims within the deductible amount
26 and the obligations, if any, of the policyholder or
27 third-party administrator to reimburse the guaranty
28 association. No charge of any kind shall be made against any
29 guaranty association on the basis of the policyholder's
30 funding of claims payment made pursuant to the mechanism set
31 forth in this subsection.

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1 (6) If the insurer has not contractually agreed to
2 allow the policyholder to fund the policyholder's own claims
3 within the deductible amount, to the extent a guaranty
4 association is required by applicable state law to pay any
5 claims for which the insurer would have been entitled to
6 reimbursement from the policyholder under the terms of the
7 deductible agreement and to the extent the claims have not
8 been paid by a policyholder or third party, the guaranty
9 association shall bill the policyholder for such reimbursement
10 and the policyholder is obligated to pay such amount to the
11 guaranty association for the benefit of the guaranty
12 associations who paid such claims. Neither the insolvency of
13 the insurer nor its inability to perform any of its
14 obligations under the deductible agreement shall be a defense
15 to the policyholder's reimbursement obligation under the
16 deductible agreement. If the policyholder fails to pay the
17 amounts due within 60 days after the bill for such
18 reimbursements is due, the receiver shall use the collateral
19 to the extent necessary to reimburse the guaranty association
20 and, at the same time, the guaranty association may pursue
21 other collection efforts against the policyholder. If more
22 than one guaranty association has a claim against the same
23 collateral and the available collateral, after allocation
24 under subsection (4), together with billing and collection
25 efforts, are together insufficient to pay each guaranty
26 association in full, the receiver shall prorate payments to
27 each guaranty association based upon the relationship the
28 amount of claims each guaranty association has paid bears to
29 the total of all claims paid by such guaranty associations.

30 (7)(a) The guaranty association is entitled to deduct
31 from collateral to be returned to a policyholder reasonable

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1 actual expenses incurred in fulfilling the responsibilities
2 under this provision, not to exceed 3 percent of the
3 collateral or the total deductible reimbursements actually
4 collected by any other guaranty association.

5 (b) With respect to claims payments made by any
6 guaranty association, the guaranty association shall provide
7 any other guaranty associations and the receiver with a
8 complete accounting of the guaranty association's deductible
9 billing and collection activities, including copies of the
10 policyholder billings when rendered and the reimbursements
11 collected. The cost of reports required pursuant to this
12 subsection shall be considered part of the expenses of the
13 guaranty association.

14 (c) The guaranty association may contract with the
15 receiver for the direct collection from the policyholders on
16 the same basis as the guaranty association and with the same
17 rights and remedies. If so assigned, the receiver shall report
18 any amounts so collected from each policyholder to the
19 guaranty association.

20 (d) To the extent that guaranty associations pay
21 claims within the deductible amount but are not reimbursed by
22 the receiver under this section or by policyholder payments
23 from the guaranty associations' own collection efforts, the
24 guaranty association shall have a claim on the insolvent
25 insurer's estate for such unreimbursed claims payments. The
26 priority of such claim shall depend upon the nature of the
27 payment that should have been reimbursed.

28 (e) Periodically, but not more than annually, the
29 receiver shall adjust the collateral being held pursuant to
30 the deductible agreement. The receiver shall maintain adequate
31 collateral to secure 110 percent of the entire estimated

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1 obligation of the policyholder. The receiver shall provide a
 2 copy of its collateral review to any obligated guaranty
 3 association. Once all claims covered by the collateral have
 4 been paid and the receiver is satisfied that no new claims can
 5 be presented, the receiver may release any remaining
 6 collateral.

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

10 (9) Nothing in this section limits or adversely
 11 affects any right the guaranty associations may have under
 12 applicable state law to obtain reimbursement from certain
 13 classes of policyholders for claims payments made by such
 14 guaranty associations under policies of the insolvent insurer
 15 or for related expenses the guaranty associations incur.

16 (10) This section applies to all liquidations for
 17 which an order is entered after July 1, 2005.

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

19 (a) "Deductible agreement" means any combination of
 20 one or more policies, endorsements, contracts, or security
 21 agreements that provide for the policyholder to bear the risk
 22 of loss within a specified amount per claim or occurrence
 23 covered under a policy of insurance, and that may be subject
 24 to aggregate limit of policyholder reimbursement obligations.

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

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

30 Section 3. Subsection (3) of section 631.54, Florida
 31 Statutes, is amended to read:

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1 631.54 Definitions.--As used in this part:

2 (3) "Covered claim" means an unpaid claim, including
3 one of unearned premiums, which arises out of, and is within
4 the coverage, and not in excess of, the applicable limits of
5 an insurance policy to which this part applies, issued by an
6 insurer, if such insurer becomes an insolvent insurer and the
7 claimant or insured is a resident of this state at the time of
8 the insured event or the property from which the claim arises
9 is permanently located in this state. For entities other than
10 an individual, the residence of a claimant, insured, or
11 policyholder is the state in which the entity's principal
12 place of business is located at the time of the insured event.

13 "Covered claim" shall not include:

14 (a) Any amount due any reinsurer, insurer, insurance
15 pool, or underwriting association, sought directly or
16 indirectly through a third party, as subrogation,
17 contribution, indemnification, or otherwise; or

18 (b) Any claim that would otherwise be a covered claim
19 under this part that has been rejected by any other state
20 guaranty fund on the grounds that an insured's net worth is
21 greater than that allowed under that state's guaranty law.

22 Member insurers shall have no right of subrogation,
23 contribution, indemnification, or otherwise, sought directly
24 or indirectly through a third party, against the insured of
25 any insolvent member.

26 Section 4. Paragraph (a) of subsection (1), paragraph
27 (d) of subsection (2), and paragraph (a) of subsection (3) of
28 section 631.57, Florida Statutes, are amended to read:

29 631.57 Powers and duties of the association.--

30 (1) The association shall:

31 (a)1. Be obligated to the extent of the covered claims

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1 existing:

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

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

6 c. Before the insured replaces the policy or causes
7 its cancellation, if she or he does so within 30 days of the
8 determination.

9 2.a. The obligation under subparagraph 1. shall
10 include only that amount of each covered claim which is in
11 excess of \$100 and is less than \$300,000, except with respect
12 to policies covering condominium associations or homeowners'
13 associations, which associations have a responsibility to
14 provide insurance coverage on residential units within the
15 association, the obligation shall include that amount of each
16 covered property insurance claim which is less than \$100,000
17 multiplied by the number of condominium units or other
18 residential units; however, as to homeowners' associations,
19 this ~~sub-subparagraph~~ ~~subparagraph~~ applies only to claims for
20 damage or loss to residential units and structures attached to
21 residential units.

22 b. Notwithstanding sub-subparagraph a., the
23 association has no obligation to pay covered claims that are
24 to be paid from the proceeds of bonds issued under s. 631.695.
25 However, the association shall assign and pledge the first
26 available moneys from all or part of the assessments
27 authorized in paragraph (3)(a) to or on behalf of the issuer
28 of such bonds for the benefit of the holders of such bonds.
29 The association shall administer any such covered claims and
30 present valid covered claims for payment in accordance with
31 the provisions of the assistance program in connection with

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1 which such bonds have been issued.

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

6 (2) The association may:

7 (d) Negotiate and become a party to such contracts as
8 are necessary to carry out the purpose of this part.

9 Additionally, the association may enter into such contracts
10 with a municipality or county or such legal entity created
11 pursuant to s. 163.01(7)(g) as are necessary in order for the
12 municipality or county or such legal entity to issue bonds
13 under s. 631.695. In connection with the issuance of any such
14 bonds and the entering into of any such necessary contracts,
15 the association may agree to such terms and conditions as the
16 association deems necessary and proper.

17 (3)(a) To the extent necessary to secure the funds for
18 the respective accounts for the payment of covered claims, ~~and~~
19 ~~also~~ to pay the reasonable costs to administer the same, and
20 to the extent necessary to retire indebtedness, including,
21 without limitation, the principal, redemption premium, if any,
22 and interest on, and related costs of issuance of, bonds
23 issued under s. 631.695 and the funding of any reserves and
24 other payments required under the bond resolution or trust
25 indenture pursuant to which such bonds have been issued, the
26 office, upon certification of the board of directors, shall
27 levy assessments in the proportion that each insurer's net
28 direct written premiums in this state in the classes protected
29 by the account bears to the total of said net direct written
30 premiums received in this state by all such insurers for the
31 preceding calendar year for the kinds of insurance included

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1 within such account. Assessments shall be remitted to and
 2 administered by the board of directors in the manner specified
 3 by the approved plan. Each insurer so assessed shall have at
 4 least 30 days' written notice as to the date the assessment is
 5 due and payable. Every assessment shall be made as a uniform
 6 percentage applicable to the net direct written premiums of
 7 each insurer in the kinds of insurance included within the
 8 account in which the assessment is made. The assessments
 9 levied against any insurer shall not exceed in any one year
 10 more than 2 percent of that insurer's net direct written
 11 premiums in this state for the kinds of insurance included
 12 within such account during the calendar year next preceding
 13 the date of such assessments.

14 Section 5. Section 631.695, Florida Statutes, is
 15 created to read:

16 631.695 Revenue bond issuance through counties or
 17 municipalities.--

18 (1) The Legislature finds:

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

24 (b) The inability of insureds within this state to
 25 receive payment of covered claims or to receive such payment
 26 timely creates financial and other hardships for such insureds
 27 and places undue burdens on the state, the affected units of
 28 local government, and the community at large.

29 (c) In addition, the failure of insurers to pay
 30 covered claims or to pay such claims timely due to the
 31 insolvency of such insurers can undermine the public's

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1 confidence in insurers operating within this state, thereby
2 adversely affecting the stability of the insurance industry in
3 this state.

4 (d) The state has previously taken action to address
5 these problems by adopting the Florida Insurance Guaranty
6 Association Act, which, among other things, provides a
7 mechanism for the payment of covered claims under certain
8 insurance policies to avoid excessive delay in payment and to
9 avoid financial loss to claimants or policyholders because of
10 the insolvency of an insurer.

11 (e) In the wake of the unprecedented destruction
12 caused by various hurricanes that have made landfall in this
13 state, the resultant covered claims, and the number of
14 insurers rendered insolvent thereby, it is evident that
15 alternative programs must be developed to allow the Florida
16 Insurance Guaranty Association, Inc., to more expeditiously
17 and effectively provide for the payment of covered claims.

18 (f) It is therefore determined to be in the best
19 interests of, and necessary for, the protection of the public
20 health, safety, and general welfare of the residents of this
21 state, and for the protection and preservation of the economic
22 stability of insurers operating in this state, and it is
23 declared to be an essential public purpose, to permit certain
24 municipalities and counties to take such actions as will
25 provide relief to claimants and policyholders having covered
26 claims against insolvent insurers operating in this state by
27 expediting the handling and payment of covered claims.

28 (g) To achieve the foregoing purposes, it is proper to
29 authorize municipalities and counties of this state
30 substantially affected by the landfall of a category 1 or
31 greater hurricane to issue bonds to assist the Florida

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1 Insurance Guaranty Association, Inc., in expediting the
2 handling and payment of covered claims of insolvent insurers.

3 (h) In order to avoid the needless and indiscriminate
4 proliferation, duplication, and fragmentation of such
5 assistance programs, it is in the best interests of the
6 residents of this state to authorize municipalities and
7 counties severely affected by a category 1 or greater
8 hurricane to provide for the payment of covered claims beyond
9 their territorial limits in the implementation of such
10 programs.

11 (i) It is a paramount public purpose for
12 municipalities and counties substantially affected by the
13 landfall of a category 1 or greater hurricane to be able to
14 issue bonds for the purposes described in this section. Such
15 issuance shall provide assistance to residents of those
16 municipalities and counties, as well as to other residents of
17 this state.

18 (2) The governing body of any municipality or county
19 the residents of which have been substantially affected by a
20 category 1 or greater hurricane may issue bonds to fund an
21 assistance program in conjunction with, and with the consent
22 of, the Florida Insurance Guaranty Association, Inc., for the
23 purpose of paying claimants' or policyholders' covered claims
24 as defined in s. 631.54 arising through the insolvency of an
25 insurer, which insolvency is determined by the Florida
26 Insurance Guaranty Association, Inc., to have been a result of
27 a category 1 or greater hurricane, regardless of whether such
28 claimants or policyholders are residents of such municipality
29 or county or the property to which such claim relates is
30 located within or outside the territorial jurisdiction of such
31 municipality or county. The power of a municipality or county

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1 to issue bonds as described in this section is in addition to
 2 any powers granted by law and may not be abrogated or
 3 restricted by any provisions in such municipality's or
 4 county's charter. A municipality or county issuing bonds for
 5 this purpose shall enter into such contracts with the Florida
 6 Insurance Guaranty Association, Inc., or any entity acting on
 7 behalf of the Florida Insurance Guaranty Association, Inc., as
 8 are necessary to implement the assistance program. Any bonds
 9 issued by a municipality or county or combination thereof
 10 under this subsection shall be payable from and secured by
 11 moneys received by or on behalf of the municipality or county
 12 from assessments levied under s. 631.57(3)(a) and assigned and
 13 pledged to or on behalf of the municipality or county for the
 14 benefit of the holders of such bonds in connection with such
 15 assistance program. The funds, credit, property, and taxing
 16 power of the state or any municipality or county shall not be
 17 pledged for the payment of such bonds.

18 (3) The association shall issue an annual report on
 19 the status of the use of bond proceeds as related to
 20 insolvencies caused by hurricanes. The report must contain the
 21 number and amount of claims paid. The association shall also
 22 include an analysis of the revenue generated from the
 23 assessment levied under s. 631.57(3)(a) to pay such bonds. The
 24 association shall submit a copy of the report to the President
 25 of the Senate, the Speaker of the House of Representatives,
 26 and the Chief Financial Officer within 90 days after the end
 27 of each calendar year in which bonds were outstanding.

28 (4) Bonds may be validated by such municipality or
 29 county pursuant to chapter 75. The proceeds of such bonds may
 30 be used to pay covered claims of insolvent insurers; to
 31 refinance or replace previously existing borrowings or

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1 financial arrangements; to pay interest on bonds; to fund
 2 reserves for the bonds; to pay expenses incident to the
 3 issuance or sale of any bond issued under this section,
 4 including costs of validating, printing, and delivering the
 5 bonds, costs of printing the official statement, costs of
 6 publishing notices of sale of the bonds, costs of obtaining
 7 credit enhancement or liquidity support, and related
 8 administrative expenses; or for such other purposes related to
 9 the financial obligations of the fund as the association may
 10 determine. The term of the bonds may not exceed 30 years.

11 (5) The state covenants with holders of bonds of the
 12 assistance program that the state will not take any action
 13 which will have a material adverse affect on such holders and
 14 will not repeal or abrogate the power of the board of
 15 directors of the association to direct the Office of Insurance
 16 Regulation to levy the assessments and to collect the proceeds
 17 of the revenues pledged to the payment of such bonds as long
 18 as any such bonds remain outstanding unless adequate provision
 19 has been made for the payment of such bonds pursuant to the
 20 documents authorizing the issuance of such bonds.

21 (6) The accomplishment of the authorized purposes of
 22 such municipality or county under this section is in all
 23 respects for the benefit of the people of the state, for the
 24 increase of their commerce and prosperity, and for the
 25 improvement of their health and living conditions. Such
 26 municipality or county, in performing essential governmental
 27 functions in accomplishing its purposes, is not required to
 28 pay any taxes or assessments of any kind whatsoever upon any
 29 property acquired or used by the county or municipality for
 30 such purposes or upon any revenues at any time received by the
 31 county or municipality. The bonds, notes, and other

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1 obligations of such municipality or county, and the transfer
 2 of and income from such bonds, notes, and other obligations,
 3 including any profits made on the sale of such bonds, notes,
 4 and other obligations, are exempt from taxation of any kind by
 5 the state or by any political subdivision or other agency or
 6 instrumentality of the state. The exemption granted in this
 7 subsection is not applicable to any tax imposed by chapter 220
 8 on interest, income, or profits on debt obligations owned by
 9 corporations.

10 (7) Two or more municipalities or counties the
 11
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13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15 On page 1, line 2, through
 16 page 2, line 23, delete those lines

17
 18 and insert:

19 An act relating to insurer insolvency; amending
 20 s. 631.181, F.S.; providing an exception to
 21 certain requirements for a signed statement for
 22 certain claims against an insolvent insurer;
 23 providing requirements; creating s. 631.1915,
 24 F.S.; providing requirements for policyholder
 25 collateral, deductible reimbursements, and
 26 other policyholder obligations; specifying that
 27 certain collateral held by an insurer or a
 28 receiver to secure policyholder obligations
 29 under a deductible agreement are not an estate
 30 asset; requiring use of such collateral to
 31 secure policyholder obligations under such

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1 agreement; requiring a receiver to use such
2 collateral to pay noncovered claims under
3 certain circumstances; providing for certain
4 claims to be claims against an insurer's estate
5 under certain circumstances; requiring a
6 receiver to allocate collateral among certain
7 obligations and administer such collateral;
8 authorizing a receiver to continue and enforce
9 certain alternative policyholder claim funding
10 contractual agreements; specifying certain
11 actions as a bar to certain claims and an
12 extinguishment of certain obligations;
13 requiring a guaranty association to bill a
14 policyholder for certain reimbursement amounts
15 for certain claims; specifying policyholder
16 obligation for certain amounts; prohibiting
17 certain defenses; requiring a receiver to use
18 certain collateral for certain purposes;
19 requiring a receiver to prorate certain funds
20 of an estate under certain circumstances;
21 authorizing a guaranty association to deduct
22 certain expenses; requiring a guaranty
23 association to provide a complete accounting of
24 certain billing and collection activities;
25 authorizing a guaranty association to contract
26 for certain collections; providing for claims
27 against an insolvent insurer's estate for
28 certain unreimbursed claims payments; requiring
29 a receiver to annually adjust collateral held
30 pursuant to a deductible agreement; specifying
31 jurisdiction of a state court to resolve

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1 disputes; preserving rights of a guaranty
2 association to reimbursement for certain
3 claims; providing application to certain orders
4 of liquidation; providing definitions;
5 providing for nonapplication to certain claims;
6 amending s. 631.54, F.S.; redefining the term
7 "covered claim"; amending s. 631.57, F.S.;
8 providing requirements and limitations for the
9 Florida Insurance Guaranty Association, Inc.,
10 relating to assessments for covered claims
11 payable from revenue bonds issued by counties
12 or municipalities; authorizing the association
13 to contract with counties and municipalities to
14 issue revenue bonds for certain purposes;
15 providing requirements for use of bond
16 proceeds; creating s. 631.695, F.S.; providing
17 legislative findings and purposes; providing
18 for issuance of revenue bonds through counties
19 and municipalities to fund assistance programs
20 for paying covered claims for hurricane damage;
21 providing procedures, requirements, and
22 limitations for counties, municipalities, and
23 the Florida Insurance Guaranty Association,
24 Inc., relating to issuance and validation of
25 such bonds; providing for payments on and
26 retirement of such bonds from certain
27 assessments; prohibiting pledging the funds,
28 credit, property, and taxing power of the
29 state, counties, and municipalities for payment
30 of bonds; specifying authorized uses of bond
31 proceeds; limiting the term of bonds;

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1 specifying a state covenant to protect
2 bondholders from adverse actions relating to
3 such bonds; specifying exemptions for bonds,
4 notes, and other obligations of counties and
5 municipalities from certain taxes or
6 assessments on property and revenues;
7 authorizing counties and municipalities to
8 create a legal entity to exercise certain
9 powers; prohibiting repeal of certain
10 provisions relating to certain bonds under
11 certain circumstances; providing severability;

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