

Bill No. SB 2184

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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 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 such information is remitted to the guaranty

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1 fund by the receiver in electronic or other mutually agreed  
2 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.

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

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

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

26       (e) Periodically, but not more than annually, the  
27 receiver shall adjust the collateral being held pursuant to  
28 the deductible agreement. The receiver shall maintain adequate  
29 collateral to secure 110 percent of the entire estimated  
30 obligation of the policyholder. The receiver shall provide a  
31 copy of its collateral review to any obligated guaranty

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1 association. Once all claims covered by the collateral have  
2 been paid and the receiver is satisfied that no new claims can  
3 be presented, the receiver may release any remaining  
4 collateral.

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

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

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

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

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

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

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

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

30 631.54 Definitions.--As used in this part:

31 (3) "Covered claim" means an unpaid claim, including

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

11 "Covered claim" shall not include:

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

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

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

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

27 631.57 Powers and duties of the association.--

28 (1) The association shall:

29 (a)1. Be obligated to the extent of the covered claims  
 30 existing:

31 a. Prior to adjudication of insolvency and arising

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1 within 30 days after the determination of insolvency;

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

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

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

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

31 3. In no event shall the association be obligated to a



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1 policyholder or claimant in an amount in excess of the  
2 obligation of the insolvent insurer under the policy from  
3 which the claim arises.

4 (2) The association may:

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

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

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

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

12 Section 5. Section 631.695, Florida Statutes, is  
 13 created to read:

14 631.695 Revenue bond issuance through counties or  
 15 municipalities.--

16 (1) The Legislature finds:

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

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

27 (c) In addition, the failure of insurers to pay  
 28 covered claims or to pay such claims timely due to the  
 29 insolvency of such insurers can undermine the public's  
 30 confidence in insurers operating within this state, thereby  
 31 adversely affecting the stability of the insurance industry in

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1 this state.

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

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

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

26       (g) To achieve the foregoing purposes, it is proper to  
27 authorize municipalities and counties of this state  
28 substantially affected by the landfall of a category 1 or  
29 greater hurricane to issue bonds to assist the Florida  
30 Insurance Guaranty Association, Inc., in expediting the  
31 handling and payment of covered claims of insolvent insurers.

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

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

16       (2) The governing body of any municipality or county  
17 the residents of which have been substantially affected by a  
18 category 1 or greater hurricane may issue bonds to fund an  
19 assistance program in conjunction with, and with the consent  
20 of, the Florida Insurance Guaranty Association, Inc., for the  
21 purpose of paying claimants' or policyholders' covered claims  
22 as defined in s. 631.54 arising through the insolvency of an  
23 insurer, which insolvency is determined by the Florida  
24 Insurance Guaranty Association, Inc., to have been a result of  
25 a category 1 or greater hurricane, regardless of whether such  
26 claimants or policyholders are residents of such municipality  
27 or county or the property to which such claim relates is  
28 located within or outside the territorial jurisdiction of such  
29 municipality or county. The power of a municipality or county  
30 to issue bonds as described in this section is in addition to  
31 any powers granted by law and may not be abrogated or

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

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

26 (4) Bonds may be validated by such municipality or  
27 county pursuant to chapter 75. The proceeds of such bonds may  
28 be used to pay covered claims of insolvent insurers; to  
29 refinance or replace previously existing borrowings or  
30 financial arrangements; to pay interest on bonds; to fund  
31 reserves for the bonds; to pay expenses incident to the

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

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

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

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

8 (7) Two or more municipalities or counties the  
 9  
 10

11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 On page 1, line 2, through  
 14 page 2, line 23, delete those lines

15  
 16 and insert:

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

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



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1 claims; providing application to certain orders  
2 of liquidation; providing definitions;  
3 providing for nonapplication to certain claims;  
4 amending s. 631.54, F.S.; redefining the term  
5 "covered claim"; amending s. 631.57, F.S.;

6 providing requirements and limitations for the  
7 Florida Insurance Guaranty Association, Inc.,  
8 relating to assessments for covered claims  
9 payable from revenue bonds issued by counties  
10 or municipalities; authorizing the association  
11 to contract with counties and municipalities to  
12 issue revenue bonds for certain purposes;  
13 providing requirements for use of bond  
14 proceeds; creating s. 631.695, F.S.; providing  
15 legislative findings and purposes; providing  
16 for issuance of revenue bonds through counties  
17 and municipalities to fund assistance programs  
18 for paying covered claims for hurricane damage;  
19 providing procedures, requirements, and  
20 limitations for counties, municipalities, and  
21 the Florida Insurance Guaranty Association,  
22 Inc., relating to issuance and validation of  
23 such bonds; providing for payments on and  
24 retirement of such bonds from certain  
25 assessments; prohibiting pledging the funds,  
26 credit, property, and taxing power of the  
27 state, counties, and municipalities for payment  
28 of bonds; specifying authorized uses of bond  
29 proceeds; limiting the term of bonds;  
30 specifying a state covenant to protect  
31 bondholders from adverse actions relating to

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

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