

By Senator Baker

20-1083A-05

See HB 1451

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

1 for paying covered claims for hurricane damage;
2 providing procedures, requirements, and
3 limitations for counties, municipalities, and
4 the Florida Insurance Guaranty Association,
5 Inc., relating to issuance and validation of
6 such bonds; providing for payments on and
7 retirement of such bonds from certain emergency
8 assessments; prohibiting pledging the funds,
9 credit, property, and taxing power of the
10 state, counties, and municipalities for payment
11 of bonds; specifying authorized uses of bond
12 proceeds; limiting the term of bonds;
13 specifying a state covenant to protect
14 bondholders from adverse actions relating to
15 such bonds; specifying exemptions for bonds,
16 notes, and other obligations of counties and
17 municipalities from certain taxes or
18 assessments on property and revenues;
19 authorizing counties and municipalities to
20 create a legal entity to exercise certain
21 powers; prohibiting repeal of certain
22 provisions relating to certain bonds under
23 certain circumstances; providing severability;
24 providing an effective date.

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

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

30 631.54 Definitions.--As used in this part:
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1 (3) "Covered claim" means an unpaid claim, including
2 one of unearned premiums, which arises out of, and is within
3 the coverage, and not in excess of, the applicable limits of
4 an insurance policy to which this part applies, issued by an
5 insurer, if such insurer becomes an insolvent insurer and the
6 claimant or insured is a resident of this state at the time of
7 the insured event or the property from which the claim arises
8 is permanently located in this state. For entities other than
9 an individual, the residence of a claimant, insured, or
10 policyholder is the state in which the entity's principal
11 place of business is located at the time of the insured event.

12 "Covered claim" shall not include:

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

17 (b) Any claim that would otherwise be a covered claim
18 under this part that has been rejected by any other state
19 guaranty fund on the grounds that an insured's net worth is
20 greater than that allowed under that state's guaranty law.
21 Member insurers shall have no right of subrogation,
22 contribution, indemnification, or otherwise, sought directly
23 or indirectly through a third party, against the insured of
24 any insolvent member.

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

29 631.57 Powers and duties of the association.--

30 (1) The association shall:

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

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

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

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

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

23 b. Notwithstanding sub-subparagraph a., the
24 association has no obligation to pay covered claims that are
25 to be paid from the proceeds of bonds issued under s. 631.695.
26 However, the association shall cause emergency assessments to
27 be made under paragraph (3)(e) for such covered claims, and
28 such emergency assessments shall be assigned and pledged under
29 paragraph (3)(e) to or on behalf of the issuer of such bonds
30 for the benefit of the holders of such bonds. The association
31 shall administer any such covered claims and present valid

1 covered claims for payment in accordance with the provisions
2 of the assistance program in connection with which such bonds
3 have been issued.

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

8 (2) The association may:

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

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

19 (3)

20 (e)1.a. In addition to assessments otherwise
21 authorized in paragraph (a) and to the extent necessary to
22 secure the funds for the account specified in s. 631.55(2)(c),
23 or to retire indebtedness, including, without limitation, the
24 principal, redemption premium, if any, and interest on, and
25 related costs of issuance of, bonds issued under s. 631.695,
26 and the funding of any reserves and other payments required
27 under the bond resolution or trust indenture pursuant to which
28 such bonds have been issued, the department, upon
29 certification of the board of directors, shall levy emergency
30 assessments upon insurers holding a certificate of authority
31 as set forth in this paragraph. The emergency assessments

1 payable under this paragraph by any insurer shall not exceed
2 in any single year more than 2 percent of that insurer's
3 direct written premiums, net of refunds, in this state during
4 the preceding calendar year for the kinds of insurance within
5 the account specified in s. 631.55(2)(c).

6 b. Any emergency assessments authorized under this
7 paragraph shall be levied by the department upon insurers
8 referred to in sub-subparagraph a., upon certification as to
9 the need for such assessments by the board of directors, in
10 each year that bonds issued under s. 631.695 are outstanding,
11 in such amounts up to such 2-percent limit as required in
12 order to provide for the full and timely payment of the
13 principal, redemption premium, if any, and interest on, and
14 related costs of issuance of bonds issued under s. 631.695.
15 The emergency assessments provided for in this paragraph are
16 assigned and pledged to the municipality, county, or legal
17 entity issuing bonds under s. 631.695 for the benefit of the
18 holders of such bonds in order to enable such municipality,
19 county, or legal entity to provide for the payment of the
20 principal, redemption premium, if any, and interest on such
21 bonds, the cost of issuance of such bonds, and the funding of
22 any reserves and other payments required under the bond
23 resolution or trust indenture pursuant to which such bonds
24 have been issued, without the necessity of any further action
25 by the association, the department, or any other party. To the
26 extent bonds are issued under s. 631.695, the proceeds of
27 emergency assessments levied under this paragraph shall be
28 remitted directly to and administered by the trustee or
29 custodian appointed for such bonds.

30 c. Emergency assessments under this paragraph may be
31 payable in a single payment or, at the option of the

1 association, payable in 12 monthly installments with the first
2 installment due and payable at the end of the month after an
3 emergency assessment is levied and subsequent installments
4 being due not later than the end of each succeeding month.

5 d. The association shall issue an annual report on the
6 status of the use of the bond proceeds as related to
7 insolvencies caused by hurricanes. The report must contain the
8 number and amount of claims paid. The association shall also
9 include an analysis of the revenue generated from the
10 additional assessment levied under this paragraph. The
11 association shall submit a copy of the report to the President
12 of the Senate, the Speaker of the House of Representatives,
13 and the Chief Financial Officer within 90 days after the end
14 of each calendar year in which bonds were outstanding.

15 2. In order to ensure that insurers paying emergency
16 assessments levied under this paragraph continue to charge
17 rates that are not inadequate or excessive, within 90 days
18 after being notified of such assessments, each insurer that is
19 to be assessed pursuant to this paragraph shall make a rate
20 filing for coverage included within the account specified in
21 s. 631.55(2)(c) and for which rates are required to be filed
22 under s. 627.062. If the filing reflects a rate change that,
23 as a percentage, is equal to the difference between the rate
24 of such assessment and the rate of the previous year's
25 assessment under this paragraph, the filing shall consist of a
26 certification so stating and shall be deemed approved when
27 made. Any rate change of a different percentage shall be
28 subject to the standards and procedures of s. 627.062.

29 3. An annual assessment under this paragraph shall
30 continue until the bonds issued with respect to which the
31 assessment was imposed are outstanding, including any bonds

1 the proceeds of which were used to refund bonds issued
2 pursuant to s. 631.695, unless adequate provision has been
3 made for the payment of the bonds under the documents
4 authorizing the issuance of such bonds.

5 4. Emergency assessments under this paragraph are not
6 premium and are not subject to the premium tax, any fees, or
7 any commissions. An insurer is liable for all emergency
8 assessments that the insurer collects and must treat the
9 failure of an insured to pay an emergency assessment as a
10 failure to pay the premium. An insurer is not liable for
11 uncollectible emergency assessments.

12 Section 3. 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
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1 adversely affecting the stability of the insurance industry in
2 this state.

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

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

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

27 (g) To achieve the foregoing purposes, it is proper to
28 authorize municipalities and counties of this state
29 substantially affected by the landfall of a category 1 or
30 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

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 emergency assessments levied under s. 631.57(3)(e) and
13 assigned and pledged to or on behalf of the municipality or
14 county for the benefit of the holders of such bonds in
15 connection with such assistance program. The funds, credit,
16 property, and taxing power of the state or any municipality or
17 county shall not be pledged for the payment of such bonds.

18 (3) Bonds may be validated by such municipality or
19 county pursuant to chapter 75. The proceeds of such bonds may
20 be used to pay covered claims of insolvent insurers; to
21 refinance or replace previously existing borrowings or
22 financial arrangements; to pay interest on bonds; to fund
23 reserves for the bonds; to pay expenses incident to the
24 issuance or sale of any bond issued under this section,
25 including costs of validating, printing, and delivering the
26 bonds, costs of printing the official statement, costs of
27 publishing notices of sale of the bonds, costs of obtaining
28 credit enhancement or liquidity support, and related
29 administrative expenses; or for such other purposes related to
30 the financial obligations of the fund as the association may
31 determine. The term of the bonds may not exceed 30 years.

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

11 (5) The accomplishment of the authorized purposes of
12 such municipality or county under this section is in all
13 respects for the benefit of the people of the state, for the
14 increase of their commerce and prosperity, and for the
15 improvement of their health and living conditions. Such
16 municipality or county, in performing essential governmental
17 functions in accomplishing its purposes, is not required to
18 pay any taxes or assessments of any kind whatsoever upon any
19 property acquired or used by the county or municipality for
20 such purposes or upon any revenues at any time received by the
21 county or municipality. The bonds, notes, and other
22 obligations of such municipality or county, and the transfer
23 of and income from such bonds, notes, and other obligations,
24 including any profits made on the sale of such bonds, notes,
25 and other obligations, are exempt from taxation of any kind by
26 the state or by any political subdivision or other agency or
27 instrumentality of the state. The exemption granted in this
28 subsection is not applicable to any tax imposed by chapter 220
29 on interest, income, or profits on debt obligations owned by
30 corporations.

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

8 Section 4. No provision of section 631.57 or section
9 166.111, Florida Statutes, shall be repealed until such time
10 as the principal, redemption premium, if any, and interest on
11 all bonds issued under section 166.111, Florida Statutes,
12 payable and secured from assessments levied under section
13 631.57(3)(e), Florida Statutes, have been paid in full or
14 adequate provision for such payment has been made in
15 accordance with the bond resolution or trust indenture
16 pursuant to which such bonds were issued.

17 Section 5. If any provision of this act or the
18 application thereof to any person or circumstance is held
19 invalid, the invalidity shall not affect other provisions or
20 applications of the act which can be given effect without the
21 invalid provision or application, and to this end the
22 provisions of this act are declared severable.

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

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