

1 A bill to be entitled

2 An act relating to insurer insolvency; amending s.
3 631.181, F.S.; providing an exception to certain
4 requirements for a signed statement for certain claims;
5 providing requirements; amending s. 631.54, F.S.; revising
6 the definition of "covered claim"; amending s. 631.57,
7 F.S.; revising requirements and limitations for
8 obligations of the Florida Insurance Guaranty Association,
9 Inc., for covered claims; authorizing the association to
10 contract with counties and municipalities to issue revenue
11 bonds for certain purposes; authorizing the Department of
12 Financial Services to levy assessments and emergency
13 assessments on insurers under certain circumstances for
14 certain bond repayment purposes; providing requirements
15 for and limitations on such assessments; providing for
16 payment, collection, and distribution of such assessments;
17 requiring insurers to include an analysis of revenues from
18 such assessments in a required report; providing rate
19 filing requirements for insurers relating to such
20 assessments; providing for continuing annual assessments
21 under certain circumstances; specifying emergency
22 assessments as not premium and not subject to certain
23 taxes, fees, or commissions; specifying insurer liability
24 for emergency assessments; providing an exception;
25 creating s. 631.695, F.S.; providing legislative findings
26 and purposes; providing for issuance of revenue bonds
27 through counties and municipalities to fund assistance
28 programs for paying covered claims for hurricane damage;

29 providing procedures, requirements, and limitations for
 30 counties, municipalities, and the Florida Insurance
 31 Guaranty Association, Inc., relating to issuance and
 32 validation of such bonds; prohibiting pledging the funds,
 33 credit, property, and taxing power of the state, counties,
 34 and municipalities for payment of bonds; specifying
 35 authorized uses of bond proceeds; limiting the term of
 36 bonds; specifying a state covenant to protect bondholders
 37 from adverse actions relating to such bonds; specifying
 38 exemptions for bonds, notes, and other obligations of
 39 counties and municipalities from certain taxes or
 40 assessments on property and revenues; authorizing counties
 41 and municipalities to create a legal entity to exercise
 42 certain powers; requiring the association to issue an
 43 annual report on the status of certain uses of bond
 44 proceeds; providing report requirements; requiring the
 45 association to provide a copy of the report to the
 46 Legislature and Chief Financial Officer; prohibiting
 47 repeal of certain provisions relating to certain bonds
 48 under certain circumstances; providing severability;
 49 providing an effective date.

50
 51 Be It Enacted by the Legislature of the State of Florida:

52
 53 Section 1. Paragraph (f) is added to subsection (2) of
 54 section 631.181, Florida Statutes, to read:

55 631.181 Filing and proof of claim.--

56 (2)

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57 (f) The signed statement required by this section shall
58 not be required on claims for which adequate claims file
59 documentation exists within the records of the insolvent
60 insurer. Claims for payment of unearned premium shall not be
61 required to use the signed statement required by this section if
62 the receiver certifies to the guaranty fund that the records of
63 the insolvent insurer are sufficient to determine the amount of
64 unearned premium owed to each policyholder of the insurer and
65 such information is remitted to the guaranty fund by the
66 receiver in electronic or other mutually agreed-upon format.

67 Section 2. Subsection (3) of section 631.54, Florida
68 Statutes, is amended to read:

69 631.54 Definitions.--As used in this part:

70 (3) "Covered claim" means an unpaid claim, including one
71 of unearned premiums, which arises out of, and is within the
72 coverage, and not in excess of, the applicable limits of an
73 insurance policy to which this part applies, issued by an
74 insurer, if such insurer becomes an insolvent insurer and the
75 claimant or insured is a resident of this state at the time of
76 the insured event or the property from which the claim arises is
77 permanently located in this state. For entities other than
78 individuals, the residence of a claimant, insured, or
79 policyholder is the state in which the entity's principal place
80 of business is located at the time of the insured event.

81 "Covered claim" shall not include:

82 (a) Any amount due any reinsurer, insurer, insurance pool,
83 or underwriting association, sought directly or indirectly

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84 through a third party, as subrogation, contribution,
 85 indemnification, or otherwise; or

86 (b) Any claim that would otherwise be a covered claim
 87 under this part that has been rejected by any other state
 88 guaranty fund on the grounds that an insured's net worth is
 89 greater than that allowed under that state's guaranty law.
 90 Member insurers shall have no right of subrogation,
 91 contribution, indemnification, or otherwise, sought directly or
 92 indirectly through a third party, against the insured of any
 93 insolvent member.

94 Section 3. Paragraph (a) of subsection (1), paragraph (d)
 95 of subsection (2), and paragraph (a) of subsection (3) of
 96 section 631.57, Florida Statutes, are amended, and paragraph (e)
 97 is added to subsection (3) of that section, to read:

98 631.57 Powers and duties of the association.--

99 (1) The association shall:

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

102 a. Prior to adjudication of insolvency and arising within
 103 30 days after the determination of insolvency;

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

106 c. Before the insured replaces the policy or causes its
 107 cancellation, if she or he does so within 30 days of the
 108 determination.

109 2.a. The obligation under subparagraph 1. shall include
 110 only that amount of each covered claim which is in excess of
 111 \$100 and is less than \$300,000, except with respect to policies

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112 covering condominium associations or homeowners' associations,
113 which associations have a responsibility to provide insurance
114 coverage on residential units within the association, the
115 obligation shall include that amount of each covered property
116 insurance claim which is less than \$100,000 multiplied by the
117 number of condominium units or other residential units; however,
118 as to homeowners' associations, this sub-subparagraph
119 ~~subparagraph~~ applies only to claims for damage or loss to
120 residential units and structures attached to residential units.

121 b. Notwithstanding sub-subparagraph a., the association
122 has no obligation to pay covered claims that are to be paid from
123 the proceeds of bonds issued under s. 631.695. However, the
124 association shall assign and pledge the first available moneys
125 from all or part of the assessments to be made under paragraph
126 (3) (a) to or on behalf of the issuer of such bonds for the
127 benefit of the holders of such bonds. The association shall
128 administer any such covered claims and present valid covered
129 claims for payment in accordance with the provisions of the
130 assistance program in connection with which such bonds have been
131 issued.

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

136 (2) The association may:

137 (d) Negotiate and become a party to such contracts as are
138 necessary to carry out the purpose of this part. Additionally,
139 the association may enter into such contracts with a

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140 municipality, a county, or a legal entity created pursuant to s.
141 163.01(7)(g) as are necessary in order for the municipality,
142 county, or legal entity to issue bonds under s. 631.695. In
143 connection with the issuance of any such bonds and the entering
144 into of any such necessary contracts, the association may agree
145 to such terms and conditions as the association deems necessary
146 and proper.

147 (3)(a) To the extent necessary to secure the funds for the
148 respective accounts for the payment of covered claims, ~~and also~~
149 to pay the reasonable costs to administer the same, and to
150 secure the funds for the account specified in s. 631.55(2)(c),
151 or to retire indebtedness, including, without limitation, the
152 principal, redemption premium, if any, and interest on, and
153 related costs of issuance of, bonds issued under s. 631.695, and
154 the funding of any reserves and other payments required under
155 the bond resolution or trust indenture pursuant to which such
156 bonds have been issued, the office, upon certification of the
157 board of directors, shall levy assessments in the proportion
158 that each insurer's net direct written premiums in this state in
159 the classes protected by the account bears to the total of said
160 net direct written premiums received in this state by all such
161 insurers for the preceding calendar year for the kinds of
162 insurance included within such account. Assessments shall be
163 remitted to and administered by the board of directors in the
164 manner specified by the approved plan. Each insurer so assessed
165 shall have at least 30 days' written notice as to the date the
166 assessment is due and payable. Every assessment shall be made as
167 a uniform percentage applicable to the net direct written

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168 premiums of each insurer in the kinds of insurance included
169 within the account in which the assessment is made. The
170 assessments levied against any insurer shall not exceed in any
171 one year more than 2 percent of that insurer's net direct
172 written premiums in this state for the kinds of insurance
173 included within such account during the calendar year next
174 preceding the date of such assessments.

175 (e)1.a. In addition to assessments otherwise authorized in
176 paragraph (a) and to the extent necessary to secure the funds
177 for the account specified in s. 631.55(2)(c), or to retire
178 indebtedness, including, without limitation, the principal,
179 redemption premium, if any, and interest on, and related costs
180 of issuance of, bonds issued under s. 631.695, and the funding
181 of any reserves and other payments required under the bond
182 resolution or trust indenture pursuant to which such bonds have
183 been issued, the department, upon certification of the board of
184 directors, shall levy emergency assessments as provided in this
185 paragraph upon insurers holding a certificate of authority. The
186 emergency assessments payable under this paragraph by any
187 insurer shall not exceed in any single year more than 2 percent
188 of that insurer's direct written premiums, net of refunds, in
189 this state during the preceding calendar year for the kinds of
190 insurance within the account specified in s. 631.55(2)(c).

191 b. Any emergency assessments authorized under this
192 paragraph shall be levied by the department upon insurers
193 holding a certificate of authority, upon certification as to the
194 need for such assessments by the board of directors, in each
195 year that bonds issued under s. 631.695 and secured by such

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196 emergency assessments are outstanding, in such amounts up to
197 such 2-percent limit as required in order to provide for the
198 full and timely payment of the principal of, redemption premium,
199 if any, and interest on, and related costs of issuance of, such
200 bonds. The emergency assessments provided for in this paragraph
201 are assigned and pledged to the municipality, county, or legal
202 entity issuing bonds under s. 631.695, for the benefit of the
203 holders of such bonds, in order to enable such municipality,
204 county, or legal entity to provide for the payment of the
205 principal of, redemption premium, if any, and interest on such
206 bonds, the cost of issuance of such bonds, and the funding of
207 any reserves and other payments required under the bond
208 resolution or trust indenture pursuant to which such bonds have
209 been issued, without the necessity of any further action by the
210 association, the department, or any other party. To the extent
211 that bonds are issued under s. 631.695 and the association
212 determines to secure such bonds by a pledge of revenues received
213 from the emergency assessments, such bonds, upon such pledge of
214 revenues, shall be secured by and payable from the proceeds of
215 such emergency assessments, and the proceeds of emergency
216 assessments levied under this paragraph shall be remitted
217 directly to and administered by the trustee or custodian
218 appointed for such bonds.

219 c. Emergency assessments under this paragraph may be
220 payable in a single payment or, at the option of the
221 association, may be payable in 12 monthly installments with the
222 first installment being due and payable at the end of the month
223 after an emergency assessment is levied and subsequent

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224 installments being due not later than the end of each succeeding
225 month.

226 d. If emergency assessments are imposed, the report
227 required by s. 631.695(7) shall include an analysis of the
228 revenues generated from the emergency assessments imposed under
229 this paragraph.

230 2. In order to ensure that insurers paying emergency
231 assessments levied under this paragraph continue to charge rates
232 that are neither inadequate nor excessive, within 90 days after
233 being notified of such assessments, each insurer that is to be
234 assessed pursuant to this paragraph shall submit a rate filing
235 for coverage included within the account specified in s.
236 631.55(2)(c) and for which rates are required to be filed under
237 s. 627.062. If the filing reflects a rate change that, as a
238 percentage, is equal to the difference between the rate of such
239 assessment and the rate of the previous year's assessment under
240 this paragraph, the filing shall consist of a certification so
241 stating and shall be deemed approved when made. Any rate change
242 of a different percentage shall be subject to the standards and
243 procedures of s. 627.062.

244 3. An annual assessment under this paragraph shall
245 continue while the bonds issued with respect to which the
246 assessment was imposed are outstanding, including any bonds the
247 proceeds of which were used to refund bonds issued pursuant to
248 s. 631.695, unless adequate provision has been made for the
249 payment of the bonds in the documents authorizing the issuance
250 of such bonds.

251 4. Emergency assessments under this paragraph are not

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252 premium and are not subject to the premium tax, to any fees, or
253 to any commissions. An insurer is liable for all emergency
254 assessments that the insurer collects and shall treat the
255 failure of an insured to pay an emergency assessment as a
256 failure to pay the premium. An insurer is not liable for
257 uncollectible emergency assessments.

258 Section 4. Section 631.695, Florida Statutes, is created
259 to read:

260 631.695 Revenue bond issuance through counties or
261 municipalities.--

262 (1) The Legislature finds:

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

268 (b) The inability of insureds within this state to receive
269 payment of covered claims or to timely receive such payment
270 creates financial and other hardships for such insureds and
271 places undue burdens on the state, the affected units of local
272 government, and the community at large.

273 (c) In addition, the failure of insurers to pay covered
274 claims or to timely pay such claims due to the insolvency of
275 such insurers can undermine the public's confidence in insurers
276 operating within this state, thereby adversely affecting the
277 stability of the insurance industry in this state.

278 (d) The state has previously taken action to address these
279 problems by adopting the Florida Insurance Guaranty Association

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280 Act, which, among other things, provides a mechanism for the
281 payment of covered claims under certain insurance policies to
282 avoid excessive delay in payment and to avoid financial loss to
283 claimants or policyholders because of the insolvency of an
284 insurer.

285 (e) In the wake of the unprecedented destruction caused by
286 various hurricanes that have made landfall in this state, the
287 resultant covered claims, and the number of insurers rendered
288 insolvent thereby, it is evident that alternative programs must
289 be developed to allow the Florida Insurance Guaranty
290 Association, Inc., to more expeditiously and effectively provide
291 for the payment of covered claims.

292 (f) It is therefore determined to be in the best interests
293 of, and necessary for, the protection of the public health,
294 safety, and general welfare of the residents of this state, and
295 for the protection and preservation of the economic stability of
296 insurers operating in this state, and it is declared to be an
297 essential public purpose, to permit certain municipalities and
298 counties to take such actions as will provide relief to
299 claimants and policyholders having covered claims against
300 insolvent insurers operating in this state by expediting the
301 handling and payment of covered claims.

302 (g) To achieve the foregoing purposes, it is proper to
303 authorize municipalities and counties of this state
304 substantially affected by the landfall of a category 1 or
305 greater hurricane to issue bonds to assist the Florida Insurance
306 Guaranty Association, Inc., in expediting the handling and
307 payment of covered claims of insolvent insurers.

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308 (h) In order to avoid the needless and indiscriminate
309 proliferation, duplication, and fragmentation of such assistance
310 programs, it is in the best interests of the residents of this
311 state to authorize municipalities and counties severely affected
312 by a category 1 or greater hurricane to provide for the payment
313 of covered claims beyond their territorial limits in the
314 implementation of such programs.

315 (i) It is a paramount public purpose for municipalities
316 and counties substantially affected by the landfall of a
317 category 1 or greater hurricane to be able to issue bonds for
318 the purposes described in this section. Such issuance shall
319 provide assistance to residents of those municipalities and
320 counties as well as to other residents of this state.

321 (2) The governing body of any municipality or county the
322 residents of which have been substantially affected by a
323 category 1 or greater hurricane may issue bonds to fund an
324 assistance program in conjunction with, and with the consent of,
325 the Florida Insurance Guaranty Association, Inc., for the
326 purpose of paying claimants' or policyholders' covered claims as
327 defined in s. 631.54 arising through the insolvency of an
328 insurer, which insolvency is determined by the Florida Insurance
329 Guaranty Association, Inc., to have been a result of a category
330 1 or greater hurricane, regardless of whether such claimants or
331 policyholders are residents of such municipality or county or
332 the property to which such claim relates is located within or
333 outside the territorial jurisdiction of such municipality or
334 county. The power of a municipality or county to issue bonds as
335 described in this section is in addition to any powers granted

336 by law and may not be abrogated or restricted by any provisions
 337 in such municipality's or county's charter. A municipality or
 338 county issuing bonds for this purpose shall enter into such
 339 contracts with the Florida Insurance Guaranty Association, Inc.,
 340 or any entity acting on behalf of the Florida Insurance Guaranty
 341 Association, Inc., as are necessary to implement the assistance
 342 program. Any bonds issued by a municipality or county or
 343 combination thereof under this subsection shall be payable from
 344 and secured by moneys received by or on behalf of the
 345 municipality or county from assessments levied under s.
 346 631.57(3) (a) and assigned and pledged to or on behalf of the
 347 municipality or county for the benefit of the holders of such
 348 bonds in connection with such assistance program. The funds,
 349 credit, property, and taxing power of the state or any
 350 municipality or county shall not be pledged for the payment of
 351 such bonds.

352 (3) Bonds may be validated by such municipality or county
 353 pursuant to chapter 75. The proceeds of such bonds may be used
 354 to pay covered claims of insolvent insurers; to refinance or
 355 replace previously existing borrowings or financial
 356 arrangements; to pay interest on bonds; to fund reserves for the
 357 bonds; to pay expenses incident to the issuance or sale of any
 358 bond issued under this section, including costs of validating,
 359 printing, and delivering the bonds, costs of printing the
 360 official statement, costs of publishing notices of sale of the
 361 bonds, costs of obtaining credit enhancement or liquidity
 362 support, and related administrative expenses; or for such other
 363 purposes related to the financial obligations of the fund as the

364 association may determine. The term of the bonds may not exceed
365 30 years.

366 (4) The state covenants with holders of bonds of the
367 assistance program that the state will not take any action that
368 will have a material adverse effect on such holders and will not
369 repeal or abrogate the power of the board of directors of the
370 association to direct the Office of Insurance Regulation to levy
371 the assessments and to collect the proceeds of the revenues
372 pledged to the payment of such bonds as long as any such bonds
373 remain outstanding unless adequate provision has been made for
374 the payment of such bonds in the documents authorizing the
375 issuance of such bonds.

376 (5) The accomplishment of the authorized purposes of such
377 municipality or county under this section is in all respects for
378 the benefit of the people of the state, for the increase of
379 their commerce and prosperity, and for the improvement of their
380 health and living conditions. Such municipality or county, in
381 performing essential governmental functions in accomplishing its
382 purposes, is not required to pay any taxes or assessments of any
383 kind whatsoever upon any property acquired or used by the county
384 or municipality for such purposes or upon any revenues at any
385 time received by the county or municipality. The bonds, notes,
386 and other obligations of such municipality or county, and the
387 transfer of and income from such bonds, notes, and other
388 obligations, including any profits made on the sale of such
389 bonds, notes, and other obligations, are exempt from taxation of
390 any kind by the state or by any political subdivision or other
391 agency or instrumentality of the state. The exemption granted in

392 this subsection is not applicable to any tax imposed by chapter
 393 220 on interest, income, or profits on debt obligations owned by
 394 corporations.

395 (6) Two or more municipalities or counties the residents
 396 of which have been substantially affected by a category 1 or
 397 greater hurricane may create a legal entity pursuant to s.
 398 163.01(7)(g) to exercise the powers described in this section as
 399 well as those powers granted in s. 163.01(7)(g). Reference in
 400 this section to a municipality or county includes such legal
 401 entity.

402 (7) The association shall issue an annual report on the
 403 status of the use of bond proceeds as related to insolvencies
 404 caused by hurricanes. The report must contain the number and
 405 amount of claims paid. The association shall also include an
 406 analysis of the revenue generated from the assessment levied
 407 under s. 631.57(3)(a) to pay such bonds. The association shall
 408 submit a copy of the report to the President of the Senate, the
 409 Speaker of the House of Representatives, and the Chief Financial
 410 Officer within 90 days after the end of each calendar year in
 411 which bonds were outstanding.

412 Section 5. No provision of s. 631.57 or s. 631.695,
 413 Florida Statutes, shall be repealed until such time as the
 414 principal, redemption premium, if any, and interest on all bonds
 415 issued under s. 631.695, Florida Statutes, payable and secured
 416 from assessments levied under s. 631.57(3)(a), Florida Statutes,
 417 have been paid in full or adequate provision for such payment
 418 has been made in accordance with the bond resolution or trust
 419 indenture pursuant to which such bonds were issued.

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420 Section 6. If any provision of this act or the application
421 thereof to any person or circumstance is held invalid, the
422 invalidity shall not affect other provisions or applications of
423 the act which can be given effect without the invalid provision
424 or application, and to this end the provisions of this act are
425 declared severable.

426 Section 7. This act shall take effect upon becoming a law.