The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1058

INTRODUCER: Senator Hutson

SUBJECT: Property Insurer Reimbursements

DATE: January 31, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	**Favorable**
2.	Hackett	Ryon	CA	**Pre-meeting**
3.			RC	

I. Summary:

SB 1058 authorizes the State Board of Administration (SBA) to provide Florida Hurricane Catastrophe Fund (Cat Fund) coverage to authorized insurers or Citizens Property Insurance Corporation (Citizens) for the policies of unsound insurers that Citizens or the authorized insurer assumes or otherwise provides coverage. The authorized insurer or Citizens may obtain Cat Fund coverage for such policies either through the authorized insurer's or Citizens' reimbursement contract with the Cat Fund or by accepting an assignment of the unsound insurer's contract with the Fund.

The bill defines "unsound insurer" to mean an insurer determined by the Office of Insurance Regulation to be in unsound condition as defined s. 624.80(2), F.S., or placed in receivership under ch. 631, F.S.

Under current law, these options for obtaining Cat Fund coverage are only available to Citizens, and only apply to the policies of liquidated insurers.

The bill takes effect July 1, 2022.

II. Present Situation:

Insurer Insolvency

Federal law specifies that insurance companies cannot file for bankruptcy and are instead subject to state laws regarding receivership.[1] Insurers are either "rehabilitated" or "liquidated" by the

[1] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

state. Typically, insurers are put into liquidation when the company is or is about to become insolvent;[2] whereas, insurers are placed in rehabilitation[3] for numerous reasons, one of which is that the insurer is impaired or failed to comply with an order of the Office of Insurance Regulation (OIR) to address an impairment of capital or surplus or both. The goal of rehabilitation is to return to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay off the company's debts and outstanding insurance claims.

In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies. This process involves the initiation of a delinquency proceeding[4] and the placement of an insurer under the control of the DFS as the receiver. DFS as receiver has many responsibilities related to outstanding debts and insurance claims, which include collecting all debts and money due to the insurer for the good of policyholders and creditors alike, evaluating and paying claims with available assets, and assisting in the transition of policyholders to other insurance coverage.[5]

Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt[6] trust fund created by the Legislature in 1993[7] as a form of mandatory reinsurance for residential property losses. The FHCF is administered by the State Board of Administration (SBA)[8] and reimburses property insurers for a selected percentage (45, 75, or 90 percent)[9] of hurricane losses to residential property above the insurer's retention (deductible). As a condition of doing business in Florida, residential property insurers are required to enter into reimbursement contracts with FHCF.[10] The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic hurricane losses.

FHCF Mandatory Coverage

All insurers admitted to do business in this state writing residential property insurance that includes wind coverage must buy reimbursement coverage (reinsurance) on their residential property exposure through the FHCF.[11] The FHCF is authorized by statute to sell $17 billion of mandatory layer coverage.[12] Each insurer that purchases coverage may receive up to its proportional share of the $17 billion mandatory layer of coverage based upon the insurer's share

[2] Section 631.061, F.S.
[3] Section 631.051, F.S.
[4] Section 631.031, F.S.
[5] Florida Department of Financial Services, *Overview of Liquidation under Chapter 631, Florida Statutes*, *https://www.myfloridacfo.com/division/receiver/guide-to-the-receivership-process/liquidationsummary* (last visited December 29, 2021).
[6] Section 215.555(1)(f), F.S.
[7] Chapter 93-409, L.O.F.
[8] Section 215.555(3), F.S.
[9] Section 215.555(2)(e), F.S.
[10] Section 215.555(4)(a), F.S.
[11] *Id.*
[12] Section 215.555(4)(c)1., F.S.

of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. Each insurer may select a reimbursement contract wherein the FHCF promises to reimburse the insurer for 45 percent, 75 percent, or 90 percent of covered losses, plus 10 percent[13] of the reimbursed losses for loss adjustment expenses.[14]

FHCF Premiums

The FHCF must charge insurers the actuarially indicated premium[15] for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.[16] The actuarially indicated premium is an amount that is adequate to pay current and future obligations and expenses of the fund. In practice, each insurer pays the FHCF annual reimbursement premiums that are proportionate to each insurer's share of the FHCF's risk exposure. The cost of FHCF coverage is generally lower than the cost of private reinsurance because the fund is a tax-exempt non-profit corporation and does not charge a risk load as it relates to overhead and operating expenses incurred by other private insurers.[17]

Assignment of Liquidated Insurer's FHCF Coverage

Citizens Property Insurance Corporation may assume or otherwise provide coverage for policies of residential property insurers placed in liquidation under ch. 631, F.S. Citizens Property Insurance Corporation may subsequently obtain FHCF coverage for the newly assumed policies either under its existing FHCF contract or by way of assignment of the liquidated insurer's FHCF contract, as mutually agreed upon between Citizens Property Insurance Corporation and SBA.[18] In the case of an assignment, FHCF applies its contract to the newly assigned policies and treats Citizens Property Insurance Corporation as though it were the liquidated insurer for the remaining term of the contract.[19]

Florida law is otherwise silent with respect to the assignability of the liquidated insurer's FHCF contract to an authorized insurer rather than to Citizens Property Insurance Corporation. The absence of legislative authority for SBA to approve the assignment of a liquidated insurer's FHCF contract to an authorized insurer removes one regulatory tool for reversing the increasing assumption of policies by Citizens Property Insurance Corporation.

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the

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[13] Section 215.555(4)(b), F.S.
[14] Loss adjustment expenses are costs incurred by insurers when investigating, adjusting, and processing a claim.
[15] Section 215.555(2)(a), F.S.
[16] *See* State Board of Administration of Florida, *Florida Commission on Hurricane Loss Methodology*, https://www.sbafla.com/method/ (last visited December 29, 2021).
[17] State Board of Administration of Florida, Florida Hurricane Catastrophe Fund, *2020 Annual Report*, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20210614_2020_FHCFAnnualReport.pdf?ver=2021-06-14-123243-403 (last visited December 29, 2021).
[18] Section 251.555(5)(e), F.S.
[19] *Id.*

voluntary admitted market.[20] Citizens is not a private insurance company.[21] Citizens was statutorily created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight-member Board of Governors[22] that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board. Citizens is subject to regulation by the OIR.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.[23] Assets may not be commingled or used to fund losses in another account.[24]

- **The Personal Lines Account (PLA)** offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.
- **The Commercial Lines Account (CLA)** offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes nonresidential commercial policies covering business properties.
- **The Coastal Account** offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind-only policies) and may offer multiperil policies.[25]

Citizens Insurance Rates

Citizens' rates for coverage are required to be actuarially sound and, except as otherwise provided in s. 627.351, F.S., are subject to the rate standards for property and casualty insurance in s. 627.062, F.S.[26] From 2007 until 2020, Citizens rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose

[20] Admitted market means insurance companies licensed to transact insurance in Florida.
[21] Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the OIR.
[22] The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members.
[23] The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.
[24] Section 627.351(6)(b)2b., F.S.
[25] In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.
[26] Among the factors OIR considers when reviewing a rate filing is the degree of competition among the insurers for the risk insured, per s. 627.062(3)(b), F.S.

annual rate increases up to an actuarially sound level. The Legislature subsequently increased the glide path in 2021. Citizens must implement an annual rate increase which, except for sinkhole coverage, does not exceed a 10 percent cap above the previous year for any individual policyholder, adjusted for coverage changes and surcharges, which increases by 1 percent annually until the cap reaches 15 percent in 2026.[27]

Citizens Eligibility

Under current law, an applicant for residential insurance cannot buy insurance in Citizens if an admitted insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 20 percent or more.[28] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

Current Citizens policyholders cannot renew a Citizens insurance policy if an insurer in the private market offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.[29]

The Legislature established the Citizens policyholder eligibility clearinghouse program in 2013.[30] Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 20 percent of Citizens' rate makes the policy ineligible for coverage with Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage equal to or less than Citizens' rate is ineligible for coverage with Citizens.

Citizens Options to Maintain FHCF Coverage for Liquidated Insurers' Policies

Citizens may assume or otherwise provide coverage for policies of residential property insurers placed in liquidation under ch. 631, F.S. Citizens may subsequently obtain FHCF coverage for the newly assumed policies either under its existing FHCF contract or by way of assignment of the liquidated insurer's FHCF contract, as mutually agreed upon between Citizens and SBA.[31] In the case of an assignment, FHCF applies its contract to the newly assigned policies and treats Citizens as though it were the liquidated insurer for the remaining term of the contract.[32]

For FHCF coverage purposes, policies assumed under Citizens' existing FHCF contract are treated as having been in effect since June 30 of that calendar year.[33] However, for policies

[27] Section 627.351(6)(n)5., F.S.
[28] Section 627.351(6)(c)5., F.S.
[29] Section 627.351(6)(c)5., F.S.
[30] Section 10, ch. 2013-60, L.O.F.
[31] Section 251.555(5)(e), F.S.
[32] *Id.*
[33] *Id.*

assigned to Citizens, Citizens may not obtain FHCF under its existing FHCF but rather accept assignment of the liquidated insurer's FHCF contract.[34]

III. Effect of Proposed Changes:

Section 1 amends s. 215.555, F.S., governing the FHCF, to define "unsound insurer" to mean an insurer determined by OIR to be in unsound condition as defined in s. 624.80(2), F.S., or placed in receivership under ch. 631, F.S.,

Section 624.80(2), F.S., defines "unsound condition" to mean that OIR has determined that one of more of the following conditions exist with respect to the insurer:

- The insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law;
- The insurer continues to write new business when it has not maintained the required surplus or capital;
- The insurer attempts to dissolve or liquidate without first having made provisions, satisfactory to OIR, for liabilities arising from insurance policies issued by the insurer; or
- The meets one or more of the grounds in s. 631.051, F.S., related to rehabilitation, for the appointment of DFS as receiver.

Chapter 631 governs receivership for purposes of rehabilitation and liquidation.

The bill authorizes the SBA to provide Cat Fund coverage to authorized insurers or Citizens for the policies of unsound insurers that Citizens or the authorized insurer assumes or otherwise provides coverage, provided the conditions are mutually agreed upon between the authorized insurer or Citizens and SBA. The authorized insurer or Citizens may seek to obtain FHCF coverage for the transferred policies under its existing FHCF contract or by accepting an assignment of the unsound insurer's FHCF contract.

The bill clarifies the authorized insurer or Citizens may only accept an assignment of the unsound insurer's FHCF contract if a covered event occurs before the policies' effective transfer date.

The bill clarifies FHCF's right to receive premium due under the unsound insurer's FHCF contract.

Section 2 provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[34] *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 215.555 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.