

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 695 Property Insurer Reimbursements

SPONSOR(S): Stevenson

TIED BILLS: **IDEN./SIM. BILLS:** SB 1058

FINAL HOUSE FLOOR ACTION: 110 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 695 passed the House on March 4, 2022, as SB 1058 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on March 8, 2022. The bill includes portions of CS/CS/HB 503.

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt trust fund created by the Legislature in 1993 as a form of reinsurance for residential property catastrophic hurricane losses. As a condition of transacting insurance business in the state residential property insurers are required to enter into contracts with the State Board of Administration (SBA) to purchase reimbursement coverage (reinsurance) on their residential property exposure. The Office of Insurance Regulation (OIR) monitors the solvency of insurers to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. If an insurer is in an unsound financial condition, OIR may refer that insurer to the Department of Financial Services for the filing of a delinquency proceeding, which may result in the liquidation of the insurer. If Citizens Property Insurance Corporation (Citizens) assumes policies from such liquidated insurer, Citizens may obtain coverage from the FHCF for these policies under its reimbursement contract with the SBA or by accepting an assignment of the liquidated insurer's reimbursement contract with the SBA. However, current law does not address the transfer of FHCF coverage to Citizens if it assumes policies from an authorized insurer that is in an unsound financial condition, but is not the subject of a delinquency proceeding, or the transfer of FHCF coverage if an authorized private insurer assumes policies from an unsound insurer.

The bill amends the conditions under which a collateral protection insurance policy, which is insurance placed by an insurer when a homeowner's policy on the property has lapsed, is eligible for FHCF coverage. The bill provides that a collateral protection insurance policy is eligible for FHCF coverage if it is placed for the amount of the last known coverage, the amount that the homeowner was notified of by the collateral protection insurer, or the amount that the homeowner requests from the collateral protection insurer.

The bill defines "unsound insurer" as an insurer that OIR has determined to be in unsound condition as defined in the Florida Insurance Code or an insurer that has been placed into receivership under ch. 631, F.S. The bill allows any authorized insurer, not just Citizens, to receive the transfer of FHCF coverage along with policies that it assumes from an unsound insurer, subject to an agreement with the SBA. The bill extends to authorized insurers the requirements that exist when Citizens assumes policies from unsound insurers and wishes to obtain coverage from the FHCF for those policies, and establishes additional requirements for both authorized insurers and Citizens. The bill replaces the statutory phrase "placed in liquidation" with the defined term "unsound insurer" so that FHCF coverage can be transferred to Citizens or an authorized insurer with policies that Citizens or such authorized insurer assumes from an unsound insurer or a liquidated insurer. The bill establishes that if a covered event has occurred before the effective date of the transfer of the policies to the authorized insurer or Citizens, the authorized insurer or Citizens may only obtain coverage from the FHCF subject to an assignment of the remaining term of the unsound insurer's FHCF contract.

The bill has no impact on state or local government revenues or expenditures. It has an indeterminate positive economic impact on the private sector.

The bill was approved by the Governor on May 20, 2022, ch. 2022-132, and will become effective July 1, 2022, except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Florida Hurricane Catastrophe Fund

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt trust fund created by the Legislature in 1993 as a form of reinsurance for residential property catastrophic hurricane losses.¹ 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 losses.² The FHCF provides insurers a source of reinsurance that is stable and generally less expensive than private reinsurance.

The FHCF is administered by the State Board of Administration (SBA) and reimburses property insurers for a selected percentage of hurricane losses to residential property when those losses exceed the insurer's retention (deductible).³ The FHCF reimburses participating insurers for losses under covered policies, subject to limitations.⁴ A covered policy is defined as "any insurance policy covering residential property" in Florida, including, but not limited to the following types of policies:

- homeowner
- mobile home owner
- farm owner
- condominium association
- condominium unit owner
- tenant
- apartment building policy
- any other policy covering a residential structure or its contents.⁵

Covered policies also include collateral protection⁶ insurance policies covering personal residences that protect both the borrower's and the lender's financial interest in an amount at least equal to coverage for the dwelling in place under a lapsed homeowner's policy, if such policies meet certain statutory conditions.⁷

Collateral protection insurance is placed by an insurer when a homeowner's policy on the property has lapsed. Sometimes, the insurer is unable to obtain correct information from the homeowner and places coverage at an amount other than the amount of the homeowner's lapsed policy. This can create a discrepancy between the coverage in place and the amount of the homeowner's lapsed policy, which makes the policy ineligible for FHCF coverage.

¹ See s. 215.555, F.S.

² See *id.*

³ *Id.* Retention is defined as the amount of losses below which an insurer is not entitled to reimbursement from the FHCF. It is calculated for each insurer based upon that insurer's proportionate share of overall premiums charged by the FHCF. See s. 215.555(2)(e), F.S.

⁴ S. 215.555(2)(d), F.S.

⁵ S. 215.555(2)(c), F.S.

⁶ "Collateral protection insurance" means commercial property insurance of which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document. Collateral protection insurance is not residential coverage. Ss. 215.555(15) and 624.6085, F.S.

⁷ S. 215.555(2)(c), F.S.

Covered policies may be issued by any authorized insurer,⁸ a commercial self-insurance fund holding a certificate of authority issued by the Office of Insurance Regulation (OIR), the Citizens Property Insurance Corporation (Citizens), and any joint underwriting association or similar legal entity.⁹

As a condition of transacting insurance business in the state, residential property insurers are required to enter into contracts with the SBA to purchase reimbursement coverage (reinsurance) on their residential property exposure.¹⁰ Pursuant to its contract with the SBA, each insurer must pay an actuarially-indicated annual premium for the reimbursement.¹¹ The actuarial basis for the premium includes an analysis of hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology, which is also part of the SBA.

Insurer Financial Condition

As part of its regulation, OIR monitors the solvency of insurers to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. OIR considers an insurer to be in an unsound financial condition if:

- 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 attempted to dissolve or liquidate without making provisions for liabilities arising from insurance policies that it issued; or
- the insurer meets one or more of the grounds in s. 631.051, F.S., for appointment of the Department of Financial Services (DFS) as receiver.¹²

Federal law specifies that insurers cannot file for bankruptcy.¹³ Instead, insolvent insurers are either rehabilitated or liquidated by the state. In Florida, the Division of Rehabilitation and Liquidation of DFS is responsible for rehabilitating or liquidating insurance companies.¹⁴

Chapter 631, F.S., relating to insurers insolvency and guaranty payments, governs the receivership process. This process involves the initiation of a delinquency proceeding in circuit court and the placement of an insurer under the control of DFS as the receiver.¹⁵ Depending on the insurer's circumstances, the delinquency proceeding may result in an order of rehabilitation or liquidation.¹⁶

Assumption of Residential Property Insurance Policies by Citizens

Citizens is a state-created, not-for-profit, tax-exempt government entity that is an integral part of the state, whose public purpose is to provide property insurance to those unable to find affordable

⁸ Authorized insurers are those insurers that have obtained a certificate of authority from OIR to transact insurance business in Florida. S. 624.09(1), F.S.

⁹ S. 215.555(2)(c), F.S.

¹⁰ S. 215.555(4), F.S.

¹¹ S. 215.555(5)(a), F.S.

¹² S. 624.80(2), F.S.

¹³ The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of federal bankruptcy proceeding. 11 U.S.C. 109(b)(2). The exclusion of insurers from the federal bankruptcy process is consistent with federal policy generally allowing states to regulate insurance. See 15 U.S.C. ss. 1011-1012.

¹⁴ Typically, insurers are put into liquidation when the company is insolvent, but put into rehabilitation for various other reasons, including an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. See s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

¹⁵ S. 631.031, F.S.

¹⁶ See ss. 631.101 and 631.111, F.S.

coverage in the private market from an authorized insurer.¹⁷ Unlike private insurers, Citizens is not required to hold a certificate of authority from OIR.¹⁸

A significant portion of Citizens' total policy count consists of residential property insurance policies. These policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and some other similar policies. Pursuant to its enabling statute, s. 627.351(6), F.S., Citizens must enter into a reimbursement contract with the SBA for coverage from the FHCF for its residential property insurance policies.¹⁹ While private carriers may select from various coverage levels available from the FHCF, Citizens is statutorily required to purchase the highest available level of coverage from the FHCF.²⁰

Currently, if an insurer is placed in liquidation under ch. 631, F.S., and Citizens assumes policies from such liquidated insurer, Citizens may obtain coverage from the FHCF for these policies under its reimbursement contract with the SBA or by accepting an assignment of the liquidated insurer's reimbursement contract with the SBA.²¹ The assignment of the contract must be provided for in the liquidation order or otherwise determined by the court as part of the delinquency proceedings involving the liquidated insurer.²² The law does not address the transfer of FHCF coverage to Citizens if it assumes policies from an authorized insurer that is in an unsound financial condition (unsound insurer), but is not the subject of a delinquency proceeding.

Assumption of Residential Property Insurance Policies by Authorized Insurers

Under certain circumstances, OIR may approve the assumption of policies by an authorized insurer (assuming insurer) from an unsound insurer or an insurer placed in receivership. However, current law does not provide for the assignment to the assuming insurer of the FHCF coverage that the unsound insurer or the insurer placed in receivership has on its policies.

Effect of the Bill

The bill amends the conditions under which a collateral protection insurance policy can be considered a "covered policy" and, thus, eligible for FHCF coverage. The bill provides that a collateral protection insurance policy is eligible for FHCF coverage if it is placed for the amount of the last known coverage, the amount that the homeowner was notified of by the collateral protection insurer, or the amount that the homeowner requests from the collateral protection insurer. The bill provides that these proposed changes related to collateral protection insurance policies are effective June 1, 2023.

The bill defines "unsound insurer" as an insurer that OIR has determined to be in unsound condition as defined in s. 624.80(2), F.S., or an insurer that has been placed into receivership under ch. 631, F.S.

The bill allows any authorized insurer to receive the transfer of FHCF coverage along with policies that it assumes from an unsound insurer, subject to an agreement with the SBA. The bill extends to authorized insurers the requirements that exist when Citizens assumes policies from unsound insurers and wishes to obtain coverage from the FHCF for those policies, and also establishes additional requirements for both authorized insurers and Citizens.

¹⁷ S. 627.351(6)(a)1., F.S.

¹⁸ Citizens, *Management Discussion and Analysis for 2017*, <https://www.citizensfla.com/documents/20702/6867558/20180411+04E+MDA+2017.pdf/4584208b-1d87-4add-9a11-55e818fe0046?t=1523029712990> (last visited Jan. 10, 2021).

¹⁹ *Id.*

²⁰ *Id.*

²¹ State Board of Administration, Agency Analysis of 2022 Senate Bill 1058, p. 1 (Jan. 6, 2022). 2022 Senate Bill 1058 is identical to this bill. See *also* s. 215.555(5)(e), F.S.

²² S. 215.555(5)(e), F.S.

The bill replaces the statutory phrase “placed in liquidation” with the defined term “unsound insurer” so that FHCF coverage can be transferred to Citizens or an authorized insurer with policies that Citizens or such authorized insurer assumes from an unsound insurer or a liquidated insurer.

The bill establishes that if a covered event has occurred before the effective date of the transfer of the policies to the authorized insurer or Citizens, the authorized insurer or Citizens may only obtain coverage from the FHCF subject to an assignment of the remaining term of the unsound insurer’s FHCF contract.

The bill removes language regarding assignments that becomes obsolete if assignment is no longer limited to policies from insurers that have been placed in liquidation under ch. 631, F.S. Finally, the bill provides that the new language regarding assignment of policies from an unsound insurer does not limit the FHCF’s right to receive premium due under the contract between an unsound insurer and the FHCF.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.
- 2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

OIR has indicated that the bill may have a positive economic impact for policyholders, who may benefit from lower collateral protection insurance costs if more policies are eligible for coverage from the FHCF.²³

D. FISCAL COMMENTS:

None.

²³ OIR Agency Analysis of House Bill 815, p. 6 (Feb. 23, 2021). House Bill 815 from the 2021 Legislative Session is largely the same as HB 503 from the 2022 Legislative Session.