

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 529 Insurance Guaranty Associations

**SPONSOR(S):** Insurance & Banking Subcommittee, Webb

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 898

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Fortenberry	Cooper
2) Ways & Means Committee	16 Y, 0 N	Aldridge	Langston
3) Commerce Committee			

### SUMMARY ANALYSIS

A condominium is a form of ownership of real property comprised of units along with an undivided right of access to common elements. A condominium association is responsible for the operation and maintenance of the common elements and all unit owners are members of the condominium association. A condominium association must use its best efforts to maintain an insurance policy for the benefit of the association, the association property, and the common elements belonging to all condominium unit owners.

Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims. Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA).

FIGA issues guaranty fund payments for all lines of property and casualty insurance, including policies written to condominium associations, with certain exceptions. FIGA maintains two accounts, including one for auto insurers and one for all other property and casualty insurers that are covered by FIGA. Florida law provides that FIGA is only obligated to pay the portions of claims, made to insolvent property and casualty insurers, which are in excess of \$100, and less than \$300,000. For policies providing homeowner's insurance coverage, FIGA shall provide for an additional \$200,000 for the portion of a covered claim which related to the damage to the structure and contents. However, for policies covering condominium associations FIGA is only obligated to pay the amount of each property insurance claim which is less than \$100,000 for each condominium unit.

If an insurer's assets are insufficient to pay all claims, FIGA can issue post-insolvency assessments to obtain funds to pay the remaining claims. The assessments levied against any insurer in a calendar year may not exceed more than two percent of that insurer's net direct written premium in Florida for the kinds of insurance within an account maintained by FIGA. In the event that these assessments are insufficient to cover claims of insurers rendered insolvent by the effects of a hurricane, FIGA may levy emergency assessments, in an amount not to exceed two percent of that insurer's net written premiums written in Florida for the kinds of insurance within an account.

The bill changes the amount of coverage that FIGA must provide for each condominium unit within a condominium association from \$100,000 to \$200,000, per condominium unit for property insurance claims made under a condominium association policy and covered by FIGA. The bill also changes the amount of the emergency assessments that FIGA is authorized to levy against any insurer from a maximum of two percent of that insurer's net written premiums in Florida for the kinds of insurance within either the auto or all other insurance accounts maintained by FIGA to a maximum of four percent of the same premiums.

This bill does not impact local or state government revenues or expenditures. It potentially has both positive and negative direct economic impacts on the private sector.

This bill has an effective date of July 1, 2020.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0529c.WMC

**DATE:** 2/11/2020

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Condominiums and Condominium Associations**

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units, which may be owned by one or more persons, along with an undivided right of access to common elements.<sup>1</sup> Common elements are those portions of condominium property not located within the boundaries of the individual condominium units<sup>2</sup> and are considered jointly owned by all of the condominium unit owners. Examples of common elements include roofs, heating and air conditioning systems, exterior walls, pipes, and electrical systems.

A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>3</sup> The declaration governs the relationships among condominium unit owners and a condominium association. The condominium association is an entity responsible for the operation and maintenance of the common elements owned by the unit owners, and all unit owners of condominiums are members of the condominium association. The condominium association is overseen by an elected board of directors, commonly referred to as a board of administration.<sup>4</sup> The board enacts bylaws, which govern the administration of the condominium association.<sup>5</sup>

#### *Insurance Policies Held by Condominium Associations*

A condominium association must use its best efforts to maintain an insurance policy for the benefit of the association, the association property, and the common elements belonging to all condominium unit owners. One of the most significant common elements typically covered by condominium association insurance is roofs. Roofs are also some of the most likely elements to be severely damaged in a windstorm or hurricane. Condominium association insurance coverage does not include personal property within a unit or a unit's limited common elements, floor, wall, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments.<sup>6</sup> Insurance coverage for such property is the responsibility of the unit owner.<sup>7</sup>

#### **Guaranty Associations**

Under federal law, insurance companies cannot file for bankruptcy.<sup>8</sup> Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers<sup>9</sup> in Florida and sets up guaranty payments where necessary.<sup>10</sup> Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.<sup>11</sup> A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements

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<sup>1</sup> S. 718.103(11), F.S.

<sup>2</sup> S. 718.103(8), F.S.

<sup>3</sup> S. 718.104(2), F.S.

<sup>4</sup> S. 718.111, F.S.

<sup>5</sup> S. 718.112, F.S.

<sup>6</sup> S. 718.111, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> 11 U.S.C. § 109(b)(2).

<sup>9</sup> "An 'insolvent insurer' means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review." S. 631.54(7), F.S.

<sup>10</sup> Ch. 631, F.S.

<sup>11</sup> *Id.*

due to the insolvency of an insurer.<sup>12</sup> Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA)<sup>13</sup>.

### *Florida Insurance Guaranty Association*

FIGA provides a “mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer.”<sup>14</sup> It issues guaranty fund payments and provides related services for all lines of property and casualty insurance, including policies written to condominium associations, with certain exceptions.<sup>15</sup> When a Florida property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. FIGA obtains funds to pay the claims of insolvent insurers located in Florida from the liquidation of the assets of insolvent insurers by the Division of Rehabilitation and Liquidation (the Division) in the Florida Department of Financial Services (DFS) and from the liquidation of assets of insolvent insurers located outside Florida that transact insurance business in Florida.<sup>16</sup>

Florida law provides that FIGA is only obligated to pay the portions of claims made to insolvent property and casualty insurers, which are in excess of \$100, and less than \$300,000.<sup>17</sup> It further establishes that for policies providing homeowner’s insurance coverage, FIGA shall provide for an additional \$200,000 for the portion of a covered claim which related to the damage to the structure and contents.<sup>18</sup> However, for policies covering condominium associations, which the condominium associations have a responsibility to provide insurance coverage on residential units within the association, FIGA is only obligated to pay the amount of each property insurance claim which is less than \$100,000 for each condominium unit.<sup>19</sup>

When an insolvent insurer is liquidated in Florida, FIGA assumes the claims and is “deemed the insurer to the extent of its obligation on...covered claims, and,...shall have all rights, duties, defenses, and obligations of the insolvent insurer as if the insurer had not become insolvent.”<sup>20</sup> If an insurer’s assets are insufficient to pay all claims, FIGA can also issue post-insolvency assessments to obtain funds to pay the remaining claims.<sup>21</sup> Currently, the assessments levied against any insurer in a calendar year may not exceed more than two percent of that insurer’s net direct written premium in Florida for the kinds of insurance within an account.<sup>22</sup>

In the event that these assessments are insufficient to cover claims of insurers rendered insolvent by the effects of a hurricane, FIGA may levy emergency assessments.<sup>23</sup> The emergency assessments levied against any insurer in any one calendar year may not exceed more than two percent of that insurer’s net written premiums written in Florida for the kinds of insurance within either the auto or all other insurance accounts maintained by FIGA.<sup>24</sup>

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<sup>12</sup> See e.g., ss. 631.51 and 631.902, F.S.

<sup>13</sup> Ch. 631, part II, F.S.

<sup>14</sup> S. 631.51, F.S.

<sup>15</sup> S. 631.52, F.S.

<sup>16</sup> See s. 631.061, F.S. for grounds for liquidation. See s. 631.025, F.S., for an overview of persons subject to proceedings initiated by the Division.

<sup>17</sup> S. 631.57(1), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> S. 631.57, F.S.

<sup>21</sup> *Id.*

<sup>22</sup> S. 631.57(3)(a), F.S. As established in s. 632.52, F.S., FIGA covers “all kinds of direct insurance” with certain exceptions, such as life, annuity, health, disability, workers’ compensation, and surplus lines insurance. FIGA maintains two accounts, including one for auto insurance and one for all other property and casualty insurance who are covered by FIGA. When an auto insurer’s assets are insufficient to pay claims, all auto insurers within the auto account are assessed. When another property and casualty insurer’s assets are insufficient to pay claims, all insurers within the all other account are assessed.

<sup>23</sup> S. 631.57(3)(e)1., F.S.

<sup>24</sup> *Id.*

## **Effect of Bill**

The bill changes the amount of coverage that FIGA must provide for each condominium unit within a condominium association from \$100,000 to \$200,000, per condominium unit for property insurance claims made under a condominium association policy and covered by FIGA.

The bill also changes the amount of the emergency assessments that FIGA is authorized to levy against any insurer from a maximum of two percent of that insurer's net written premiums in Florida for the kinds of insurance within either the auto or all other insurance accounts maintained by FIGA to a maximum of four percent of the same premiums.

### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 631.57, F.S., relating to duties and powers of the association.

**Section 2.** Provides an effective date of July 1, 2020.

## **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:**

This bill has a positive effect on the private sector by providing additional coverage for condominium unit owners when claims on condominium association policies must be paid by FIGA. It also has the potential to have a negative impact on the private sector if FIGA deems it necessary to exercise its increased emergency assessment authority. However, the potential for FIGA to exercise its emergency assessment authority is more remote than the potential exercise of the initial assessment authority.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill neither authorizes nor requires administrative rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 15, 2020, the Insurance and Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment made a technical change regarding the percentage of the emergency assessment.

The staff analysis has been updated to reflect the committee substitute.