SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1766

SPONSOR: Banking and Insurance and Senator Alexander

SUBJECT: Florida Workers' Compensation Insurance Guaranty Association

DATE: April 10, 2003 REVISED: ________ ________ ________ ________

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Deffenbaugh	Deffenbaugh	BI	Favorable/CS
2.			CM	
3.			JU	
4.				
5.				
6.				

I. Summary:

The bill expands the assessment base for funding the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA or "association"), which pays workers' compensation claims of insolvent insurers and self-insurance funds. The bill provides that the assessments against insurers and self-insurers of a specified percentage of workers' compensation premiums written in the state, would be applied to the full policy premium value, without taking into account any discount or credit for deductibles. The bill does not increase the percentage caps on assessments, but the expanded assessment base significantly increases funding for FWCIGA, which is facing mounting liabilities. A similar change was made in 1999 to the assessments levied against carriers to fund the state's costs of administering the workers' compensation laws (via the Workers' Compensation Administrative Trust Fund).

The bill also limits the obligation of FWCIGA to $50,000, for covering claims for the return of unearned premium. In addition, the bill provides for a 6-month stay of all legal proceedings in which an insolvent insurer is a party, as the law currently provides if a self-insurance fund is a party to a legal proceeding.

The association is funded through annual assessments, capped at 2 percent of each insurer's net direct written premium in Florida, and capped at 1.5 percent for self-insurance funds. Assessments were levied at these maximum rates for 2002 and 2003. But, the law allows an *additional* 1.5 percent assessment against insurers (but not funds), totaling 3.5 percent, if necessary to meet fund obligations. This extra 1.5 percent assessment has never been levied but some or all of this amount is expected to be levied later this year for 2003 obligations, primarily due to the insolvency of a large insurer. Whether the absolute maximum assessments are adequate to cover obligations in 2004 and beyond is in doubt, primarily due to the insolvency of this insurer and another large insurer that is insolvent, but not yet in liquidation.

This bill substantially amends the following sections of the Florida Statutes: 631.913, 631.914, and 631.924.

II. Present Situation:

Florida Workers' Compensation Insurance Guaranty Association

In Florida and every other state, when the assets of an insolvent insurer are insufficient to pay claims, the claims for most types of insurance are paid in whole or in part by a guaranty fund. Chapter 631, F.S., creates four different guaranty funds for different types of insurance, one of which is the Florida Workers' Compensation Insurance Guaranty Fund (FWCIGA, or "association").[1] The FWCIGA covers claims of insolvent authorized insurers (with a certificate of authority issued in Florida), as well as claims of insolvent workers' compensation insurance funds licensed in Florida.

Florida is one of only two states to have a separate guaranty fund for workers' compensation insurers. The FWCIGA was created in 1997 by merging the Florida Self-Insurance Fund Guaranty Association and the workers' compensation account of the Florida Insurance Guaranty Association.[2] The association evaluates workers' compensation claims made by injured employees against insolvent member companies or funds, and determines if such claims are covered and should be paid or settled with association funds. The association pays the claims of insolvent workers' compensation insurers and self-insurance funds, but does not pay claims for insolvent individually self-insured employers, which are covered by a separate guaranty association.[3]

Regulatory Authority

The Office of Insurance Regulation currently licenses and regulates workers' compensation insurers and self-insurance funds, as previously regulated by the Department of Insurance. However, the Department of Financial Services administers ch. 440, F.S., the Workers' Compensation Law. The department is also authorized to be appointed as receiver of an insolvent insurer or fund, as well as oversight responsibility for the various insurance guaranty associations. [4]

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[1] SS. 631.901-.932, F.S.
[2] Ch. 97-262, L.O.F.
[3] S. 440.385, F.S.
[4] Effective January 7, 2003, the Department of Insurance was transferred to the Department of Financial Services and to the Office of Insurance Regulation (ch. 2002-404, L.O.F.). The 2002 act provides that the Office of Insurance Regulation (OIR) is responsible for all matters relating to insurers and other risk-bearing entities. However, the Department of Financial Services (DFS) was assigned the Division of Workers' Compensation, as well as the Division of Rehabilitation and Liquidation. (s. 20.121, F.S.). This session, CS/CS/SB 1712, amends the Florida Statutes to make conforming changes to the 2002 act, including a requirement that the OIR license and regulate insurers and self-insurance guaranty funds, and that the DFS administer the provisions of ch. 440, F.S., the Workers' Compensation Law. The bill also authorizes DFS to petition a circuit court for an order in a delinquency proceeding against an insurer, upon being required to do so by the OIR, and to be appointed as receiver, liquidator, or rehabilitator of the insurer; authorizes DFS to approve plans of operation and have oversight responsibilities for insurance guaranty associations; and authorizes the Chief Financial Officer (who is head of DFS) to make those appointments to the boards of insurance guaranty funds which were previously made by the Insurance Commissioner.

Assessments by FWCIGA; Current Status

FWCIGA is funded by assessments against all workers' compensation insurance and self-insurance funds. The association is authorized to determine whether an assessment against its members is necessary to pay covered claims or to reimburse the association for its administrative expenses. Section 631.941, F.S., authorizes the association to annually assess insurers up to 2 percent, and self-insurance funds up to 1.5 percent of their annual net direct written premium for workers' compensation policies in Florida. In 1999, the Legislature granted the association additional assessment authority up to 1.5 percent of premiums against insurers (but not self-insurance funds), totaling 3.5 percent, if necessary to make all payments on reimbursements then owing.[5]

The obligations of the FWCIGA have grown significantly over the past two years and are projected to rise even further. FWCIGA reports that it levied a .05 percent assessment against insurers and funds in 2000, a 1.0 percent assessment in 2001, and the "maximum" (first level) assessment of 2.0 percent against insurers and a 1.5 percent against funds in both 2002 and 2003. The extra 1.5 assessment against insurers that is authorized has never been used, but some or all of this amount is projected to be necessary to fully cover obligations for 2003. Without the extra 1.5 percent assessment, the association projects a deficit of about $10.2 million on December 31, 2003. The additional 1.5 percent assessment would generate additional revenue of about $38.9 million. Whether the absolute maximum assessments are sufficient to meet obligations for 2004 and beyond is in doubt. The board has already approved a 2 percent assessment (and 1.5 percent for funds) for 2004, to be levied in January of that year.

The recent insolvency of a very large insurer, Reliance, has caused a major drain on the guaranty fund. Another large insurer has been found insolvent, but has not yet been placed in liquidation. The association is handling the estates of 54 insolvent insurers and 2,874 open claims by injured workers.

The assessments levied by FWCIGA are levied on "net direct written premiums" meaning the gross premiums written in the state, less return premiums and dividends paid or credited to policyholders (s. 631.54(8), F.S.). The assessment is not applied to any deductible amount. That is, the assessment is not applied to the amount of the discount or credit received by the policyholder from the full premium. In contrast, the assessment levied against carriers to fund the Workers' Compensation Administrative Trust Fund, which funds the state's costs of administering the workers' compensation laws, is applied to the deductible amount.[6] This change was made in 2000, after it became apparent that an increasing number of large deductible policies were being obtained, for the ostensible purpose of mitigating the costs of the assessment. This may be still occurring, to mitigate FWCIGA assessments.[7]

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[5] Ch. 99-3, L.O.F.

[6] S. 440.51(1)(b), F.S. The WCATF assessment is capped at 2.75 percent of premium. The law provides that when reporting deductible policy premium for purposes of computing assessments levied after July 1, 2001, full policy premium value must be reported prior to application of deductible discounts or credits. But the assessment levied against carriers to fund the Special Disability Trust Fund, pursuant to s. 440.49(9)(b), F.S., does not include the deductible amount. (ch. 2000-150, L.O.F.)

[7] Ch. 2000-150, L.O.F.

Representatives of FWCIGA state that the association is responsible for paying workers' compensation claims of insolvent insurers, even for the amount of any deductible under the policy.

The law provides that the 2 percent (or lower) assessment against carriers "shall be included as an appropriate factor in the making of rates." (s. 631.914(1)(b), F.S.) This indicates that such costs may be included in the rate filing that is made by the insurer or the rating organization (the National Council on Compensation Insurers, or NCCI) that files rates on behalf of all workers' compensation carriers in the state, subject to approval by the Office of Insurance Regulation. However, the extra 1.5 percent assessment that may be levied provides that each insurer or a licensed rating organization may make a rate filing within 90 days after being notified of the assessment. If the rate filing reflects a percentage rate change equal to the difference between the rate of the assessment and the rate of the previous year's assessment (referring only to the extra 1.5 percent assessment), the filing shall be deemed approved when made.

Claims for Unearned Premium Refunds
The FWCIGA is also liable for payment of claims of unearned premiums refunds owed to employers of insolvent workers' compensation carriers. There is no statutory limit on such claims.

Stay of Legal Proceedings
Currently, s. 631.924, F.S., provides that all legal proceedings in which an insolvent self-insurance fund is a party are stayed for 6 months to allow for the association to defend covered claims. By its terms, this section does not apply to legal proceedings in which an insurer is a party. The association may still petition a court for a stay, and is likely to obtain one, but there is no statutory entitlement to a stay.

III. Effect of Proposed Changes:

The bill expands the premium assessment base to fund the obligations of FWCIGA, to include the full policy premium value, without taking into account any discount or credit for deductibles. (Section 2, amending s. 631.914, F.S.) This is the same accounting that is used for assessments to fund the Workers' Compensation Administration Trust Fund under s. 440.51, F.S.

By applying the assessment to the full policy value, including the deductible amount, the association estimates that its assessment base will increase from about $2.6 billion to $4.1 billion. As a result, the 2 percent assessment would generate $81.1 million, rather than $51.8 million. This extra $29.3 million would cover the projected year-end deficit for 2003, currently estimated to be $10.2 million with a 2 percent assessment levied under current law. Therefore, the additional 1.5 percent assessment authorized under current law would not be necessary if this amendment is enacted

The bill also provides that the association's obligation to return any unearned premium to an employer shall not exceed $50,000 per policy.

The bill amends s. 631.924, F.S., to extend this section's application regarding the mandatory stay of proceedings regarding insolvent self-insurers to include proceedings against insolvent

insurers. Currently, all legal proceedings in which an insolvent self-insurance fund is a party is stayed for 6 months to allow for the association to defend covered claims. The bill applies this same provision to insurers which are parties in a legal proceeding.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

See, Related Issues, below, regarding the questions of statutory interpretation raised by the bill's effective date of upon becoming law. These issues may also raise constitutional issues of due process and, possibly, impairment of contract.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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Carriers writing policies with deductibles will be paying greater assessments, apparently as early as the next assessment following the bill's effective date of upon becoming law, which may be a supplementary assessment in 2003, recalculating the 2 percent assessment that has already been levied for 2003. (See Related Issues.) Such carriers would not have collected any additional amount from their policyholders for this additional cost. However, the law provides that such assessments "shall be included as an appropriate factor in the making of rates" and are likely to be included in the next rate filing made by the insurer or its rating organization (NCCI), subject to approval by the Office of Insurance Regulation. In comparison, the extra 1.5 percent assessment that is

authorized (but is not expected in 2003 if the bill becomes law) allows carriers to make a special rate filing limited to the amount of the assessment which "shall be deemed approved when made."

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill takes effect upon becoming law, indicating that the expanded assessment base would apply to assessments levied on or after that date. The association has already levied a 2 percent assessment for 2003, but may now be authorized to recalculate that assessment and levy a supplemental assessment under the "expanded" 2 percent cap.

The effective date of upon becoming law also applies to the $50,000 limit on the association's obligation to pay employer claims for unearned premium. It may not be clear if this would apply to current insolvencies for which claims have already been filed, or would be limited to employer claims filed after the effective date, or orders of liquidation entered after the effective date, or some other triggering event.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.