HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 159 Guaranty Associations
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Legg and others
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	14 Y, 0 N, As CS	Callaway	Cooper
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill makes changes to the Florida Insurance Guaranty Association (FIGA), the Florida Life and Health Insurance Guaranty Association (FLAHIGA), and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). Guaranty associations are non-profit corporations that assume responsibility for settling claims and refunding unearned premiums to policyholders of insolvent and liquidated insurance companies. Insurance companies are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill combines the two automobile accounts in FIGA and changes the assessment recoupment process insurance companies use to recoup assessments levied by FIGA from their policyholders. If an insurance company becomes insolvent, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds to pay the claims of the insolvent insurer – regular and emergency assessments. FIGA assesses member insurance companies directly for both assessments and the insurance company is allowed by law to pass the assessment on to their policyholders.

Regarding FLAHIGA, the bill increases the coverage limits for some types of claims covered by FLAHIGA, permits insurance agents to discuss the existence of FLAHIGA with potential or current life and health insurance policyholders or annuity purchasers, and makes numerous statutory changes to conform the FLAHIGA statutes with the National Association of Insurance Commissioners 2009 Model Act for life and health insurance guaranty associations.

The bill makes FWCIGA, rather than FIGA, responsible for covering employment liability claims of insolvent workers' compensation insurers.

The bill has no fiscal impact on local governments. The bill will reduce the amount of insurance premium tax collected by the State due to the exemption of the recoupment of FIGA regular assessments from the insurance premium tax. The fiscal impact on the collection of insurance premium tax, as calculated by the revenue estimating impact conference on March 26, 2010, is a loss of $1.68 million in fiscal year 2010-2011. The fiscal impact on future years is detailed in the Fiscal Analysis section of the staff analysis.

The increased FLAHIGA coverage limits will enable policyholders of insolvent life and health insurance companies or purchasers annuities from insolvent life and health insurance companies to obtain a greater claim payment from FLAHIGA. Greater claims payments by FLAHIGA, however, could lead to a greater likelihood of a deficit in FLAHIGA and resulting assessments on member insurers because FLAHIGA is funded by assessments against member insurers if FLAHIGA does not have sufficient funds to pay claims.

The bill is effective on July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Guaranty Associations - Background

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.[1] Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.[2]

Florida operates five insurance guaranty funds to ensure policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[3] A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums[4] to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill makes changes to the Florida Insurance Guaranty Association which is the guaranty association for property and casualty insurance, the Florida Life and Health Insurance Guaranty Association which is the guaranty association for life and health insurance and annuities, and 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).

[2] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is 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.

[3] The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of an insolvent Health Maintenance Organization (HMO) and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

[4] The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired potion of the policy.

Florida Workers' Compensation Insurance Guaranty Association which is the guaranty association for workers' compensation insurance.

Florida Insurance Guaranty Association (FIGA)

Statutory provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. FIGA operates under a board of directors and is a nonprofit corporation. FIGA is composed of all insurers licensed to sell property and casualty insurance in the state.

When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders that have paid premiums for insurance are not left without valid claims being paid. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount FIGA will cover is $300,000 but special limits apply to damages to structure and contents on homeowners', condominium, and homeowners' association claims. For damages to structure and contents on homeowners' claims FIGA covers an additional $200,000, for a total of $500,000. For condominium and homeowners' association claims FIGA covers the lesser of policy limits or $100,000 multiplied by the number of units in the association. All claims are subject to a $100 FIGA deductible in addition to any deductible in the insurance policy.

FIGA obtains funds to pay claims of insolvent insurance companies primarily from the liquidation of assets of these companies done by the Division of Rehabilitation and Liquidation in the Department of Financial Services. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states but having claims in Florida.

In addition, after insolvency occurs, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds to pay claims – regular and emergency[5] assessments. FIGA assesses member insurance companies directly for both assessments and the insurance company is allowed by law (s. 631.57(3)(a), F.S.) to pass the assessment on to their policyholders.

By law, FIGA is divided into three accounts:

- the auto liability account;
- the auto physical damage account; and
- the account for all other included insurance lines (the all-other account).[6]

FIGA has had two separate auto accounts since its inception. In 2008, 7 insurers wrote auto liability policies but no auto physical damage policies and 4 insurers wrote auto physical damage policies but no auto liability policies whereas 216 insurers wrote both auto liability and auto physical damage policies.[7] Thus, the large majority of auto insurers write both policies. Additionally, the National Association of Insurance Commissioners Property and Casualty Insurance Guaranty Association Model Act (Model Act) does not provide for two auto accounts. In the Model Act, all auto claims are paid from a single auto account.[8] Likewise, guaranty funds in other states do not separate the auto account into two accounts.[9]

Changes to FIGA Proposed by the Bill

The bill combines the two FIGA automobile accounts: the automobile liability account and the automobile physical damage account. According to representatives of FIGA, combining these accounts

[5] Emergency assessments can only be issued to pay claims of insurers rendered insolvent due to a hurricane.
[6] Section 631.55(2), F.S.
[7] Information obtained from the Office of Insurance Regulation on January 13, 2010 on file with the Insurance, Business, & Financial Affairs Policy Committee.
[8] Model Act on file with the Insurance, Business, & Financial Affairs Policy Committee.
[9] Information obtained from representative of FIGA.

will provide greater efficiencies for FIGA and will align FIGA with the Model Act and the guaranty funds of other states.[10]

The bill also changes the way insurance companies assessed by FIGA for deficits pass the assessment to their policyholders. The procedure used by FIGA to levy assessments against member insurance companies and the procedure used by member insurance companies to pass the assessment levied on to their policyholders are found in s. 631.57(3), F.S. Under current law, once FIGA's board determines an assessment is needed to pay claims, pay claim administration costs, or to pay bonds issued in accordance with the FIGA governing statute, the board certifies the need for an assessment levy to the Office of Insurance Regulation (OIR). The OIR reviews the certification submitted by FIGA to support the assessment levy need and amount. If the certification is sufficient, the OIR issues an order to all insurance companies subject to the FIGA assessment ordering the companies to pay the assessment to FIGA within 30 days.[11] Insurance companies paying the assessment can recoup the assessment amount from their policyholders. To do so, for regular assessments, the company must submit a rate filing to the OIR that raises rates in an amount that corresponds to the assessment amount paid by the insurer and to be recouped from the policyholders.[12] Once OIR approves the insurance company's rate filing, the rates are increased in an amount that results in a pass through of the assessment to the company's policyholders. This allows the insurance company to recoup the assessment from policyholders throughout the year upon renewal or issuance of a new policy. Once an insurer recoups the assessment amount from its policyholders, the insurer files another rate filing with the OIR reducing rates in an amount that corresponds to the regular assessment recouped.

The bill removes the requirement that insurance companies must do a rate filing to pass through a FIGA assessment to the companies' policyholders. Instead, the companies are allowed to apply a recoupment factor to the premium of the policies subject to the FIGA assessment. The recoupment factor is not approved by the OIR, but the companies must submit an informational statement to the OIR 15 days before they begin to recoup assessments that sets out the amount of the recoupment factor and an explanation as to how the recoupment factor will be applied to policyholders. The recoupment factor must be calculated so that assessments are recouped over a year at the minimum. The insurer can recoup assessments over a longer period if it wants. The recoupment factor can only apply to the types of policies that are subject to the FIGA assessment. If the insurer does not recoup the full amount of the assessment the company paid to FIGA during the initial 12 month recoupment period, the insurer can recoup over another 12 month period but must recalculate the recoupment factor so that only the amount of the assessment remaining is recouped. If the insurer recoups from its policyholders more than 15 percent of the assessment amount the insurer paid to FIGA, the insurer must refund the excess funds to its policyholders. Excess funds recouped that are 15 percent or less than the total assessment paid are given to FIGA. Within 90 days after the company completes its assessment recoupment, the company must file an informational statement with the OIR setting forth an accounting of the recoupment.

The bill specifies regular assessments recouped by insurance companies due to insolvencies on or after July 1, 2010 are not premium and thus not subject to the insurance premium tax. These recouped assessments are also not subject to fees or commissions. Current law is similar in that it provides emergency assessments paid by insurance companies to FIGA and recouped from policyholders are not premium and thus are not subject to the premium tax, fees, or commissions. The bill retains current law exempting emergency assessments from the insurance premium tax and adds an exemption to the premium tax for regular assessments recouped for future insolvencies. Insurance companies pay insurance premium tax, fees, and commissions on regular assessments under current law.

[10] Information on file with the Insurance, Business, & Financial Affairs Policy Committee.
[11] Emergency assessments are payable at the end of the month after the assessment is levied and can be paid in a single payment or in 12 monthly installments (s. 631.57(3)(e)1.c., F.S.).
[12] Emergency assessments are not recouped in a rate filing. Rather, these assessments are a separate charge that is added to the policy premium and delineated as such in the premium notice. These assessments are recouped at policy issuance or renewal.

Florida Life and Health Insurance Guaranty Association (FLAHIGA)

Statutory provisions relating to FLAHIGA, which was created in 1979, are contained in part III of chapter 631, F.S. FLAHIGA is governed by a board of directors composed of nine insurance companies and is a nonprofit corporation. All insurance companies (with limited exceptions) licensed to write life and health insurance or annuities in Florida are required, as a condition of doing business in Florida, to be a member of FLAHIGA.

By law, FLAHIGA is divided into three accounts:

- the health insurance account;
- the life insurance account; and
- the annuity account.

In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, FLAHIGA provides protection (up to the limits spelled out in the statute) to Florida residents who are holders of life and health insurance policies and certain annuities with the insolvent insurer.[13] Generally, direct individual or direct group life and health insurance policies as well as individual and allocated annuity contracts issued by FLAHIGA's member insurers are covered by FLAHIGA.[14]

When a FLAHIGA member insurer is found to be insolvent and is ordered liquidated, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, FLAHIGA automatically becomes liable for the policy obligations the liquidated insurer owed to its Florida policyholders.[15] FLAHIGA services the policies, collects premiums and pays valid claims under the policies. FLAHIGA's rights under the policies are those that applied to the insurer prior to liquidation. FLAHIGA may cancel the policy if the insurer could have done so, but normally FLAHIGA continues the policies until the association can transfer (or substitute) the policies to a new, stable insurer with approval of the State.

Current law specifies life and health policies and annuity contracts from non-licensed insurers are not covered by FLAHIGA.[16] In addition, s. 631.713(3), F.S., excludes all of the following from coverage by FLAHIGA:

- any portion or part of a variable life insurance contract or a variable annuity contract that is not guaranteed by a licensed insurer;
- any portion or part of any policy or contract under which the risk is borne by the policyholder;
- any policy or contract or part thereof assumed by the failed insurer under a contract of reinsurance, unless assumption certificates were issued;
- fraternal benefit society products;
- health maintenance insurance;
- dental service plan insurance;
- pharmaceutical service plan insurance;
- optometric service plan insurance;
- ambulance service association insurance;
- preneed funeral merchandise or service contract insurance;
- prepaid health clinic insurance;
- certain federal employees group policies;
- any annuity contract or group annuity contract that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed directly and not through an intermediary to an individual by an insurer under such contract or certificate.

[13] Non-residents of Florida and beneficiaries of covered persons are covered by FLAHIGA under limited circumstances (s. 631.713(2), F.S.).
[14] Allocated annuity contracts are directly issued to and owned by individuals or annuities that directly guarantee benefits to individuals by the insurer.
[15] Generally, FLAHIGA covers only policyholders and certificate holders that were valid Florida residents on the date that a member insurer is declared insolvent and liquidated. However, non-residents of Florida and beneficiaries of covered persons are covered by FLAHIGA under limited circumstances (s. 631.713(2), F.S.).
[16] s. 631.713, F.S.

FLAHIGA maximum coverage limits for any one person are set by statute and are:

- Life Insurance Death Benefit: $300,000 per insured life;
- Life Insurance Cash Surrender: $100,000 insured life;
- Health Insurance Claims: $300,000 per insured life;
- Annuity Cash Surrender: $100,000 per contract owner; and
- Annuity in Benefit: $300,000 per contract owner.

Changes to FLAHIGA Proposed by the Bill

The bill increases some of the coverage limits for FLAHIGA. The coverage limit for life insurance cash surrender is unchanged at $100,000 but is clarified to be based on net cash surrender and net cash withdrawal to codify the calculation method of the coverage limit for life insurance cash surrender that has always been used by FLAHIGA. The coverage limit for deferred annuities is set at $250,000 for net cash surrender and net cash withdrawal and is an increase from the $100,000 limit under current law. This limit only applies to annuities in the accumulation phase (i.e. while the deferred annuity is being invested and is not in the payout phase). However, if an annuity is in the payout phase, the coverage limit is unchanged and is $300,000.

The bill also allows licensed insurance agents to explain FLAHIGA to policyholders, applicants for insurance coverage, or prospective policyholders. A similar provision was enacted relating to FIGA in 2009.[17] Current law prohibits advertisement for insurance to use the existence of FLAHIGA for the purpose of the sale of insurance.[18]

The bill makes numerous changes to current law governing FLAHIGA in order to achieve more uniformity with the National Association of Insurance Commissioners 2009 Model Act for life and health insurance guaranty associations and to facilitate the administration of multi-state insolvencies through the National Organization of Life and Health Guaranty Associations. These changes are as follows:

Non-Resident Coverage: Generally, FLAHIGA only covers claims made by Florida residents.[19] However, current law allows life insurance, health insurance, or annuity policy owners not living in Florida when an insurance company domiciled in Florida becomes insolvent to have their life, health, or annuity claims covered by FLAHIGA under certain circumstances.[20]

FLAHIGA covers claims by an owner of a life or health insurance policy or an annuity that does not live in Florida at the time the insurer becomes liquidated, in part, if the liquidated Florida insurer was never licensed in the state where the policy owner resides at the time of the insurer's liquidation.[21] Accordingly, in instances where the liquidated insurer was previously licensed in the state where the policy owner currently lives but is not licensed at the time of liquidation, the policy owner cannot obtain payment of a life or health insurance or annuity claim by FLAHIGA. Moreover, the policy owner is not likely to obtain payment of a claim by the guaranty association in the state where the policy owner resides because the liquidated insurance company is domiciled in Florida and not in that state. Thus, the policy owner is not able to obtain payment of a claim from FLAHIGA or any other state guaranty association upon the insolvency of the insurance company, despite owning a valid insurance policy or annuity issued by the liquidated insurer.

Under the bill, a life insurance, health insurance, or annuity policy owner not living in Florida when their insurance company is liquidated will be able to have FLAHIGA pay their claim if the insurance company that issued the insurance policy was not licensed in the state where the policy owner currently lives during the time which is required by that state's guaranty association to mandate coverage of the claim by that state's guaranty association. The other three requirements in current law for coverage by FLAHIGA for claims of policy owners not living in Florida at the time the insurance company is

[17] Section 14, Ch. 2009- 140, L.O.F.
[18] s. 631.735, F.S.
[19] s. 631.713(2), F.S.
[20] s. 631.713(2), F.S.
[21] A policy owner not living in Florida at the time the insurance company becomes insolvent is covered by FLAHIGA only if these other conditions are met too: the insurer that issued the policy and that is now insolvent is domiciled in Florida at the time of insolvency and if the state where the policy owner resides has a guaranty association but the policy owner is not covered by that state's guaranty association.

liquidated are not changed (see footnote #21). Thus, non-resident policy owners have to also meet these three requirements in order to get FLAHIGA coverage of their claim.

Coverage Exclusion Based on Interest and Crediting Rates: A new kind of insurance policy or portion of an insurance policy is added to the list of policies excluded from coverage by the FLAHIGA. Policies or parts of policies are excluded from FLAHIGA coverage if they are based on an interest rate, crediting rate or an index that calculates interest in an amount greater than an amount calculated in accordance with parameters set forth in the bill.

Coverage Exclusion for Indexed Products: A new kind of insurance policy or portion of an insurance policy is added to the list of policies excluded from coverage by the FLAHIGA. The bill excludes from coverage by FLAHIGA any interest credited to a life or health insurance policy or annuity or changes in value to those types of policies if the interest is credited to the policy or the policy value changes after the date the policy is liquidated. This exclusion is needed because changing the value of policies of insolvent insurers after liquidation is inconsistent with current law providing the liquidation date sets the value of the policy.[22] But, if the insurance policy allows interest to be credited to the policy more frequently than annually, then the bill allows any interest that would accrue to the policy as of the date of impairment or insolvency of the insurance company issuing the policy to be credited to the policy.[23] Thus, the policy amount covered by FLAHIGA will be the amount set by the policy terms at the date of impairment or insolvency, whichever date is earlier.

Coverage Exclusion for Medicare Advantage Policies: A new kind of insurance policy is added to the list of policies excluded from coverage by the FLAHIGA. Insurance policies that provide health care benefits under Medicare Part C or D[24] or under regulations issued pursuant to Medicare Part C or D are not covered by FLAHIGA.

Coverage for Structured Settlement Annuities: The bill specifies structured annuities are covered by FLAHIGA up to a maximum of $300,000 if the payee or beneficiary under the annuity contract does not live in Florida and the neither the payee, beneficiary or annuity contract owner can obtain coverage for the structured annuity from the guaranty association in the state where the annuity contract owner lives.

Insolvent Insurer Definition Change: Under current law, in order for an insurance company to meet the statutory definition of "insolvent insurer" a court order of liquidation with a finding of insolvency is required and all appellate review of the order must be complete. The bill removes the requirement that all appellate review of a court order of liquidation must be complete before an insurer can be found to be insolvent. According to representatives of FLAHIGA, only five or six guaranty associations have the appellate exhaustion requirement. They further contend this requirement makes coordination of nationwide liquidation plans difficult. Additionally, because court orders of liquidation are frequently appealed on collateral matters and not on the finding of insolvency, FLAHIGA representatives believe removal of the appellate exhaustion requirement is not problematic. In fact, removal of the requirement will allow FLAHIGA to cover policyholders of the insolvent insurance company during the pendency of an appeal.

Resident Definition Change: The bill amends the definition of "resident" to provide clarification as to what state is a businesses' residence and what state is the residence of a person living abroad. Generally, FLAHIGA only covers Florida residents who are owners of life and health insurance policies

[22] ss. 631.192, F.S. 631.351, F.S., and 631.252, F.S.

[23] The pertinent date is the earlier date of the date of impairment or the date of insolvency. Impairment occurs when the minimum surplus required under s. 624.408, F.S., has been dissipated and the insurer does not have assets at least equal to all its liabilities including its total issued and outstanding capital stock; or, when the surplus of an insurer does not comply with s. 624.408, F.S. (s. 631.011(12) and (13), F.S.). Insolvency occurs when all of the assets of an insurer, if made immediately available, are insufficient to discharge all its liabilities or the insurer is unable to pay its debts as they become due (s. 631.011(14), F.S.).

[24] Medicare is the United State's health insurance program for people age 65 or older. Medicare has four parts: hospital insurance (Part A) that helps pay for inpatient care in a hospital or skilled nursing facility (following a hospital stay), some home health care and hospice care; medical insurance (Part B) that helps pay for doctors' services and many other medical services and supplies that are not covered by hospital insurance; Medicare Advantage (Part C) plans that are available for people with Medicare Parts A and B that choose to receive all of their health care services through one of the provider organizations under Part C; and prescription drug coverage (Part D) that helps pay for medications prescribed for treatment. (http://www.ssa.gov/pubs/10043.html#part1 (last viewed March 3, 2010)).

and certain annuities of an insolvent insurer.[25] The bill specifies businesses are residents of the state in which they have their principle place of business. The bill specifies persons living abroad are residents of the state of domicile of the insurance company that issued the insurance policy or contract as long as the place where the person living abroad lives does not have a guaranty association. This ensures citizens living abroad who purchase life or health insurance or annuities have their claims covered by a guaranty association if the insurance company insuring the policy or selling the annuity becomes insolvent.

Issuance of Substitute Coverage for Indexed Products: Section 631.717(12), F.S., authorizes FLAHIGA to substitute life and health insurance policies in place of life and health policies issued by an insolvent insurance company as long as the Department of Financial Services approves the substitution. Current law, however, does not allow FLAHIGA to substitute policies for policies of an insolvent insurance company that are indexed and accrue interest or crediting in accordance with the index. The bill allows FLAHIGA to substitute policies for indexed life insurance policies, indexed health insurance policies, or indexed annuities as long as the substituted policies are substantially similar to the replaced policy. The bill also places requirements on the policies that are substituted, such as requiring these policies to have a fixed interest rate or payment of dividends with minimum guaranteed dividends, or a different method for calculating interest. Approval by the receivership court is required before FLAHIGA can substitute policies for indexed products.

FLAHGA Coverage By An Insolvent Insurer's Reinsurance: Section 631.205, F.S., allows an insolvent insurers' receiver (usually the Division of Rehabilitation and Liquidation of the Department of Financial Services) to be paid under the insolvent insurer's reinsurance contract unless the reinsurance contract contains a clause naming the insolvent insurer a direct beneficiary of the reinsurance contract.

If an insolvent insurance company has reinsurance[26] on their book of business, the bill allows FLAHIGA to continue coverage under the insolvent insurer's reinsurance policy as long as FLAHIGA pays all unpaid premiums on the reinsurance contract. This will allow FLAHIGA to assume the role of the insolvent insurer in any reinsurance contracts the insurer has at liquidation. Thus, FLAHIGA will be able to collect payments owed to the insolvent insurer by the reinsurer.

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)

The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) was created in 1997 by merging the workers' compensation account in FIGA with the Florida Self-Insurance Fund Guaranty Association.[27] The FWCIGA pays workers' compensation claims of insolvent insurers and group self-insurance funds licensed in Florida, as well as unearned premium claims.[28] FWCIGA does not have a coverage limit for workers' compensation claims of insolvent insurers.

Claims under the employer's liability part of a workers' compensation insurance policy are not covered by the FWCIGA.[29] Employer's liability claims of insolvent workers' compensation insurers are covered by FIGA. According to representatives of FIGA, when a workers' compensation insurer becomes insolvent, it is difficult for FIGA to administer the employer's liability claims under the workers' compensation policies of the insolvent insurer. Specifically, FIGA has difficulty assessing workers' compensation insurance companies a portion of their workers' compensation premium for the

[25] s. 631.713(2)(b)1., F.S.

[26] Reinsurance is insurance bought by insurers. A reinsurer assumes part of the risk and part of the premium originally taken by the insurer, known as the primary company. Reinsurers don't pay policyholder claims. Instead, they reimburse insurers for claims paid. (http://www2.iii.org/glossary/R/ last viewed on March 7, 2010).

[27] Ch. 97-262, L.O.F.

[28] FWCIGA does not pay claims for insolvent self-insured employers, which are covered by a separate guaranty association (s. 440.385, F.S.)

[29] A workers' compensation insurance policy is divided into Part A and Part B. Part A provides workers' compensation coverage to cover medical expenses, lost income wages, rehabilitation costs and, if needed, death benefits for employees who sustain an injury, illness and/or contract a disease as a result of their employment. Part B provides employer's liability coverage to cover the employer in the event the employee elects not to accept the coverage offered under Part A of the policy. In such case, the employee exercises his/her right to sue the employer and part B defends and protects the employer's interests.

assessment needed to pay the insolvent insurer's claims under the employer's liability part of the worker's compensation policy.

Changes to FWCIGA Proposed by the Bill

The bill remedies FIGA's difficulty administering employer's liability claims due to the insolvency of a workers' compensation insurer by giving FWCIGA responsibility for covering these claims. Under the bill, the maximum amount FWCIGA will pay for employer's liability claims is $300,000. This amount is the same as the FIGA's coverage limit on these claims.[30]

B. SECTION DIRECTORY:

Section 1: Amends s. 631.52, F.S., relating to the scope of the FIGA part of ch. 631, F.S.

Section 2: Amends s. 631.54, F.S., relating to definitions used for FIGA.

Section 3: Amends s. 631.55, F.S. relating to creation of FIGA.

Section 4: Amends s. 631.51, F.S., relating to the powers and duties of FIGA.

Section 5: Amends s. 631.713, F.S., relating to the application of the FLAHIGA part of ch. 631, F.S.

Section 6: Amends s. 631.714, F.S., relating to definitions used for FLAHIGA.

Section 7: Amends s. 631.717, F.S., relating to the powers and duties of FLAHIGA.

Section 8: Creates s. 631.7295, F.S., relating to reinsurance purchased by insolvent insurers and FLAHIGA.

Section 9: Amending s. 631.735, F.S., relating to prohibited advertisement of FLAHIGA in the sale of insurance.

Section 10: Amending s. 631.904, F.S., relating to definitions used for FWCIGA.

Section 11: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Under current law, FIGA regular assessment recoupments are considered premium and thus the insurance company must pay the insurance premium tax on the amount the company recoups for FIGA regular assessments. The insurer's recoupment of emergency assessments levied by FIGA, however, is not considered premium for the insurance company recouping the emergency assessments. Thus, the recoupment of emergency assessments is not premium for the insurance company and is not subject to the insurance premium tax. The bill provides FIGA regular assessment recoupments made by an insurance company for insolvencies on or after July 1, 2010 are not considered premium. Thus, insurance companies no longer will pay the insurance premium tax on the recoupment of these regular assessments.

[30] s. 631.57(1)(a)2., F.S.

A revenue estimating impact conference was held on March 26, 2010 to estimate the impact the exemption for FIGA regular assessments from the insurance premium tax has on the tax. The consensus estimate of the impact conference was as follows:

	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash
General Revenue	(1.15)	(1.15)	(1.22)	(1.28)	(1.34)
State Trust					
DFS	(0.09)	(0.09)	(0.10)	(0.1.)	(0.10)
Total State Impact	(1.24)	(1.24)	(1.32)	(1.38)	(1.44)
Total Local Impact (DMS)	(0.44)	(0.44)	(0.44)	(0.45)	(0.47)
Total Impact	(1.68)	(1.68)	(1.76)	(1.83)	(1.91)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The increased coverage limits for FLAHIGA will allow policyholders having life, health, or annuity claims against insolvent insurers to obtain greater funds for payment of claims. The increased coverage limits for FLAHIGA, however, also result in greater claims payments by FLAHIGA. Greater claims payments by FLAHIGA could lead to a greater likelihood of a deficit in FLAHIGA and resulting assessments on member insurers because FLAHIGA is funded by assessments against member insurers if FLAHIGA does not have sufficient funds to pay claims.[31]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

[31] Section 631.718, F.S., limits the annual assessment amount against member insurers. Class A assessments which are used to meet administrative costs, general expenses, and insurer examination costs are limited to $250 per member insurer per year. Class B assessments which are used to pay the claims of the insolvent insurer are limited to one percent of the member insurer's premiums written in Florida. A portion of any assessment paid by a member insurer can be credited against the insurer's premium or corporate income tax. (See s. 631.72, F.S.) FLAHIGA assessments are not passed through to policyholders by member insurers.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Insurance, Business & Financial Affairs Policy Committee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute. The staff analysis was updated to reflect the committee substitute.