HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 211 Florida Insurance Guaranty Association
SPONSOR(S): Insurance & Banking Subcommittee; Raburn
TIED BILLS: **IDEN./SIM. BILLS:** SB 324

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill makes changes to the Florida Insurance Guaranty Association (FIGA) which is the guaranty association for property and casualty insurance. FIGA is composed of most 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. If FIGA does not have sufficient funds to pay claims of an insolvent insurer, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds – regular and emergency assessments.

The bill gives FIGA new options for collecting assessments. For regular assessments, the bill retains current law which allows FIGA to collect assessments from insurers within 30 days of the assessment levy. However, the bill adds a new option for the collection of regular assessments. This option allows FIGA to collect regular assessments directly from property and casualty policyholders. The bill also adds a new option for FIGA to use to collect emergency assessments. Under the bill, FIGA can levy emergency assessments directly on property and casualty insurance policyholders, with the assessments being collected over a 12 month period as policies are issued or renewed. The bill does not remove FIGA's ability under current law to collect emergency assessments upfront from insurers who then later recoup the assessments from their policyholders. Although FIGA still has this collection option under the bill, the bill specifies it can only be used if the FIGA board determines FIGA must immediately begin paying claims and does not have financing to pay the claims.

The bill has no fiscal impact on state or local government, but does impact the private sector. The drain on insurer surplus from having to prepay FIGA assessments up front and collect the assessments over a year from policyholders is avoided. In addition, a 2011 change to statutory accounting principles relating to how assessments are treated on an insurer's financial statement now negatively impacts some insurer's net worth. If FIGA decides to collect assessments directly from policyholders as allowed in the bill, then the impact on insurer net worth associated with the assessments is eliminated. Furthermore, if FIGA decides to collect regular and emergency assessments from policyholders directly as allowed under the bill, FIGA no longer has a source for a quick influx of cash to pay claims. Thus, to obtain cash quickly to pay claims of an insolvent insurer FIGA could issue bonds to supply funds for its immediate cash need. Any borrowing costs associated with a bond issuance would be added to the assessment amount to be collected and could result in a larger assessment.

The bill is effective July 1, 2013, and the changes to the collection of FIGA assessments made by the bill apply to assessments certified and levied after July 1, 2013, regardless of the date of the insolvency causing the assessment levy.

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.

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.

By law, FIGA is divided into two accounts:

- the auto liability and auto physical damage account; and
- the account for all other included insurance lines (the all-other account).[5]

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. Claims for property insurance are paid out of the all-other account in FIGA.

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[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 portion of the policy.

[5] Section 631.55(2), F.S.

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 other 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 assessments. Emergency assessments can only be issued to pay claims of insurers rendered insolvent due to a hurricane.

The specific procedure used by FIGA to levy both types of 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., and is generally the same for regular and emergency assessments. Once FIGA's board determines an assessment is needed to pay claims, pay claim administration costs, or to pay bonds issued by FIGA, 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 instructing the companies to pay their share of the assessment to FIGA.

If a regular assessment is levied, insurers must pay FIGA within 30 days of the levy. If an emergency assessment is levied, insurers pay FIGA in one payment due the end of the month after the assessment is levied or in 12 monthly installments. FIGA decides whether insurers pay in one payment or over 12 months. The maximum assessment amount for regular assessments is two percent per year per FIGA account, for a maximum of four percent per year. The maximum assessment for emergency assessments is two percent per year.

For both types of assessments, once insurers pay the assessment to FIGA, they recoup the assessment from their policyholders at policy issuance or renewal. In other words, insurance companies prepay their assessment to FIGA upfront and wait as long as 12 months to recoup the assessment amount from their policyholders as policies renew or new policies are issued.[6] Because insurers prepay the assessment upfront, FIGA is able to quickly obtain funds to pay claims of insolvent insurers.

On November 9, 2012, FIGA levied a 0.9% assessment for the all other account. This assessment was paid upfront by insurers and passed through to policyholders who repay the insurer for the assessment at policy issuance and renewal.

Changes Proposed by the Bill

The bill gives FIGA new options for collecting assessments. For regular assessments, the bill retains current law which allows FIGA to collect assessments from insurers within 30 days of the assessment levy. However, the bill adds a new option for the collection of regular assessments. This option allows FIGA to collect regular assessments directly from property and casualty policyholders. To collect the assessment directly from policyholders, once FIGA determines the need for and amount of a regular assessment and notifies the OIR of such, the OIR issues an order to insurers specifying the assessment percentage to be collected by the insurer from their policyholders over 12 months at policy

[6] Insurer recoupment from policyholders may occur over a period longer than 12 months if the insurer's book of business subject to the assessment decreases during the recoupment period. This makes the insurer's collection of the assessment over 12 months insufficient to recoup the full amount of the assessment paid to FIGA, so the insurer continues to recoup the assessment from policyholders until the assessment is recouped in full.

issuance or renewal. Insurers then periodically transmit the assessment collected from their policyholders to FIGA. The maximum assessment under current law of two percent per FIGA account per year is not changed by the bill.

The bill also adds a new option for FIGA to use to collect emergency assessments. Under the bill, FIGA can levy emergency assessments directly on property and casualty insurance policyholders, with the assessments being collected by FIGA over a 12 month period as policies are issued or renewed. The mechanics of the collection method from policyholders is the same as that for the collection of regular assessments from policyholders described previously in the analysis. The two percent per year maximum emergency assessment provided by current law is not changed by the bill.

The bill does not remove FIGA's ability under current law to collect emergency assessments upfront from insurers who then later recoup the assessments from their policyholders. Although FIGA still has this collection option under the bill, the bill specifies it can only be used if the FIGA board determines FIGA must immediately begin paying claims and FIGA does not have financing to pay the claims. This condition precedent is not contained in current law. If FIGA opts to collect emergency assessments directly from insurers, it can collect them in a one payment or in 12 monthly installments, as allowed under current law.

B. SECTION DIRECTORY:

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

Section 2: Provides an effective date of July 1, 2013, and provides application of the changes to the collection of FIGA assessments made by the bill to assessments certified and levied after July 1, 2013, regardless of the date of the insolvency causing the assessment levy.

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:

Insurers allege having to prepay assessments upfront to FIGA could imperil the solvency of insurers that do not have sufficient funds on hand or the ability to borrow the funds to pay the FIGA assessments. However, current law, which is unchanged by the bill, exempts insurers from paying FIGA assessments if the payment would impair the solvency of the insurer.

Because the bill allows FIGA to collect regular and emergency assessments directly from policyholders, insurers would not have to prepay these assessments upfront to FIGA and recover the amount prepaid from their policyholders. Accordingly, the drain on insurer surplus from having to prepay FIGA assessments up front and collect the assessments over a year from policyholders is avoided.

In addition, a 2011 change to statutory accounting principles relating to how assessments are treated on an insurer's financial statement now negatively impacts some insurer's net worth.[7] The bill reduces that impact. Most insurers produce financial statements using both statutory and generally accepted accounting principles. Insurer financial information prepared in accordance with Generally Accepted Accounting Principles (GAAP) are typically used by investors, whereas, insurer financial information prepared in accordance with statutory accounting is used by the OIR. FIGA's levy of assessments against insurers reduces an insurer's net worth under both statutory and GAAP accounting. Under both GAAP and statutory accounting, insurers incur a liability in the form of a direct charge to surplus (i.e., a loss in surplus) in the amount of the assessment when the company is billed for the assessment. However, GAAP and statutory accounting treat an asset to offset that liability differently. Under GAAP accounting, the full assessment paid by the insurer to FIGA is a direct charge to surplus (i.e., reduces surplus) and there is no an offsetting asset allowed, which immediately reduces the insurer's net worth in the amount of the assessment. Under statutory accounting, however, the full regular assessment is also a direct charge to surplus, but there is an offsetting asset that is included on the insurer's financial statement when the assessment is paid to FIGA.[8]

If FIGA decides to collect assessments directly from policyholders as allowed in the bill, then the impact on insurer net worth associated with the assessments is eliminated. Assessments levied directly against policyholders are not included in an insurer's financial statement.

If FIGA decides to collect regular and emergency assessments from policyholders directly as allowed under the bill, FIGA no longer has a source for a quick influx of cash to pay claims (i.e., assessments paid by insurers within 30 days of levy). Thus, to obtain cash quickly to pay claims of an insolvent insurer FIGA could issue bonds to supply funds for its immediate cash need. Any borrowing costs associated with a bond issuance would be added to the assessment amount to be collected and could result in a larger assessment.

The bill does not increase the amount of assessments FIGA can levy. FIGA regular assessments remain at 2% maximum per year per account and emergency assessments remain at 2% maximum per year.

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.

[7] The changes to the statutory accounting principles that negatively impact insurer net worth paying assessments to FIGA were effective January 1, 2011.

[8] Prior to January 1, 2011, insurers were allowed to book an offsetting asset of an account receivable to the direct charge to surplus from a regular assessment when the charge was booked, rather than waiting to book the offsetting asset when the assessment is paid by the insurer.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The OIR does not believe the OIR or FIGA could make policyholders pay the FIGA assessment if they are ordered to pay it directly because neither the OIR nor FIGA regulate policyholders.[9] Thus, there may be no way for FIGA to collect assessments from policyholders who refuse to pay. However, current law, which is unchanged by the bill, provides that failure to pay FIGA emergency assessments should be treated by the insurer as failure to pay premium. The law further specifies that an insurer is not liable for uncollectible FIGA emergency assessments.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2013, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute. The proposed committee substitute made the following changes to the filed version of the bill:

- Removed language clarifying FIGA does not pay claims of insolvent risk apportionment plans,
- Restored current law about regular assessments being treated as advances paid by insurers as the current law was repealed in error,
- Clarified assessments levied by FIGA are limited to 2 percent per calendar year,
- Clarified the board of FIGA certifies assessments to the OIR, rather than collects them,
- Re-lettered paragraphs in the bill,
- Corrected conflicting language in the bill specifying which entity levies FIGA assessments to provide consistency and congruency with current law requiring the OIR to levy FIGA assessments, and
- Provided a new effective date.

The staff analysis was updated to reflect the committee substitute.

[9] Bill analysis from the OIR, dated January 24, 2013, on file with the Insurance & Banking Subcommittee.